



Port Sector Investor's
Manual

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PORTOS
DO BRASIL
MINISTÉRIO DA
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MINISTRY OF INFRASTRUCTURE
FEDERAL UNIVERSITY OF SANTA CATARINA – UFSC
TRANSPORTATION AND LOGISTICS LABORATORY – LABTRANS

ELABORATION OF STUDIES RELATED TO THE PLANNING AND MANAGEMENT OF PORT
GRANTS AND THE SUSTAINABILITY OF PORT LOGISTIC INTELLIGENCE SYSTEMS

PORT SECTOR INVESTOR´S MANUAL

OBJECT 1 – STUDIES RELATED TO THE PLANNING AND MANAGEMENT OF PORT
GRANTS

PHASE 1 – UPDATE AND IMPROVEMENT OF THE GENERAL NATIONAL LEASING PLAN –
PGO

JUNE/2019

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1. CONTEXTUALIZING THE PORT SECTOR

This manual intends to introduce the main alternatives for investments in the Brazilian port sector to potential national and international investors. In this context, it specifies: characteristics related to the national port sector, investment opportunities based on government programs and guidelines, and sectorial planning tools; definitions and characteristics of grant modalities for investments in organized ports, public areas and infrastructures and port installations located outside the organized port; description of processual and procedural flows for new pleas and contract renewals; instruments for grant and lease pleas; and, finally, the available lines of credit and tax incentives.

The flows indicate each necessary stage for the operation of investments in port grants. The definitions and descriptions of types of grants and procedures were elaborated based on current legislation. In this way, this manual hopes to constitute a practical guideline, from which investors can use as reference to obtain basic information on the possibilities and procedures for carrying out investments in port grants, by means of useful information regarding the stages and necessary requirements for each grant modality.

1.1. Investing in the brazilian port sector

Waterway transportation is the most relevant means of transportation for the goods movement that belong to the Brazilian's foreign trade agenda. Among these, the agribusiness, mining, automotive industry, oil and gas sector, and semi-manufactured and manufactured goods stand out.

In recent times, the demand for infrastructure has significantly increased within all sectors. Considering the demand for sustainable development and the increase of competitiveness and productivity, it is still necessary to amplify, restore and modernize Brazilian ports' structure.

As an alternative, the improvement on infrastructure offering increases economic competitiveness and reduces logistic costs, expanding export.

Particularly in the port sector, infrastructure actions boost development, reduce bottleneck logistics and promote new regional integrations, granting great centers and the foreign market more access to people and products.

For the sector in discussion, infrastructure actions were directed to dredging works, access to land and quays, among others. In addition, the resources have enabled an efficient management of control services, security and logistics intelligence.

These investments are performed in partnership with the private sector, which is the main responsible for the maintenance and operation of terminals. However, they depend on important public investments in order to make great public port infrastructures possible.

In this way, there is a large field with potential. Brazil has reached a leading role in the global economy in the previous years. The nation is one of the most important within the developing countries bloc, and has demonstrated social and economic strength, presenting

itself as a strong and appealing actor, with opportunities characterized by a high degree of diversification.

Since 2002, Brazil has focused on a new cycle of sustainable growth, based on a wide process of adjustments and adoption of measures destined for the improvement of its competitiveness and productivity. The country has a big and growing consumer market, with approximately 208 million people (IBGE, 2018).



Figure 1 – Investing in Brazil: Why?

Sources: IBGE (2018); Food and Agriculture Organization (FAO) (2019); World Bank (2018); UNCTAD (2018); WebPortos (2019); Ministry of Industry, Foreign Trade and Services (2019). Elaboration: LabTrans/UFSC (2019).

Additionally, Brazil holds the position of a strong global actor, being located in the middle-eastern part of South America, as well as currently acting as the ninth world economy.

Also, the country has a privileged location in the middle-eastern part of South America, sharing a border with almost all the other countries. This allows companies an easy access to Latin American and African markets.

Brazilian agribusiness, for instance, is a prosperous, safe and lucrative activity. Its power is a result of scientific and technological developments in the modernization of agriculture, and in the machinery industry and agricultural equipment.

Another relevant data is the country's Gross Domestic Product (GDP) in relation to the states where the ten biggest Brazilian ports¹ are located. The GDP of the eight states in question represents 68% of Brazil's GDP (IBGE, 2018).

1.2. Main organizations and entities that mediate the port sector

The Provisional Measure no. 870, of January 1st, 2019, grants the **Ministry of Infrastructure** the responsibility of creating policies and guidelines for the development and promotion of the port sector and maritime, river and lake port installations. Also, the Ministry of Infrastructure is responsible for the execution and evaluation of measures, programs and projects that support the infrastructure and superstructure development of ports and maritime, river and lake port installations.

In the scope of the Ministry of Infrastructure, the **National Secretariat of Ports and Waterway Transports (SNPTA)** is responsible for: participating in the creation and implementation of the Ministry's strategic planning regarding waterway and port transports with the proposal of priorities in the investment program; establishing guidelines for grant plans and tax proposals in the waterway transport sector; and elaborating grant plans and their proposal for the exploration of infrastructure and service in the port sector and maritime, river and lake port installations, among other responsibilities.

The **National Agency of Waterway Transports (ANTAQ)**, institutionalized by means of the Law no. 10,233, of June 5th, 2001, is the sector's regulating organization. It is responsible for implementing the Ministry of Infrastructure policies according to principles and guidelines established by legislation. It is also responsible for regulating, inspecting and controlling the provision of services of waterway transports, and the exploration of port and waterway infrastructures. In addition, this organization examines activities performed by the administration of organized ports, port operators, leaseholders and authorized port installations.

The **Planning and Logistics Company Inc. (EPL)**, created by Law no. 12,404, of May 4th, 2011, provides service in the areas of projects, studies and researches destined to subsidize the logistics and transportation planning of the country. This entails infrastructure, platforms and services regarding highway, railway, pipeline, waterway and airway modals.

¹ The ten biggest public ports of the country are being considered based on the amount of transported cargo, the area of influence, among other criteria: Santos (SP), Paranaguá (PR), Rio de Janeiro (RJ), Itajaí (SC), Vitória (ES), Rio Grande (RS), São Francisco do Sul (SC), Salvador (BA), Manaus (AM) and Aratu (BA).

Other organizations and institutions act as public actors which contribute to the port sector. Let us glance over the ones that contribute directly.

The **Investment Partnerships Program (PPI)**, bound to the Presidency of the Republic, was created by Law no. 13,334, of September 13th, 2016, and works as a force-task that acts in support of the ministries, and regulating agencies, for the execution of the program's activities. Other responsibilities of this secretariat are: to assist the President of the Republic in matters related to the PPI, by elaborating papers and studies and proposing rules, measures and guidelines; to coordinate, monitor, evaluate and supervise the PPI's actions, supporting necessary actions to the carrying-out of enterprises by the ministries and regulating agencies; and to divulge the PPI's projects and work together with investors and others interested in the program, including state and municipality organizations.

The **Brazilian Development Bank (BNDES)**, created by Law no. 1,628, of June 20th, 1952, and **Caixa Econômica Federal (CEF)**, created by the Decree-Law no. 759, of August 12th, 1969, are the financial agents that provide financial support. They can make their own lines interested companies. The BNDES is one of the main infrastructure financers of the country. It holds credit lines for projects (*BNDS Project Finance*) and for different infrastructure modalities (BNDES Finem Infrastructure) (Appendix 1 – Line of Credit and Tax Incentives).

1.3. The national port system

According to the Federal Constitution of 1988, the direct or authorized exploration, grant or permission of maritime, river and lake ports, concerns the Union exclusively. In this case, the port sector's legislation that is in force, Law no. 12,815 of June 5th, 2013, known as Law of the Ports, establishes that the indirect exploration of an organized port and the port installations located in it will take place by means of grants or lease of public goods. The same will be applied in the case of port installations located outside the area of an organized port.

A grant "is the onerous cession of an organized port aiming at the management and exploration of its infrastructure for a certain period" (BRASIL, 2013c). A lease, on the other hand, "is the onerous cession of the area and public infrastructure located inside the organized port, for its exploration during a certain period" (BRASIL, 2013c). As for an authorization, it is "the grant of a right to the exploration of port installations located outside the area of the organized port and formalized through an adhesion contract" (BRASIL, 2013c). In any case, port grants are a competence of the Union exclusively, whose Granting Power is mediated by the Ministry of Infrastructure and its respective Secretariats.

Such modalities of port and port services' exploration characterize the national port system, according to the internationally recognized model known as landlord port, by which the public law, exercised by the Union, provides port infrastructure, highway and waterway access and the right to exploration. It is up to the private sector the responsibility over the superstructure, the terminals' maintenance and the provision of port services, which are all public services according to contractual clauses.

The national port system consists of 37 organized ports whose management is exercised by the Union directly, through *Companhias Docas*, or the states and municipalities, through Delegation Partners.

The national port system also consists of approximately 193 authorized port installations, which are managed by authorizers themselves.

Figure 2 presents the public ports distribution in Brazilian territory, as well as authorized port installations, classified as port clusters, according to the 2015 National Ports and Logistics Master Plan (PNLP) (Appendix 2 – Port Clusters).

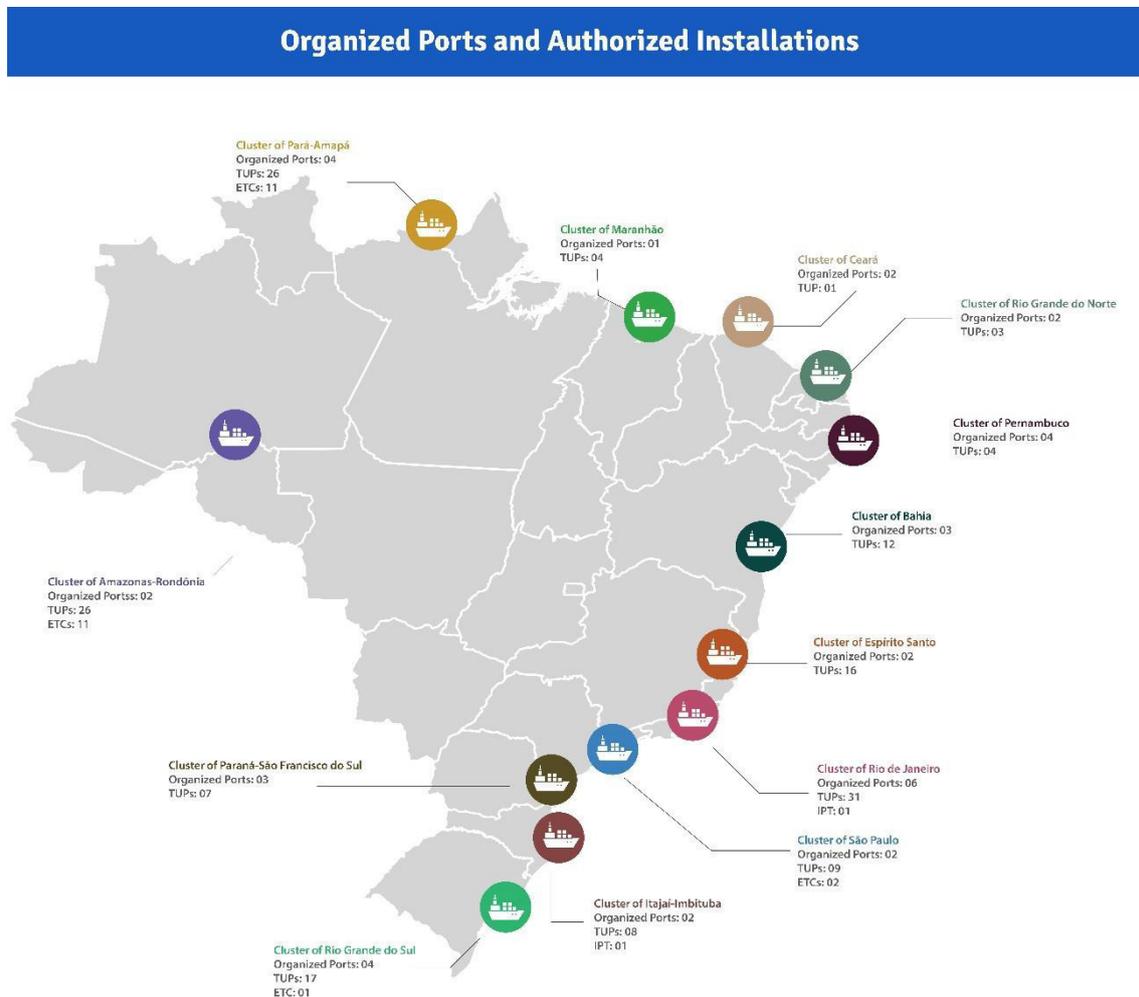


Figure 2 – Distribution of organized ports and authorized installations in Brazilian territory
Source: PNLP (MINISTRY OF INFRASTRUCTURE; LABTRANS/UFSC, 2018). Elaboration: LabTrans/UFSC (2019).

In the context of the national port system, it is important to highlight the evolution of cargo movement in the main Brazilian ports with the creation of the Special Secretariat of Ports (SEP), in 2007, which removed the port system from an inferior position and gave it a strategic and developmental perception. During the Secretariat's existence, an evolution of over 30% in the total cargo movement around the country can be verified, according to data presented in the WebPortos. The WebPortos is an online tool, which provides agile and interactive information about the organized ports under the management of the Ministry of Infrastructure (MInfra), and private port facilities, in a management format.

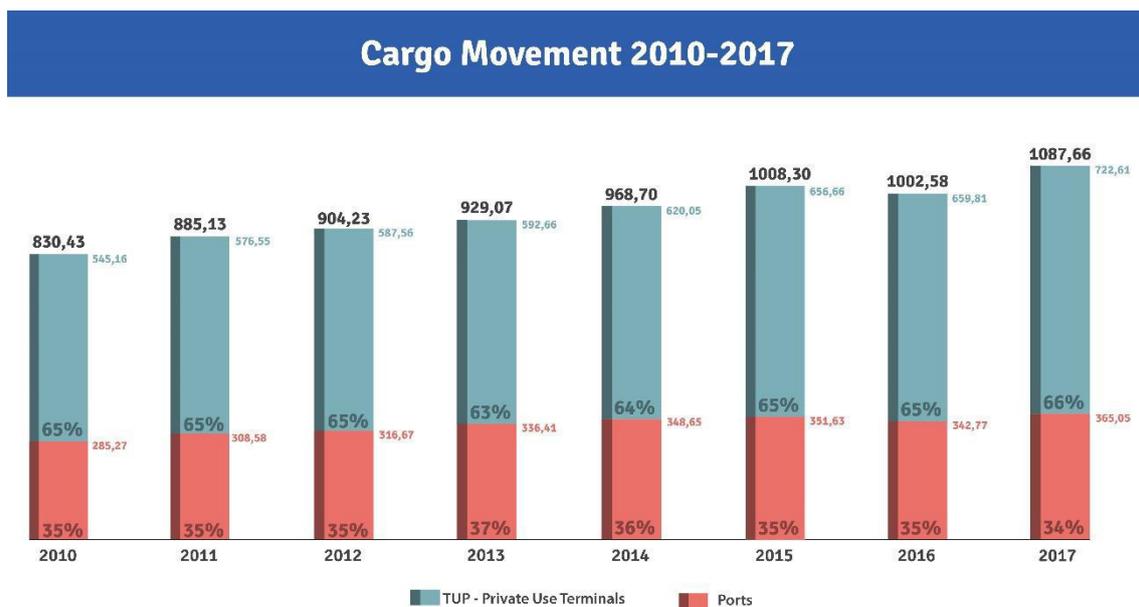


Figure 3 – Cargo Movement in Brazil (millions of tons) from 2010 to 2017

Source: WebPortos (2019). Elaboration: LabTrans/UFSC (2019).

It is important to mention the attraction of large-scale private investments the new 2013 edition of the Law of Ports brought about for the port sector. One of its goals was to provide more agility and modernization within the sector, reducing operational costs. Among the main alterations promoted by it, there are: the extinction of a preponderance criterion for Private Use Terminals (TUPs) own cargo, which previously were only authorized to deal with cargo that belonged to the terminal's owner. This enabled new investments and increased this modality's goods transport. It also facilitated the creation of "early extensions" in lease contracts, which stimulates immediate private investments in leased terminals without the use of public resources, allowing the leaseholder to explore the terminal for a longer period to amortize new investments.

It's important to highlight other substantial alterations promoted by the regulating decree of the new Law of Ports, the Decree no. 8,033, of June 27th, 2013, derived from the publication of the Decree no. 9,048, of May 10th, 2017. These decrees aimed at: the promotion of legal certainty, essential to attract new investments; stabilization of previous legal relationships; and the creation of a safe environment capable of predicting economic agents. Among the main alterations promoted by said regulations, there were:

- » Increase of hypothesis for the elaboration of a simplified Technical, Economic and Environmental Feasibility Study (EVTEA).
- » Exemption of public hearings previous to smaller-value biddings.
- » Increase of deadlines for grants and port lease contracts.
- » Permission that valid lease contracts under the aegis of Law no. 8,630/1993 may have an early extension.
- » Increase of port lease areas.
- » Substitution of leased areas.
- » Revision of investment schedules.
- » Possibility of investments authorization before ANTAQ's analysis.
- » Possibilities of investments outside the leased area.
- » Advance of tariff and lease income for new investments.

- » Adaptation of lease contracts to Law no. 12,815/2013.
- » Lack of mandatory warranties for private terminals enterprises, which will only be demanded in the case of public selection processes.
- » End of the 25% restriction for the increase of TUPs.

Even though the changes related to current legislation are recent, results can already be noticed. As part of this evolution process and after an extensive stagnation period of new port business biddings, 22 port lease auctions and 203 port installation authorizations took place, from this sector's new regulatory mark to April, 2019. (BRASIL,2019)

1.4. Sectorial planning

In 2007, the Special Secretariat of Ports was established by Law 11,518 of September 5th, 2007. Afterwards, with Law no. 12,314 of August 19th, 2010, it was transformed into the Secretariat of Ports of the Presidency of the Republic (SEP/PR), with the purpose of immediately and directly advising the President of the Republic in the elaboration, coordination and supervision of policies and guidelines for the development and promotion of the port sector and maritime port terminals. Also, the SEP/PR aims at promoting the carrying-out and evaluation of measures, programs and support projects for the development of ports and maritime port terminals' infrastructure and superstructure, as well as the ones granted to Companhia Docas.

With the edition of the Provisional Measure no. 726, of May 12th, 2016, later converted into Law no. 13,341, of September 29th, 2016, the SEP/PR was extinct, and its duties were transferred to the Ministry of Transportation, Ports and Civil Aviation (MTPA). On January 1st 2019, by means of the Provisional Measure no. 870, the MTPA's duties were transferred to the Ministry of Infrastructure.

The Decree no. 8,088, of September 2nd, 2013, was edited due to statements from Law no. 12,815/2013 and its regulative decree (Decree no. 8,033/2013), especially in what concerns the "Granting Power's" duties, whose infralegal rules assigned its exercise to the extinct SEP/PR. With its edition, a set of institutional and management actions began, with the mission to elaborate policies and guidelines for the promotion of the national port sector and the implementation of measures, programs and projects directed at public and private investments in organized ports and their installations.

From this sector's new regulatory mark (Decree no. 8,033/2013), planning activities achieved a distinctive position. As a result, the extinct Secretariat of Ports edited the Ordinance SEP/PR no. 03, of January 7th, 2014, which institutionalized the National Ports and Logistics Master Plan (PNLP) and other tools that began to shape the planning matrix of the national port sector, which are: the Master Plan, the Port Development and Zoning Plan (PDZ) and the General National Leasing Plan (PGO).

The PNL is a State's tool for the national port sector's strategic planning that seeks to identify vocations of many ports according to a set of their respective influence areas. For that, it defines short, medium and long-term scenarios with alternatives of intervention in the infrastructure and management systems, assuring an efficient allocation of resources from the prioritization of investments.

The Master Plan is a State's planning tool for the port unit. It takes into consideration perspectives of the port sector's strategic planning present in the PNL, which intends to direct actions, improvements and short, medium and long-term investments in ports and their accesses.

The PDZ is a Ports Administration operational planning tool that makes available policies of municipalities, state and region's urban development where the port is located. It seeks to establish actions and goals for the rational expansion and optimization of port installations and use area, adhering to the PNL and the Master Plan.

The PGO is a State's planning tool which consists of an action plan for the grant of new ports or private and public terminals. It gathers the areas to be destined to the port exploration in the modalities of lease, grant, authorization and delegation with their respective implementation ideals, based on the planning of the Granting Power, Port Administrations and private initiatives.

However, from the edition of the Decree no. 9,048/2017, the PGO started having a guidance character with the intent of supporting decisions related to port grants in all their modalities. According to the necessary characteristics of each one of them, this support must contain information related to ports and Brazilian port installations, as well as guidance on the requirements and procedures to be adopted in new grants.

In that way, the bond between the guidelines derived from sectorial planning and the measures for port investments was created, as it states in the Article 10, main section, Article 12, Paragraph 4, of Law no. 12,815/2013:

Article. 10. Granting Power may determine to Antaq, at any moment and **in accordance with planning guidelines and port sector policies**, the opening of a public call procedure to identify the existence of any interested party in the acquiring of a port installation authorization, according to regulations and predicted deadlines in Paragraph 1, Article 9 (subsection II).

[...]

Article. 12. After the public call or announcement procedure, Granting Power must analyze locational viability of proposals **and their adequacy to planning guidelines and port sector policies**.

[...]

Paragraph 4. In any case, only port installations that are compatible with planning guidelines and port sector policies may be authorized (BRASIL, 2013c, *our emphasis*).

Such bond was specially reinforced by studies which were necessary to elaborate bidding notices for new leases, as well as for plea analysis inherent to contracts' extensions and expansions of leased areas to contiguous areas, with the edition of Decree no. 9,048/2017, which altered Decree no. 8,033/2013. This is similar to what establishes the main section of article 6, article 19, paragraph 3 (subsection III), article 24, paragraph 1, article 27 (subsection I), article 28 and article 31, paragraph one of one:

Article 6. Previous technical, economic and environmental feasibility studies of the lease object or grant **will observe the guidelines of the port sector planning, taking into account the logical use of waterway and land access infrastructure and the characteristics of each operation**. (Decree no. 9,048, of 2017).

[...]

Article. 19. Grant and lease contracts will have a deadline of up to 35 (thirty five) years, extendable multiple times by Granting Power's criteria for a maximum limit of 70 (seventy) years, including the original validity term and all extensions.

Paragraph 3. The requirements for a grant or port lease contract extension, with no damage from others stated in laws or regulations are:

III - Compliance with the guidelines and planning of the utilized area according to the development and zoning plan of the port.

Article. 24. Granting Power may authorize, by means of a leaseholder's request, the expansion of a leased area to a contiguous area inside the organized port's polygon when:

Paragraph 1. Efficiency gains to port operations are proved to be derived from comparison between results of the exploration of the total expanded area and results which would be obtained with the exploration of areas separately. This comparison will pay notice to competition aspects and **sectorial planning guidelines**.

Article. 27. A port installation authorization may be requested to Antaq by the interested party at any time, by means of the presentation of the following documents:

I – declaration that states the enterprise is in accordance with **planning guidelines** and port sector policies, emitted by Granting Power;

Article. 28. At any moment **and in agreement with planning guidelines and port sector policies**, Granting Power might be able to indicate to ANTAQ the opening of public call procedures in order to identify the existence of anyone who is interested in obtaining a permit for port installations.

Article 31. Port installation authorizations may be directly emitted, regardless of a public selection process, when:

Paragraph one of one. Port installations will only be authorized when they are in accordance with **planning guidelines** and port sector policies. (BRASIL, 2013, *our emphasis*).

A systematic sectorial planning as an aid for decision taking is based on: research and a current situation analysis of each port complex, future demand predicted scenarios and the establishment of guidelines. This tool has been important for the State when it comes to the implementation of actions and public policies.

2. INVESTMENT OPPORTUNITIES IN PORT GRANTS

The maritime way currently represents 46% of Brazilian foreign trade in FOB value (*free on board*), approximately US\$111 billion in 2018 (COMEX STAT, 2019). In recent years, the port sector has grown an average of 3% per year, which is above the average growth of the Brazilian GDP according to Statistical Yearbook (ANTAQ, 2016a) that comprises the years of 2010 and 2016. For the following years, the market's expectation is of retaking economic growth, which consequently will reflect on a greater demand for port services.

2.1. Types and modalities of port grants

Brazilian legislation foresees the possibility of investment in organized ports and port installations located inside or outside the area of the organized port, according to the modalities in Figure 4:

Types of grants Public installations X Private installations			
Type	Modality		
Administration of the organized port	Concession		Lease
Areas related to port operations	Lease	Transition Contract	Passage Contract
Areas not related to port operations	Use Authorization	Non-onerous cession	Onerous cession
Private Use Terminals (TUP)	Authorization		
Cargo Trainshipment Station (ETC)	Authorization		
Tourism Port Installation (IPTur)	Authorization		
Small public port installation (IP4)	Authorization		

■ Public installations inside the organized port
 ■ Private installations outside the organized port

Figure 4 – Types of Grants

Source: Brasil (Law no. 12,815, 2013c; Decree no. 8,033, 2013a) and ANTAQ (Normative Resolution no.7,2016b).
Elaboration: LabTrans/UFSC (2019).

On the following topics, legal concepts inherent to types of grants and modalities will be presented.

2.1.1. Organized port

2.1.1.1. Concession

According to Law no. 12,815/2013, any indirect exploration of the organized port will be done by means of a concession, which consists of the onerous cession of the organized port

for the administration and exploration of its infrastructure for a certain period, always preceded by a bidding process.

On the new Law of the Ports, the organized port is defined as a “public good which is built and equipped to better attend navigation, passengers movement or goods movement and storage needs, whose traffic and port operations are under the jurisdiction of a port authority” (BRASIL, 2013c). The area of the organized port “is delimited by an act of the Executive that covers port installations and infrastructure of protection and access to the organized port” (BRASIL, 2013c).

The concession contract grants the right to manage and explore the organized port for up to 35 (thirty-five) years, which can be extended many times by Granting Power’s criteria for a maximum of 70 (seventy) years, including the original deadlines and their extensions (BRASIL, 2017a).

All Brazilian organized ports are currently managed by public institutions, called “Port Authorities”. In some cases, they are institutions of Indirect Public Administration – Companhias Docas – and on others, they are the state or municipality by means of delegation partnerships.

2.1.2. Port installations located inside the organized port

Port legislation allows two manners of exploration of port installations inside the organized port. On one hand, the lease of areas and public infrastructures related to port operations; on the other, the exploration of areas not related to port operations.

2.1.2.1. Areas related to port operations

Areas and port installations located inside the organized port related to port operations are the ones destined to the movement and storage of goods, and the embarking and disembarking of passengers whose destination or origin come from waterway transport.

The areas and public infrastructures related to port operations will be explored by a lease, in the context of the exploration of areas and port facilities related by port operations under management of the port with the possibility of passage contract according to the Normative Resolution no. 7-ANTAQ, of May 30th, 2016.

2.1.2.1.1. Lease

According to Law no. 12,815/2013, “the indirect exploration of an organized port and the port installations located in it will take place by means of a public good lease” (BRASIL, 2013), which consists of the “onerous cession of public area and infrastructure located inside the organized port for the exploration for a certain period” (BRASIL, 2013c) through a contract and always preceded by bidding.

Lease contracts grant holders the right to explore public areas and infrastructures for: the movement and storage of goods, whose destination or origin come from waterway transport, or to the embarking and disembarking of passengers. Both respect a deadline of up to 35 (thirty-five) years, which can be extended multiple times by Granting Power’s criteria for

a maximum limit of 70 (seventy) years, including the original deadlines and all their extensions (BRASIL, 2017a).

By rule, port leases are applied to many mechanisms that guarantee public interest from the concession model themselves, such as: need of a bidding, execution of consultations and public hearings, determined contractual deadline, identification of reversible goods, establishment of a tax policy, compliance with users rights, provision of adequate service, compliance with performance parameters and inspection of controlling organizations (BRASIL, 2017a).

2.1.2.1.2. Passage contract

Normative Resolution no. 7-ANTAQ/2016 states that, in relation to the **Passage Contract**:

Article. 36. An interested party that conducts any activity of goods movement and storage, whose destination or origin come from waterway transport may be associated with: the port administration, by means of adequate payment; passage of a common area or one which has already been occupied by others in the organized port's polygon.

[...]

Article. 37. The passage must observe the most rational, available course for the interested party's need, imposing the smallest charge for the port administration and third parties.

[...]

Paragraph 2. The passage will be for the installation of ducts, conveyor belts, pedestrian structures or any other means that enable the movement of goods and passengers.

[...]

Article. 38. The passage contract will always be struck between the interested party and the port administration. When it is an area of the port which has already been leased to other parties, there will be an intervention from the holder of this area's right of use, who will be previously submitted to a basic project for the implementation of the passage. (ANTAQ, 2016b).

The requirement for the execution of a passage contract must be submitted from the interested party to the port administration and may be struck for a limited deadline of 25 (twenty-five) years, which can be extended multiple times, whenever needed, as long as port activity is maintained and the beneficiary promotes necessary investments for the modernization of said installations. The procedure inherent to the execution of the contract is stated from Articles 36 to 45 of the Normative Resolution no. 7-ANTAQ/2016 (ANTAQ, 2016b).

2.1.2.2. Areas not related to port operations

Areas considered "not related" to port operations are the ones located inside the polygon area of the organized port that, according to the port's PDZ, is not directly destined to activities of passengers' movement and movement or storage of goods whose destination or origin come from waterway transport (BRASIL, 2013a).

By Granting Power's criteria, the port administration may explore, directly or indirectly, areas not related to port operations, which must be foreseen in the port's PDZ.

Indirect exploration of areas not related to port operations must be conducted by means of a use authorization of an onerous cession (BRASIL, 2013a).

2.1.2.2.1. Use authorization

The Port Administration, according to their own convenience and opportunity, may authorize the utilization of areas not related to port operations, aiming at short-term events. The definition of a contract's deadline must strictly be for the necessary period of the proposed objective, whose duration cannot exceed 90 (ninety) days (SEP/PER, 2014c). Its procedure is stated in Articles 6 and 9 of Ordinance SEP/PR no. 409, of November 27th, 2014.

2.1.2.2.2. Onerous cession

Cultural, social, recreational, commercial and industrial economic activities over 90 (ninety) days will be carried out through an onerous cession, celebrated over a contract whose deadline may have a deadline for up to 20 (twenty) years and preceded by a bidding process. Its process is stated from Articles 13 to 18 of the Ordinance SEP/PR no. 409/2014.

Given that statements from the Ordinance SEP/PR no. 409/2014 do not apply to areas destined to projects of port revitalization, areas and installations not related to port operations that can be destined to port zones revitalization may be indirectly explored by means of an onerous cession according to terms in the Ordinance SEP/PR no. 114, of March 23rd, 2016.

The Port Administration may grant, for up to 20 (twenty) years, areas and installations for institutional, cultural, social, recreational, commercial activities, among others. This can be achieved by means of readequation or urban-port integration projects, to be developed inside the area and in the outskirts of the areas under the management of the port administration. The procedures inherent to cessions are stated from Articles 14 to 21 in the Ordinance SEP/PR no. 114/2016.

2.1.3. Port installations located outside the organized port

In the words of the new Law of Ports, the indirect exploration of port installations located outside the organized port will take place by means of an authorization, which consists of the "grant of a right to explore the port installation located outside the area of the organized port and formalized by means of an adhesion contract". (BRASIL, 2013c).

2.1.3.1. Authorization

Port installations located outside the area of the organized port "will be explored by means of an authorization, preceded by public calls or announcements and a public selection process, whenever is the case" (BRASIL, 2013). This comprehends the modalities of Private Use Terminals; Trainshipment Cargo Stations; Small Public Port Installations; and Tourism Port Installations.

- » **Private Use Terminals (TUP)** – are port installations explored by means of an authorization. They are located outside the area of the organized port and used in the

movement and/or storage of goods whose destination or origin come from waterway transport.

- » **Cargo Trainshipment Station (ETC)** – are port installations explored by means of an authorization. They are located outside the area of the organized port and used exclusively in the trainshipment operation of goods in interior navigation vessels or cabotage.
- » **Small Public Port Installation (IP4)** – are port installations explored by means of an authorization. They are located outside the area of the organized port and used in the movement of passengers or goods in interior navigation vessels².
- » **Tourism Port Installation (IPTur)** – are port installations explored by means of an authorization. They are located outside the organized port and used for the embarking, disembarking and transit of passengers, crew, baggage and input for the provision and supply of tourism vessels (BRASIL, 2013c).

Private must hold a land's ownership certificate where he/she intends to establish the terminal, occupation registration, fee farm certificate, cession contract, or any other legal instrument that grants him/her the right to use and profit from said land.

The authorization will be formalized through an adhesion contract, which will hold the same clauses foreseen on concession and lease contracts with the exception of entries related to “contract value, tariffs and criteria of revision and readjustment procedures”, and “goods write-off” during contract termination, as well as clauses that preserve activities' economic freedom and the prerogative of authorizers to discipline port operations.

The authorization will last for a maximum of 25 (twenty-five) years, which can be extended for multiple times as long as port activity is maintained and the authorization holder promotes necessary investments for the expansion and modernization of port installations (BRASIL, 2013c).

2.2. Investment Partnerships Program

The Brazilian government has recently implemented a set of incentives in order to attract infrastructure investments by means of the Investment Partnerships Program (PPI). This project was launched through Law no. 13,334, on September 13th, 2016, with the purpose of reformulating the Brazilian concession model, as well as strengthening legal certainty and regulatory stability, and modernizing governance, guaranteeing minimum intervention in business and investments.

The idea is to have a new flow of decisions for prioritizing and foreseeing projects that will be carried out by means of concessions, public-private partnerships (PPP) and privatizations, as well as ensuring a favorable environment for the expansion of infrastructure, economic development, investment and work opportunities in the country.

² The activity related to the updating and improvement of the PGO provide for TED 02/2018, aims to update and systematize the internal Procedures Guide Port Grants published by the then SNP/ MTPA in July 2017, for this reason Small Public Port Installations (IP4) were not discussed in the PGO due to Decentralized Execution Term no. 01/2015, these facilities were excluded from PGO's scope made available in July 2017.

Within the port sector, this project will enable business opportunities and help Brazil to retake its GDP's growth. Besides increasing movement with scale gains and operational improvements, the government's goal is to reduce costs and increase ports' efficiency, reducing, thus, the so-called Brazilian Cost "Custo Brasil". Other benefits are: increase of competitiveness, modernization and logistic restructure of ports and the possibility of long-term planning of port activities.

With that in mind, the PPI resets models of concessions in order to increase competitiveness and provide transparency and legal certainty for the contracts. According to its official website, Projeto Avançar Parcerias is led by the following guidelines:

1. Concessions will be conducted with outmost technical rigor – only strong, consistent projects, capable of generating financial return to society and investors will enter the market. This prevents concessions to be contaminated by infringements, which many times translate risks to good governance, like contract amendments and excessive rebalances.
2. The focus will be on improving the provision of services to people and to the production sector. What we want is to ensure logistic and power conditions to improve people's lives and reduce our products' cost. We demand improvements that function in order to hone service according to attested demands in each project.
3. In order to amplify legal security, all contracts will hold clear indicators – performance clauses will protect users by placing quality of service as a main concession goal. Investors will also know exactly which goals are to be achieved and how they will be measured.
4. We will give back to the regulating agencies the effective meaning of State's organization – they will be strengthened so as to completely fulfill their role of regulating, monitoring and controlling. Agencies' autonomy is the guarantee they will be exclusively committed to the sectors' development they regulate.
5. Public notices will only be released after going through public debate and obtaining approval from Federal Court of Accounts (TCU) – all elaborated studies for projects will have wide publicity, by means of audiences and public consultations.
6. All public notices will be published in Portuguese and English. This was one of the Administrative Council for Economic Defense (CADE) suggestions, which has been collaborating in the preparation of this new model as a way to increase transparency and facilitate the participation of foreign investors.
7. The minimum deadline for the public notice will be expanded to 100 (a hundred) days. The deadline between the public notice's release and the collection of proposals will be superior to 100 (a hundred) days, which will allow a bigger number of investors to prepare themselves to take part in the competition.
8. From now on, only projects with proved environmental viability will be leased. For that, a previous environmental licensing or its guidelines issued by competent organizations will be mandatory. Said guidelines, for instance, will indicate necessary adjustments so as the license can be issued.
9. The manner of employing a long-term financing will change. The tendency is for them to be hired in the beginning of the construction work, avoiding the need for

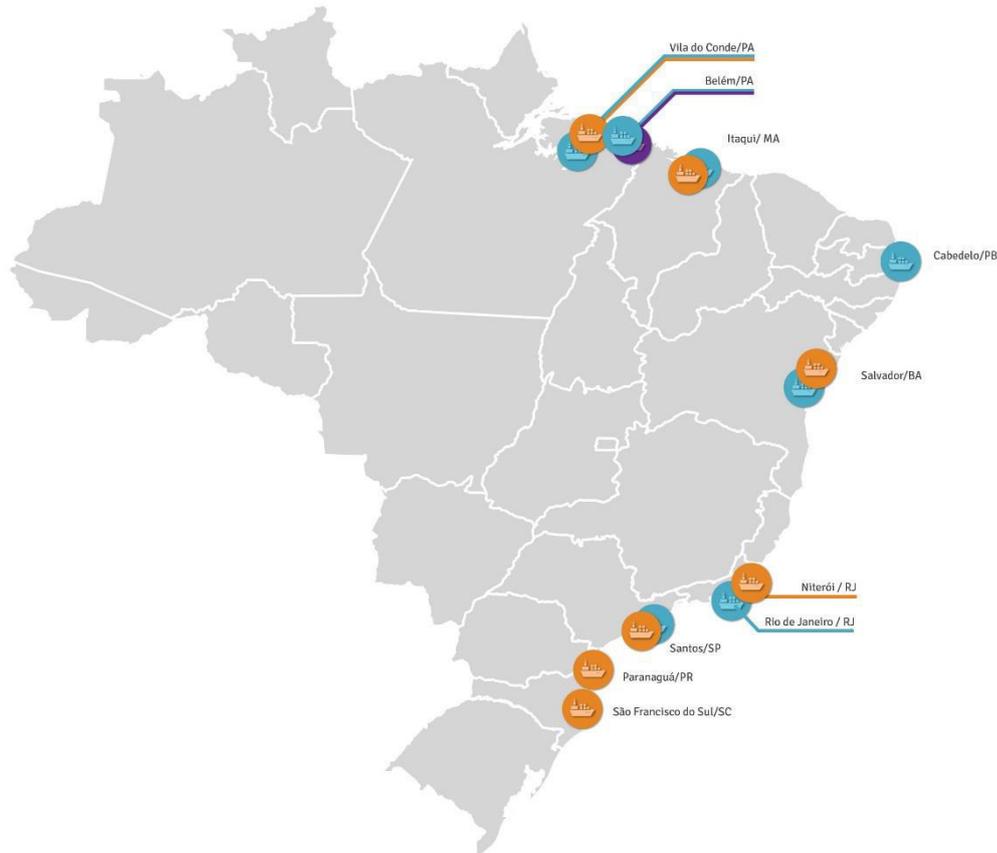
intermediate term loans, which increase the cost and turn operations bureaucratic. In that sense:

- We will also bet on the emission of debentures as a tool, supporting the circulation of private equity as a means for renewing our economy, stimulating the secondary market of these titles;
- During construction work, credit risk will be taken by banks, including BNDES, Caixa and Banco do Brasil. Finance contracts will hold efficiency conditions from the lease contract;
- Warrants will be shared between creditors and debenture holders. In that way, the risks for long-term financiers are minimized and the opportunity for the finance sector, with its expertise when evaluating risks, is created and provides said financing sources;
- Besides BNDES and FI-FGTS, the new model includes the participation of private banks and other financing sources. This demands well qualified projects that present adequate rates of return to market conditions.

10. For existing concessions, we will work so that they keep committed to the guarantee of balance between projects. In this sense, advanced studies search for alternatives for the solution of existing problems in light of the changes that are shaping this new regulating environment. For any alternative, the government will conduct technical studies, which will be submitted to hearings and public consultations, as well as TCU's approval. (BRASIL, 2019).

Based on these government guidelines, a few essential lease projects to the port sector were selected. In the context of the PPI's foreseeable actions, the following enterprises were conducted, according to Figure 5:

Completed Projects Qualified by PPI



Early Extension

 Salvador/BA Container Terminal of Salvador – Tecon Resolution no. 6, of September 13th, 2016	 Paranaguá/PR Fertilizer Terminal of Porto Paranaguá – Fosparr Resolution no. 6, of September 13th, 2016	 São Francisco do Sul/SC Port Terminal of Santa Catarina – TESC Resolution no. 10, of March 7th, 2017
 Vila do Conde/PA Container Terminal (Convicon) Resolution no. 10, of March 7th, 2017	 Niterói/RJ NITport Port Services Resolution no. 10, of March 7th, 2017	 Niterói/RJ NITshare Port Services Resolution no. 10, of March 7th, 2017
 Itaqui/MA Chemical Terminal of Aratur – Tequilmar Resolution no. 10, of March 7th, 2017	 Santos/SP Terminal XXXIX – Caramuru Resolution no. 10, of March 7th, 2017	 Itaqui/MA Fertilizer Terminal of Porto de Itaqui – COPI Resolution no. 14, of August 23rd, 2017

Leases

 Rio de Janeiro/RJ Rio de Janeiro Wheat Terminal Resolution No. 2, 13th of September, 2016	 Santarém/PA STM 04 – Fuel Terminals of Santarém Resolution No. 2, 13th september 2016	 Santarém/PA STM 05 – Terminais de Combustíveis de Santarém Resolution No. 2, 13th september 2016
 Itaqui/MA Pulp Terminal at Itaqui Port – IQI 18 Resolution No. 10, 07th of March of 2017	 Santos/SP Terminal STS 13 – Liquid Bulk Terminals Res/Resolution No. 33, 19th of March, 2018	 Belém/PA Liquid Bulk in the Belém / PA Port - (BEL 02A, BEL 02B, BEL 04, BEL 08 e BEL 09) Resolution No. 14, 23th of August, 2017
 Vila do Conde/PA Bulk Liquids Port in Vila do Conte / PA Port Vila do Conde/PA - (VDC 12) Res. n° 14, of 08/23/2017	 Cabedelo/PB Liquid Bulk Terminals in the Cabedelo Port /PB - AE 10/ AE 11 / AI 01. Res. No. 33, of 03/19/2018	 Vitória/ES VIX 50 - Liquid Bulk Port in the Vitória Port

Onerous Assignment

 Belém/PA MIR 01 – Liquid Bulk Handling Resolution No. 14, 23th of August, 2017	 Belém/PA BEL 05 – Liquid Bulk Handling Resolution No. 14, 23th of August, 2017	 Belém/PA BEL 06 – Liquid Bulk Handling Resolution No. 14, 23th of August, 2017
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Figure 5 – Actions conducted in the scope of PPI
Source: PPI (BRASIL, 2019). Elaboration: LabTrans/UFSC (2019).

To ensure the execution and credibility of the actions foreseen by the PPI, the government opted for a gradual announcement of projects. In this way, the government's technical teams were able to work with the outmost rigor in order to present their technical,

economic and environmental feasibility projects, all focused on the provision of services and the establishment of clear performance indicators.

In this context, new projects were qualified by the PPI's Council as a way to retake and strengthen the sector's growth through infrastructure offers, as well as rescuing credibility, predictability and transparency.

Figure 6 below shows us the short-term investment opportunities within the port sector, all qualified by means of the PPI's Council Resolutions no. 10, of March 7th, 2017, no. 14, of August 23rd, 2017, and no. 33, of March 19th, 2018.

Investment Opportunities Qualified by the PPI



Leases

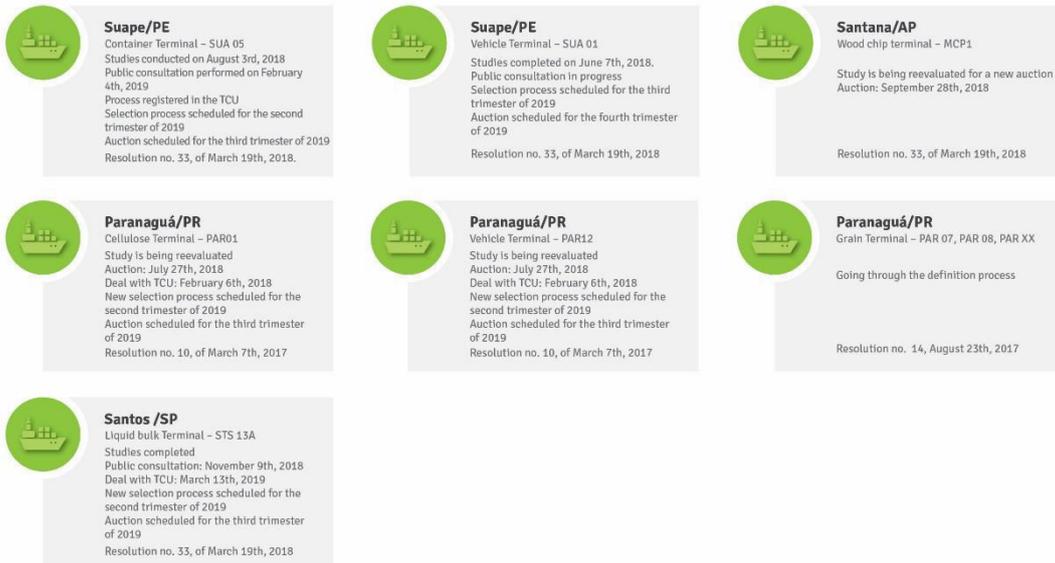


Figure 6 – Short-term investment opportunities (PPI)
Source: PPI (BRASIL, 2019). Elaboration: LabTrans/UFSC (2019).

2.3. Investment potential identified by the PNLP's capacity deficit

The Ministry of Infrastructure keeps the PNLP and the Port Complex Master Plans updated as a planning tool for the port sector. These are evaluated regarding future expectations of demand and port capacity. In this way, it is possible to identify bottlenecks, possible movement capacity deficits and, consequently, the need of improvements and short, medium and long-term investments in installations, storage and accesses.

The Master Plans concluded between 2012 and 2015 are currently available on the Ministry of Infrastructure website. Between 2016 and 2019, all Master Plans and the PNLP will be updated. In the case of the PNLP, its latest complete update was in 2015, and the demand project was in 2016, which is also published.

Among the PNLP's data, it is important to pay notice to the PGO and its projection of demand, cargo allocation and capacity. Their goal is to give an estimate of Brazilian port complexes' future demands, so as to allow the sector's evolution and understand where the port investments should go. According to a publication in 2015, cargo flows corresponded to 900 million tons in 2014, representing a 21,7% growth between 2010 and 2014. Among the natures of cargo, solid bulk is the main one. In this way, there was an operational improvement in said period. That increase on productivity, among other factors, is due to Federal Government and maritime terminal investments made in new specialized terminals, as well as to the acquisition of equipment at docks and yards.

Although the movement growth is high, the Brazilian port sector owns an installed capacity to deal with current cargo volume, that is, the whole of the port system's current capacity is superior to Brazilian ports' current demand. However, due to the exceeding projection of a future demand, the existing capacity will need to be supplied through operational improvements and investments.

On the following figures, you will be able to see some data on projection of demand, capacity and capacity deficit extracted from the PNLP. The maps seek to illustrate the potential of possible investments against the demonstrated capacity deficits. As a way to facilitate logistic planning and calculate cargo projection, the data is shown according to port *clusters* (Appendix 2 – Port Clusters) and product groups. Thus, it restricts the analyzed products (Appendix 3 – Natures of Cargo).

Current Capacity X Demand in 2045 Solid bulk in tons

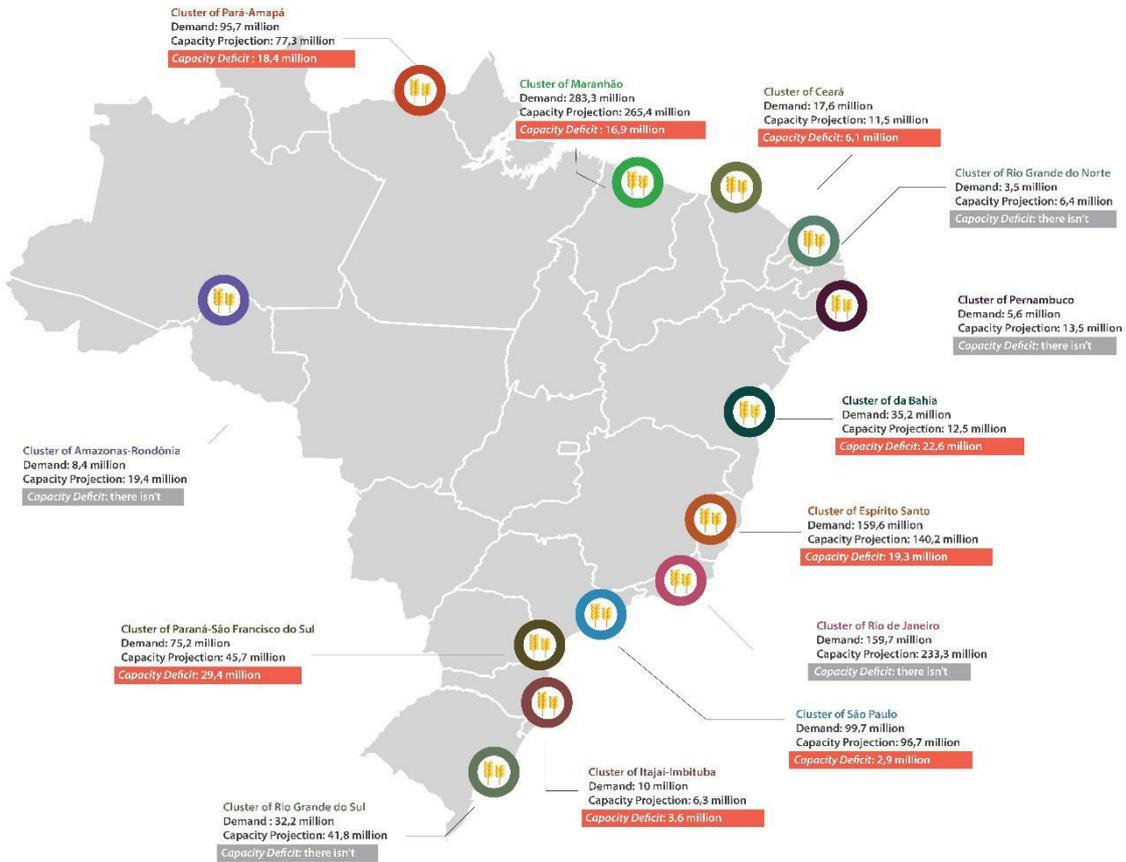


Figure 7 – Capacity versus solid bulk demand

Source: PNL (MINISTRY OF INFRASTRUCTURE; LABTRANS/UFSC, 2018). Elaboration: LabTrans/UFSC (2019).

Current Capacity X Demand in 2045 Liquid bulk in tons



Figure 8 – Capacity versus liquid bulk demand

Source: PNL (MINISTRY OF INFRASTRUCTURE; LABTRANS/UFSC, 2018). Elaboration: LabTrans/UFSC (2019).

Current Capacity x Demand in 2045 Container (TEUs) in tons

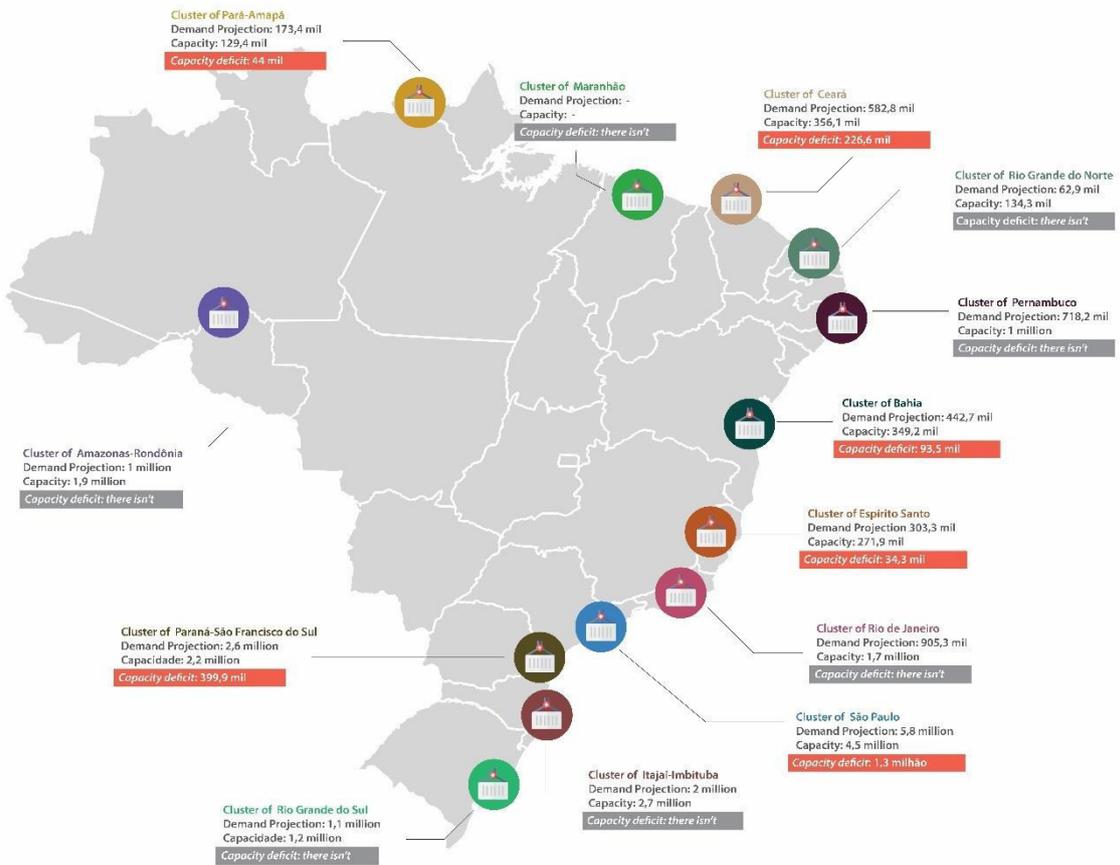


Figure 9 – Demand vesus container capacity

Source: PNL (MINISTRY OF INFRASTRUCTURE; LABTRANS/UFSC, 2018). Elaboration: LabTrans/UFSC (2019).

Current Capacity x Demand in 2045 General Load in tons



Figure 10 – Demand versus general cargo capacity
 Source: PNL (MINISTRY OF INFRASTRUCTURE; LABTRANS/UFSC, 2018). Elaboration: LabTrans/UFSC (2019).

3. REQUIREMENTS AND PROCEDURES FOR NEW BUSINESS AND CONTRACTUAL RENOVATIONS

3.1. Organized port concessions and lease of public areas and infrastructures

Indirect exploration of an organized port and the port installations located within it will take place by means of a concession and a lease of public goods. The **concession** is the onerous cession of an organized port aiming at its management and infrastructure exploration for a certain period, whereas the **lease** is the onerous cession of areas and public infrastructures located inside the organized port, also to be explored for a certain period.

The procedures for the concession of organized port and leasing of public infrastructure areas are provided for in Law 12,815 / 2013, Decree No. 8,033 / 2013 and Normative Resolution No. 7-ANTAQ / 2016.

Requirements for investments in organized port concessions or leases in public areas and infrastructures are:

- » Granting Power's decision to bid the port or area and infrastructure (which can be motivated by the investor);
- » Technical, Economic and Environmental Feasibility Study (EVTEA). It can be carried out by Granting Power, ANTAQ, Port Administration or any other interested party duly qualified by ANTAQ;
- » ANTAQ's elaboration of a bidding selection process. This should be submitted to consultation procedures and public hearings when the value of the contract is 100 times superior to the limit established in Article 23, main section, subsection I, item "c" of Law no. 8,666, of 1993, and to the Federal Court of Accounts (TCU):
- » bidding process;
- » Investor's participation in the bidding process, according to established rules in the bidding selection process in question.

Due to its peculiarities, the port sector has a specific procedure for the assignment of public areas. This happens through auctions for the exploration of port and port installations.

Bidding process for concessions or public good concession purposes have its legal basis on Law 12,462, of August 4th, 2011; Law no. 8,666, of June 21st, 1993; Law no. 8,987, of February 13th, 1995; and the Decree no. 7,571, of October 11th, 2011.

Based on Granting Power's guidelines, it is up to ANTAQ to carry out bidding process and elaborate bidding selection processes. The same can be said of Port Authorities which, according to Ordinance no. 574, of December 26th, 2018, deals with the decentralization of duties related to the indirect exploration of port installations of organized ports and their respective port administrations, whether they are delegated or not.

The bidding process will always be preceded by previous technical, economic and environmental feasibility studies of the lease or concession object, observed by the guidelines of the port sector in a way as to consider the rational use of waterway and terrestrial access

infrastructure and the characteristics of each enterprise. After the bidding object is defined, ANTAQ must adopt the following measures: i) consult customs; ii) consult the respective municipal public power; and iii) emit the reference term for environmental studies that aim at the bidding.

ANTAQ must consult the selection process' public hearings when the contract value is 100 times superior to the limit established in Article 23, main section, subsection I, item "c" of Law no. 8,666, of June 21st, 1993, and should be provided for a TCU's analysis.

In case the obligations for the elaboration of a selection and bidding process for the lease of port installations located inside organized ports are delegated, the Port Administration must forward, for ANTAQ's analysis and approval and prior to a public consultation procedure, a copy of the administrative process of the bidding in question. This copy must contain: EVTEA; a port administration manifest regarding the EVTEA's adequacy; proof documents that testify the demands of Article 14 of Law no. 12,815, of June 5th, 2013; and minutes of the selection process notice and the contract.

The following criteria, in a combined or isolated manner, will be used for judgment: greater movement capacity; smaller rate; shorter cargo movement time; higher investment value; smaller consideration of Granting Power; better technical proposal, according to established criteria by Granting Power; higher lease value.

The bidding process will pay notice to the stages and orders foreseen by Law no. 12,462/2011, as well as Law no. 8,666/1993. The lease contract will be signed by Granting Power, intervened by ANTAQ and the Port Authority in question.

It is important to highlight the difference between brownfield and greenfield areas for port leases. Greenfield areas are new areas, with no physical structure, in which a leaseholder invests in construction and new equipment. Brownfield areas, on the other hand, correspond to existing areas, previously occupied by a permanent structure, and that receive operational improvements by leaseholders in more modern and efficient contracts.

Concession and lease contracts must essentially hold clauses related to:

- object, area, and deadline;
- manner, way and exploration conditions of organized ports or port installations;
- criteria, indicators, formulas and parameters that define the quality of the activity provided, as well as goals and deadlines for the achievement of certain levels of service;
- contract values, usual tariffs and review and readjustment criteria and procedures;
- investment responsibilities of the contractor;
- users rights and duties, with correlated obligations of the contractor and their respective sanctions;
- parties' responsibility;
- goods write-off;
- rights, warranties and obligations between the contracting party and the contractor, including the ones related to future needs of supplementation, alteration and expansion of activities and their consequent modernization, perfection and installations' amplification;
- ways to fiscalize installations, equipment, methods and practices of carrying out those activities, as well as indications of organizations and institutions that are fit to perform them;
- guarantees of a proper execution of the contract;

responsibility of the port installation holder for the poorly execution of activities;
 hypothesis to terminate a contract;
 mandatory provision of information of interest to the Granting Power, National Agency of Waterway Transports (ANTAQ) and other authorities that act on the port sector, including those of specific interest to the National Defense;
 adoption and execution of customs' inspection measures for goods, vehicle and people;
 access to organized ports or port installations by Granting Power, ANTAQ and other authorities that act on the port sector;
 penalties and their applications;
 jurisdiction (BRASIL, 2013C).

On Figure 11, there is a flow chart indicating the procedures for investing in organized port concessions or public areas and infrastructures leases.



Figure 11 – Procedure for new leases

Sources: Brasil (Decree no. 8,033, 2013a; Law no. 12,815, 2013c) and ANTAQ (Resolution no. 3,220, 2014; Normative Resolution no. 7, 2016b; Resolution no. 5,464, 2017) . Elaboration: LabTrans/UFSC (2019).

3.2. Authorization of port installations located outside the area of the organized port

Indirect exploration of port installations located outside the organized port will take place by means of an authorization. This authorization consists of the right to explore a port installation located outside the area of the organized port, and it is formalized by means of an adhesion contract.

They will be explored by means of an authorization, preceded by a public call or announcement and, when necessary, a public selection process. Port installations located outside the area of the organized port cover the following modalities: private use terminal; trainshipment cargo station; small public port installation; and tourism port installation. Legal basis can be verified in Law no. 12,815/2013, Decree no. 8,033/2013, Normative Resolution no. 20-ANTAQ/2018, and Ordinance SEP no. 249/2013.

An artificial person under Brazilian law, with its headquarters and administration in this country, might request to ANTAQ an authorization to build and explore a port installation at any time, according to a requirement sample established on Annex A of ANTAQ Resolution

no. 20/2018, which should be instructed by foreseen documentation on its article 4, both physical and digital formats.

Article 4. Documentation will consist of:

I- a declaration that states the enterprise is adequate according to planning guidelines and port sector policies, to be emitted by Granting Power;

II- register's file duly filled out, according to Annex B of the normative resolution in question;

III- organization document, articles of incorporation or articles of association in force, duly registered and, in the case of business corporations, alongside documents that prove the election of their administrators with valid term of office, registered in a competing organization;

IV- registration evidence of the enterprises headquarters in the National Registry of Legal Entities (CNPJ/MF), as well as of the port installation when constituted under branch offices;

V- descriptive memorial of the terminals' installations. It should contain:

a) description of areas' polygons by means of georeferencing coordinates, separately indicating: intended area in land; intended area for the installation of physical structures over water; intended area for docking berths; and the required area for maneuvering basin and access channels. All of the mentioned above must be presented in Universal Transverse Mercator (UTM) coordinate system, in an electronic spreadsheet. The areas' graphic representation must be presented in a site plan, both in physical and digital formats, in PDF, KML/KMZ, SHP extensions or any other one required by Antaq. These must identify and delimit (in proper scale, with subtitles and captions, name, signature and registration number of the responsible technician) any waterway (maritime, river or lake) and terrestrial (highway, railway and pipeline) access, and other enterprises that are located in the terminal's vicinity, especially other port installations.

b) description of all access to existing terminals or others to be built: waterway (maritime, river or lake) and terrestrial (highway, railway, pipeline);

c) description of terminals, with identification of docking installations, respective docking berths and their functions, storage installations, circulation areas, general and supply installations, and their respective destinations and capacities;

d) vessel specification – project type per docking berth, with information on type of vessel, its length, beam, draft and deadweight, in TPB;

e) description of main equipment and devices for the loading and unloading of vessels, as well as for cargo movement in storage installations, informing, when necessary, the existing amount, capacity and utilization;

f) physical and financial schedule for implementing a port installation; except when one's already built;

g) cargo and/or passenger movement estimate; and

h) global value for the investment. This should be presented with a Technical Term of Responsibility (ART) and a Technical Registration of Responsibility (RRT) and Technical Term of Responsibility must contain the name for the responsible technician for the project's budget, his/her signature and register number in CRE.

VI - Site plan of terminal installations, both in physical and digital formats, and in PDF, KML/KMZ, SHP extensions, or any other ones demanded by Antaq. These must identify docking installations and indicate their docking berths, storage facilities, circulation routes, general installations, and existing and projected supply

installations. These must identify and delimit (in proper scale, with subtitles and captions) the demarcation of constant areas from the land's ownership certificate. The Technical Term of Responsibility (ART) and the Technical Registration of Responsibility (RRT) must be presented, and both must contain the name of the responsible technician, his/her signature and the Regional Council of Engineering and Architecture (CREA/CAU) registration number;

VII - land's ownership certificate, occupation registration, fee farm certificate, or cession contract, or any other legal instrument that grants the right to use and profit from the land;

VIII - consultation of costs;

IX - consultation of the municipal public power in question;

X - emission of a term of reference for environmental studies emitted by the bidding organization, or a competing environmental license emitted by a suitable organization or the exemption of a license;

XI - Documents that prove artificial person's regular operations to State and Municipal National Treasure and, when applicable, of location where a port installation is implemented;

XII - Concerning waterway space and navigation safety of port areas' responsibility, a favorable report from maritime authority regarding the compliance to terms of NORMAM-11/DPC, which covers work over and on the shores of Brazilian waters. (ANTAQ, 2018).

Interested parties who are organized in syndicates must present a request through their leading companies, which must be instructed with the purpose of organizing an association. This association must be subscribed by members and registered at a notary's office, and one of the associates must provide the documents previously mentioned (both physical and digital formats) and the ones present at subsections II, III and IV.

Regarding the mutual usage of docking infrastructure between port installations, the terminal's description concerning the identification of docking installations, foreseen on item "c" of the descriptive memorial, must be presented alongside its contract, according to Article 43 of Normative Resolution no. 20/2018, which states:

Article. 43. A mutual usage of docking infrastructures between private port installations is possible.

Paragraph one of one. Rights and obligations derived from the shared use of docking infrastructure between private port installations must be present in a contract struck between both parties. This contract **must be forwarded to Antaq as a complement of the required documentation, whose mutual usage will be expressed in the respective adhesion contracts** (ANTAQ, 2018, our emphasis).

The investment's global value must contemplate all values to be invested in the enterprise, such as port infrastructure and superstructure, land acquisition and, once the installation is already built, its commercial value alongside the specific Technical Term of Responsibility (ART) or the Technical Registration of Responsibility (RRT) of the person responsible for the project's budget.

In the case of port installations that **provide service of passenger's transport**, the descriptive memorial must contemplate:

- i. areas with proper dimensions to attend foreseeable flows of passengers and cargo;
- ii. segregation of passenger's embarking and disembarking areas from those of cargo movement and storage, shared use with physical division between both, or the establishment of a specific procedure to perform non-simultaneous operations;
- iii. passenger's embarking and disembarking platforms with guard-rails, flat, non-slip flooring and ramps or transition structures between deck and land in safe movement-of-people-and-goods condition;
- iv. installations for passengers and ticket sale;
- v. covered waiting areas with seats to rest and protect people and their belongings against bad weather during embarking and disembarking;
- vi. general use bathroom installations and an appropriate number of bins at easy access;
- vii. accessible installations that provide a special and priority service to disabled persons, the elderly, pregnant women, lactating and people who are with small children according to legislation; and
- viii. Lighting, security signage and communication project to guide the entrance, circulation and exit of passengers, crews and vehicles, when necessary. (ANTAQ, 2018).

Regarding the areas where the implementation of port installations are in order, a certificate from the Secretariat of the Union's Patrimony (SPU), of the Ministry of Economy, may be admitted. This certificate is to ensure the right of usage and fruition of the land and seeks to testify that the required territory is available for a future holder authorized by Granting Power (ANTAQ, 2018).

Five days after receiving said requirement, ANTAQ will publish on its website a model of file to be filled out (ANTAQ, 2018).

If the presented documentation is in agreement with Article 4 of ANTAQ Resolution no. 20/2018, and the certificates of artificial person regularity are in accordance with the National Treasury and the Length-of-Service Guarantee Fund (FGTS), ANTAQ will promote the opening of a **public announcement** 10 days from the receiving date of the petition, by means of a convocation instrument (ANTAQ, 2018).

According to article 28 of the Decree no. 8,033/2013, Granting Power might determine that ANTAQ, at any moment and in accordance with the port sector's planning guidelines, open a public call procedure to identify any of those who are interested to obtain an authorization for a port installation. In this way, **by the granting power's action**, the Agency will promote a **public call** to divulge a convocation instrument.

The convocation instrument to open a **public announcement** or a **public call** will determine a deadline of 30 (thirty) days to identify whether there are any others interested in obtaining a port installation authorization on the same geographical region. This will be published on the Diário Oficial da União (DOU, published by the Brazilian National Press) and on ANTAQ's webpage. The publication will approach the following information:

- I - geographical region where the port installation will be built;

- II - profile of cargo to be moved according to one or more of the following modalities:
 - a) solid bulk;
 - b) liquid and gas bulk;
 - c) breakbulk cargo; and
 - d) containerized load.
- III - estimate of the annual volume of passengers and/or cargo movement in tons; and
- IV - Total area of port installation (ANTAQ, 2018).

Under Brazilian law, the artificial person with its headquarters and management in the country interested in attending to the Public Announcement or Public Call must formally manifest their interest by means of a protocolled correspondence at ANTAQ, with the documentation stated in Article 4, both in physical and digital formats (ANTAQ, 2018).

On its webpage, ANTAQ will publish a notice with the list of qualifications and justification for eventual disqualifications. Afterwards, it will proceed to the analysis of the port installation's locational viability (ANTAQ, 2018).

Locational viability is the possibility of physically building one (or more) port installations on the same geographical region without generating any operational restraints to any of them (ANTAQ, 2018).

In case only one interested party is qualified, the locational viability analysis will take into account the possibility of physically implementing a port installation that does not generate operational restraints to those that already exist on the same geographical region (ANTAQ, 2018).

ANTAQ may require a statement about the availability of physical space in public waters during its locational analysis. This statement is emitted by the SPU or any other institution that holds an equivalent function, if that is the case (ANTAQ, 2018).

If the implementation of a port installation is considered not viable from any of the qualified interested parties because it generates an operational restraint to those already present in the geographical region in question, a deadline of 30 (thirty) days will be granted to redevelop technical proposals. However, if the locational non-viability is persistent, the interested parties will be considered unqualified (ANTAQ, 2018).

If the implementation of a port installation from one or more interested parties is considered viable, a final report will be emitted and will forward said administrative procedure to Granting Power, instructed with the minutes of the adhesion contract after the collegiate executive officer's deliberation (ANTAQ, 2018).

In case more than one interested party is justifiably considered non-viable or concurring implement all requested port installations, ANTAQ will publish a notice on its webpage for a Public Selective Process, which must contain, at least (ANTAW, 2018):

- I - a scientific character of ANTAQ's result analysis;
- II - opening of a 30-day deadline to solicitants and interested parties that attended the Announcement or Call to reformulate technical proposals destined to participate in the Public Selective Process and the elimination of locational non-viability;
- III - definition of a judging criterion for the technical proposals; and

IV - documentation and necessary instructional information that considers the adopted judging criterion (ANTAQ, 2018).

Once the proposals are reformulated, an analysis regarding the elimination of the locational restraint previously identified will be conducted. After ANTAQ makes these projects compatible, they will be considered apt for concession (ANTAQ, 2018).

Once the proposals are reformulated and the locational restraint is eliminated, these proposals must be submitted for Granting Power's approval one more time. This approval covers from the analysis of how adequate these proposals are to port sector's policies and planning guidelines, according to paragraph 4, article 12 of Law no. 12,815/2013 and paragraph 1, article 32 of Decree no. 8,033/13.

If projects are not compatible, a notice will be published to the Market, communicating the decision and the beginning of the Public Selection Process procedures. (ANTAQ, 2018).

If the Public Selective Process is to be carried out, a guarantee of execution between the following modalities will be demanded from the authorizer, for the occasion of a adhesion contract celebration (ANTAQ, 2018).

- i. cash deposit;
- ii. bank deposit;
- iii. securities of the Federal executable tax debts; and
- iv. performance bond (ANTAQ, 2018).

The insurance will be of up to 2% of the informed investment value (global value of the investment, presented in the descriptive memorial) limited to an amount of R\$500,000 (ANTAQ, 2018).

The insurance will be paid back in full after the emission of the Operation Approval Plan (TLO), by ANTAQ. However, for enterprises whose operational integrality will be hinder after different stages of the project, the insurance will be paid back proportionally to the beginning of each respective stage of the operation, after the emission of a partial TLO (ANTAQ, 2018).

The Public Selection Process will adopt as a judging criterion of technical propositions, in a single or combined manner:

- i. bigger movement capacity;
- ii. cheapest price;
- iii. shortest cargo movement time; and
- iv. another criterion established in the convocative instrument.

ANTAQ will publish a list of technical proposals preliminary qualification, from which an administrative appeal with a 30-day deadline may be in order. After the appeal deadline, the Agency will publish a final list of those whose technical proposals were qualified. (ANTAQ, 2018).

After the appeal, if all requests are considered to be not qualified, ANTAQ will publish either a convocation, so interested parties can improve any appointed judgements made to

their proposals, or a market's announcement, stating that all requests were disqualified and this administrative process will be closed (ANTAQ, 2018).

In case interested parties are given the chance to improve any appointed judgments made to their proposals, ANTAQ will publish a final ranking list of all technical proposals; if the reason for disqualification persists, the market will be notified and all requests and the administrative process will be filed and closed (ANTAQ, 2018).

By the end of the Public Selection Process, ANTAQ will emit a final report and will forward its administrative procedure to Granting Power, instructed with the minute of the adhesion contract, after the collegiate executive officer's deliberation (ANTAQ, 2018).

Once the procedures are concluded, an authorization will be formalized through an adhesion contract struck between the Granting Power and the authorizer, intervened by ANTAQ. This contract will state the following clauses:

- object, area, and deadline;
- manner, way and exploration conditions of organized ports or port installations;
- criteria, indicators, formulas and parameters that define the quality of the activity provided, as well as goals and deadlines for the achievement of certain levels of service;
- contract values, usual tariffs and review and readjustment criteria and procedures;
- investment responsibilities of the contractor;
- users rights and duties, with correlated obligations of the contractor and their respective sanctions;
- parties' responsibility;
- goods write-off;
- rights, warranties and obligations between the contracting party and the contractor, including the ones related to future needs of supplementation, alteration and expansion of activities and their consequent modernization, perfection and installations' amplification;
- ways to fiscalize installations, equipment, methods and practices of carrying out those activities, as well as indications of organizations and institutions that are fit to perform them;
- guarantees of a proper execution of the contract;
- responsibility of the port installation holder for the poorly execution of activities;
- hypothesis to terminate a contract;
- mandatory provision of information of interest to the Granting Power, National Agency of Waterway Transports (ANTAQ) and other authorities that act on the port sector, including those of specific interest to the National Defense;
- adoption and execution of customs' inspection measures for goods, vehicle and people;
- access to organized ports or port installations by Granting Power, ANTAQ and other authorities that act on the port sector;
- penalties and their applications; and
- jurisdiction (BRASIL, 2013c).

Also, clauses that conserve the activity's economic freedom and the authorizer's prerogative to develop port operations without any damage to ANTAQ's competences. On Figure 12, you can visualize a flow chart that indicates procedures for investments in port installation authorizations.



Figure 12 – Process for new authorizations

Source: Brasil (Decree no.8,033, 2013a; Law no. 12,815, 2013c) and ANTAQ (Normative Resolution no. 20, 2018).
Elaboration: LabTrans/UFSC (2019)

In entries of the article 35 of Decree no. 8,033/2013, the celebration of a new adhesion contract or a new public announcement is exempt according to the following hypothesis, **which will depend strictly on Granting Power's approval**:

- i. transference of an authorization holdership, as long as the conditions established on the original adhesion contract are maintained;
- ii. increase of the port installation area, as long as there is locational viability; or
- iii. changes in the physical and financial schedule, or on predicted investments to implement a port installation.

The transference of authorization holdership may only take place if ANTAQ conducts a previous analysis and Granting Power approves it. A celebration of a new adhesion contract is exempt, as long as original established conditions are still in force. **The transference of the adhesion contract holder's society control** will depend on ANTAQ's analysis and approval (ANTAQ, 2018)

Ordinance SEP/PR no. 249, of November 29th, 2013, establishes the necessary procedures to request an authorization holdership transference, if conditions established on the original adhesion contract are maintained. One who wishes to transfer his/her authorization holdership must formalize a request to ANTAQ, by presenting the following documents, among others who might be required (SEP/PR, 2013):

- I- organization document, articles of incorporation or articles of association in force, duly registered and, in the case of business corporations, alongside documents that prove the election of their administrators with term of office in force, registered in a competing organization;
- II- documents that prove regularity before National, State and Municipal Treasury, Labor Court, the National Institute of Social Welfare (INSS) and the Guarantee Fund for Time of Service (FGTS), as well as no register of bankruptcy, judicial and extrajudicial recovery;

- III- registration evidence of the enterprises headquarters in the National Registry of Legal Entities (CNPJ/MF), as well as of the port installation when constituted under branch offices;
- IV- brief report certificate emitted by the state's Trade Board where the petitioner's headquarters is located;
- V- registration form to be filled out according to ANTAQ's established models; and
- VI- declaration stating that one is in compliance with all port administration's contractual obligations. (SEP/PR, 2013).

When applicable, the Agency will grant a deadline so the petitioner can regulate the land's ownership certificate with the Land Registry Office. Regarding the property's owner, occupation registration, fee farm certificate; or cession contract alongside authorization for the use of physical space on public waters, when applicable, emitted by the Secretariat of the Union's Patrimony or any other institution with equivalent obligations (SEP/PR,2013).

The petitioner must also present a declaration stating that all conditions that allowed the original authorization concession (regarding its technical habilitation) will be maintained. Once this petition is received, ANTAQ must provide its filling out of documents of the administrative process in which the original authorization was emitted, and then forward it to Granting Power alongside the following documents (SEP/PR, 2013):

- I - certificate stating that one who's interested in transferring his/her authorization holdership does not have overdue bills with the port administration or ANTAQ itself;
- II - technical analysis of the intended holdership change;
- III - Minute of the Asset from the Adhesion Contract;
- IV - Law Report; and
- V - Deliberation from ANTAQ's Collegiate Executive Office, published in the Official Federal Gazette (SEP/PR, 2013).

After a technical analysis is conducted and conditions previously established are met, the process, alongside the minute of additional entry, will be submitted to an analysis from the Ministry of Infrastructure's Legal Consultancy, so as a posterior addition of an entry in the adhesion contract/authorization term can be celebrated by granting power.

If there is locational viability, the increase of port installation area will depend on ANTAQ's analysis and approval from the Granting Power. It will be formalized by means of a contractual new entry (ANTAQ, 2018). The documents foreseen on article 4 of Normative Resolution no. 20-ANTAQ/2018 will be requested for those interested in expanding port installation areas.

In cases where area expansions involve Union's properties, there may be admitted the presentation of a certificate emitted by SPU that testifies the requested area is available for future enterprises, authorized by Granting Power. Also, a celebration of an additional entry will be authorized with a suspensive condition based on its efficiency, on entries of paragraph 5 of article 4. If the area expansion involves Union's properties, the authorizer must previously communicate his/her intention of increasing the port installation area to Granting Power, and present a legal instrument that ensures his/her right to use and profit from the land, as well as other documents that may be required (ANTAQ, 2018).

Granting power, on its turn, will examine the request to expand the area, if that is the case, ensuring principles of wide defense, and will notify facts to ANTAQ so the Agency can adopt suitable measures (ANTAQ, 2018).

Any alterations made on the physical and financial schedule or the amount of investments predicted to the implementation of a port installation depend on a further analysis conducted by ANTAQ and Granting Power's approval, with the exemption of a new adhesion contract (ANTAQ, 2018).

If a handled cargo profile needs to be changed or included, a new authorization from Granting Power must be issued and a new adhesion contract followed by a new public announcement must be celebrated. The increase of a port installation's movement or storage capacity with no expansion of the original area will depend on communication with Granting Power and ANTAQ 60 (sixty) days earlier, except when this is vetoed in the adhesion contract or the celebration of a new adhesion contract or entry is exempt. (ANTAQ, 2018).

Other pleas for the increase of movement or storage capacity that result in an expansion of the original area will depend on Granting Power's approval and will be formalized by means of new contractual entries (ANTAQ, 2018).

3.3. Extension of a port lease contract

The Early Extension of a Port Lease Contract consists of the possibility, under Granting Power's criteria, to early extend a lease contract struck under Law no. 8,630/1993 and whose predicted extension has not yet been done through the leaseholder's immediate investments.

That type of extension is stated on Law no. 12,815/2013, Decree no. 8,033/2013 and Ordinance SEP/PR no. 349, of September 30th, 2014.

The requirements for an early extension are: 1) that lease contracts have been struck under Law no. 8,630/1993; 2) that its expressed extension predictions have not yet been done; 3) that the leaseholder attends to the necessary requirements foreseen on paragraph 3 of Decree no. 8,033/2013; and 4) that the leaseholder accepts his/her obligation to perform new and immediate investments (non-returnable) for as long as the original contract is in force.

Initially, the leaseholder must direct his/her early extension request to Granting Power, holding the following documents:

- I- Investments Plan;
- II- Technical, Economic and Environmental Feasibility Study (EVTEA);
- III- request of economic-financial rebalance of the lease contract associated with previous events, if any;
- IV- documents related to the maintenance of legal conditions, technical and economic qualifications and fiscal, social security and laborist good standings; and
- V- other documents the leaseholder sees pertinent, specially, but not limited to, aspects to be approached in the circumstantial report, inherent to the meeting of contractual obligations (SEP/PR, 2014b).

The Investment Plan to be presented corresponds to the simplified description of intended investment, as well as expected capacity and performance. It must be elaborated in accordance with public policies and guidelines, the port sector planning and the leased area's vocation (SEP/PR, 2014b).

It may also come together with a request of economic-financial rebalance associated with previous events. The plea of early extension cannot be confused with the rebalance request. Although both can be issued together, it is important to notice that the early extension can only be allowed if the amortization deadline of new proposed investments is superior to the deadline predicted in the first period of the contract. Values of previous events will only be considered to contractual economic-financial rebalance purposes, but will not be taken into account in the calculation to verify whether the leaseholder is entitled to early extensions (SEP/PR, 2014b).

The EVTEA must be elaborated with a commitment to the Investment Plan and effective regulations. In case the leaseholder presents a contract's economic-financial rebalance request alongside the early extension, the EVTEA must consider it to all ends and purposes (SEP/PR, 2014b).

Early extension requests will be rejected if:

- I- admissibility requirements are not complied with; and
- II- the Investments Plan is not approved (SEP/PR, 2014b).

In case the early extension request is preliminary rejected, the leaseholder may ask it to be reconsidered. There will be a deadline of five days for it, counting from the day said rejection notice was received. **In case the early extension is preliminary accepted**, the process will be issued to ANTAQ, which will be responsible for the EVTEA's analysis. If during this analysis the need for a revision of the Investments Plan is certified, ANTAQ will request the leaseholder to reevaluate and adjust whatever is deemed necessary (SEP/PR, 2014b).

On the hypothesis the EVTEA is not approved, ANTAQ will communicate its decision to the leaseholder, who may request it to be reconsidered. If not accepted, it will be filed after the leaseholder receives a notice. **On the hypothesis the EVTEA is approved**, ANTAQ will forward the process back to Granting Power, in order to ratify the Investments Plan approval and celebrate contractual new entries, alongside a declaration regarding the leaseholder's financial compliance, as well as artificial persons, directly or indirectly, controlling, controlled, associated with or with a common controlling leaseholder before the regulating agency (SEP/PR, 2014b).

The early extension of the lease contract will be formalized by means of additional entries, struck between the Granting Power and the leaseholder, and intervened by ANTAQ and the port authority. Among others, it will consist of articles related to: investment, capacity, performance, tick size movement obligations, in agreement with the Investments Plan and its deadlines; and the Executive Project (SEP/PR, 2014b).

When investments proposed in the Investments Plan are not enough to keep the contract's economic-financial balance until the end of its extended validity, there will be an article on the additional entry stating the obligation of future investments, as a way to preserve the economic-financial balance of the lease contract (SEP/PR, 2014b).

The additional entry must present a formula to correct the remnant values to be invested over time, as well as the final date for the presentation of a new Investments Plan (SEP/PR, 2014).

If the proposed investment in the Investments Plan is not enough to keep the contract's economic-financial balance until the end of its extended validity, the leaseholder may, alternately and under Granting Power's criteria, propose an economic-financial rebalance of the lease contract, in one installment or during the lease contract's deadline (SEP/PR, 2014b).

The leaseholder must present the Executive Project to Granting Power in a deadline of up to 12 months counting from the date the contract was signed. This Executive Project is related to the Investments Plan approved with the responsible professional's ART which must have, among others, a budget spreadsheet, contemplating the investments that were proposed, as well as another spreadsheet with the description of services or supply items that were contemplated on the budget destined to programs of maintenance, improvement, update and renovation of depreciated assets, if that is the case. (SEP/PR, 2014b).

If the investment indicated in the Executive Project is inferior to the one predicted in the approved Investments Plan, the leaseholder, alternately or under granting power's criteria, must propose either the immediate reversion of the investment value not contemplated on the Executive Project, to be paid in a single installment, or the readjustment of the contract's deadline, for economic-financial rebalance ends and purposes. However, if the investment indicated in the Executive Project is superior to the one predicted in the approved Investments Plan, this one will not allow an economic-financial balance readjustment. (SEP/PR, 2014b).

3.4. Economic-financial rebalance of lease contracts

Granting power may promote economic-financial rebalance of port installation's lease contracts if the following facts that bring about unbalance take place:

- I - impacts on the economic-financial equation derived from an alteration of the contractual risks matrix;
- II - risks took over by Granting Power;
- III - leaseholder did not comply with contractual obligations regarding economic-financial impacts;
- IV - when investments or provision of services of public interest not originally established in contract are determined or authorized, including outside the leased area;
- V - impacts on the economic-financial equation originated from contract extensions;
- VI - impacts on the economic-financial equation originated from consolidated contracts; and
- VII - impacts on the economic-financial equation originated from a leased area that has not originally been foreseen in contract. (SEP/PR, 2015).

Economic-financial rebalance is foreseen by Decree no. 8,033/2013, Resolution no. 3,220-ANTAQ, of January 8th, 2014, and Ordinance SEP/PR no. 499, of November 5th, 2015.

One of the facts that are capable of generating unbalance must happen in order to the lease contract's economic-financial rebalance become admissible. They are foreseen by Ordinance SEP no. 499/2015, article 4 (subsections I to VII).

To better understand each type of rebalance, besides the early extension mentioned on item 3.3, here are some specific information on every fact that may generate unbalance:

- a) When there are impacts on the economic-financial equation originated from alterations on the contract's risk matrix without any actual risk. For example, a dock which was previously exclusive and, for some reason (such as berthing problems of another leaseholder in another dock) has been shared, or dredging, which was previously a Granting Power's obligation and, for some reason (such as absence of public resources) has become a leaseholder's obligation. On both examples there was an alteration on the risk matrix, considering the execution of the contract was not damaged.
- b) When risks are taken over by Granting Power: expropriation, additional costs derived from delays caused by Granting Power, unpredicted cases when insurance cannot be applied, and alterations on legislation and regulations, including the creation, alteration or extinction of taxes or charges.
- c) When the leaseholder does not comply with contractual obligations, which cause impacts on the economic-financial equation: the Tick Size Movement (MMC) not reaching its potential, lease values not being paid, among others.
- d) When investment or provision of services of public interest not originally foreseen in contract are determined or authorized, including outside the leased area. Granting Power may authorize new investments, after ANTAQ's analysis, as well as authorize immediate and urgent investments before ANTAQ's analysis in cases of: 1) necessary investments to meet demands of organizations and institutions that are members of public administration and are competent to intervene in port operations; 2) necessary investments to restore the port installation's functionality due to posterior actions that prevent or make difficult the offer of port services; 3) investments to increase operational efficiency or the port installation's capacity when the measure is proved to be urgent for an appropriate service for users. Granting Power may also authorize investments outside the leased area, in shared infrastructure of the organized port, as long as the port administration approves it.
- e) When contract extensions result in impacts on the economic-financial equation: unlike early extensions, the extensions that are foreseen by contract do not depend on unpredicted, exceptional facts, nor do they depend on the leaseholder's commitment to invest. The contract establishes criteria that will guide decisions. If they are complied with, the contract's validity deadline may be extended. The requirements for port lease contract extensions are: 1) continuity of legal conditions, technical and economic-financial qualifications, fiscal regularity and compliance to article 7 (subsection XXXIII) of the Constitution; 2) compliance with contractual obligations with the port administration and ANTAQ, according to Law no. 12,815/2013, article 62.; and

- 3) compatibility with the area's guidelines and planning of use and occupation, according to what's been established in the port's development and zoning plan.
- f) When a general contract generates impacts on the economic-financial equation: general contracts consist of independent lease contracts struck between the port administration and a leaseholder. One of the contracts to be unified are chosen and binded to other contracts, which result in a need for economic-financial rebalance of the remnant contract;
- g) When modifications on the leased area not originally foreseen in contract generate impacts on the economic-financial equation: when this measure is proved to bring more efficiency to port operations or when technical impracticability can be proved, Granting Power may authorize the expansion of the leased area to a contiguous area inside the organized port's polygon. Also, the port lease area may be completely or partially replaced by an area that has not been leased inside the same organized port, according to the port's PDZ. This is possible after the port authority has been consulted and if the measure can bring operational benefits to port activities, or in the case of subsequent obstacles to the original area;

Every time recomposition procedures affect the capacity or efficiency of leased port installations, lease parameters such as guaranteed or fixated tick size movement, the minimum value of the service's tariff, performance measuring criteria and the value of the lease must be adjusted so as to incorporate efficiency gains and keep the correlation between rights and obligations in accordance with the lease contract (SEP/PR, 2015).

The leaseholder must request an economic-financial rebalance until the maximum deadline established by the contract or, in its absence, in a maximum of 5 (five) days after the unbalance occurrence has taken place, or in its beginning, if it's the case of a continuous event (SEP/PR, 2015).

The presentation of an economic-financial rebalance request will imply on the leaseholder's irrevocable and irretrievable recognition that there aren't any other factors that generate unbalance mentioned in the request (SEP/PR, 2015).

At first, the lease contract's economic-financial rebalance request will be sent to Granting Power, alongside the following documents: Contractual Unbalance Report; Investments Plan, when the reason for unbalance is the determination or authorization of investments not originally foreseen in contract (SEP/PR, 2015).

The Contractual Unbalance Report is a technical report which specifies the reasons for contractual unbalance. When necessary, it must justify the compatibility between the request and public interest, considering its effects on other areas of the organized port (SEP/PR, 2015).

When Granting Power determines new investment, the leaseholder might be requested to present the following documents: Investments Plan, when the reason for unbalance is the authorization of investments not originally foreseen in contract; and Technical, Economic and Environmental Feasibility Studies (EVTEA) (SEP/PR, 2015).

The recomposition request might be rejected either when requirements related to each generating factor do not seem reasonable, or when the Contractual Unbalance Report or the Investments Plan are not approved (SEP/PR, 2015).

If the economic-financial rebalance request is denied, there will be a deadline of 10 days, counting from the interested party's notification date, to forward an appeal to the authority responsible for this decision. If in five days this appeal is not reconsidered, it will be forwarded to a superior authority (SEP/PR, 2015).

If the economic-financial rebalance request is accepted, Granting Power will communicate its decision to the leaseholder, and will forward the process to ANTAQ (SEP/PR, 2015).

Counting from the date the leaseholder receives the notice that approved the economic-financial rebalance request, there will be a deadline of 60 days so **he/she can elaborate the EVTEA and forward it to ANTAQ** (SEP/PR, 2015).

The EVTEA must be elaborated based on Granting Power's decision to approve the Contractual Unbalance Report and the Investments Plan, when necessary, as well as valid regulations (SEP/PR, 2015).

If the leaseholder indicates more than one unbalance reason in the economic-financial rebalance request, all of them must be considered in the same EVTEA, for all effects and purposes, and present specific marginal flows for each unbalance reason. (SEP/PR, 2015).

If during the EVTEA's analysis there proves to be a need to review the Contractual Unbalance Report of the Investments Plan, ANTAQ must request every necessary reevaluations and adjustments to the leaseholder, as well as communicate it to Granting Power (SEP/PR, 2015).

In case the EVTEA is approved, ANTAQ will restore the process to Granting Power in order to confirm the approval of the Contractual Unbalance Report and the Investments Plan (when there is any) and celebrate a new additional entry on the contract, alongside a circumstantial declaration concerning the leaseholder's financial compliance, as well as any artificial persons who directly or indirectly, controlling or controlled, are linked to the leaseholder before the Regulating Agency (SEP/PR, 2015).

The public power's additional entry or any other action that formalizes the economic-financial contractual rebalance will be struck between Granting Power and the leaseholder, intervened by ANTAQ and the port authority. These will have, among others, terms related to: 1) investment, capacity, performance and minimum movement obligations according to the Investments Plan (if there is any) or the executive project (if there is any) (SEP/PR, 2015).

In case the reason for unbalance is originated from the determination or authorization of investments not originally foreseen in contract, the leaseholder must present to Granting Power, 12 months after the signature date of the additional entry, an Executive Project related to the Investments Plan approved with the professional's ART, according to valid regulations. This document must contain, among others, a budget spreadsheet that states the proposed investments, as well as a spreadsheet with description of services or

supply items contemplated in the budget destined to the activities of maintenance, improvement, update and renovation of impaired assets, if that is the case (SEP/PR, 2015).

If the investment mentioned in the Executive Project is inferior to the one expected in the approved one on the Investments Plan, the leaseholder must propose an immediate reversion of the investment value not contemplated on the Executive Project, to be paid on a single installment, or a resettlement of the contract's deadline, for economic-financial rebalance purposes, so as Granting Power is able to analyze and approve the option proposed by the leaseholder. However, if the investment mentioned in the Executive Project is superior to the one expected on the Investments Plan, it will not provide an economic-financial rebalance (SEP/PR, 2015).

The flow chart for contractual renovations in port leases can be seen on Figure 13.

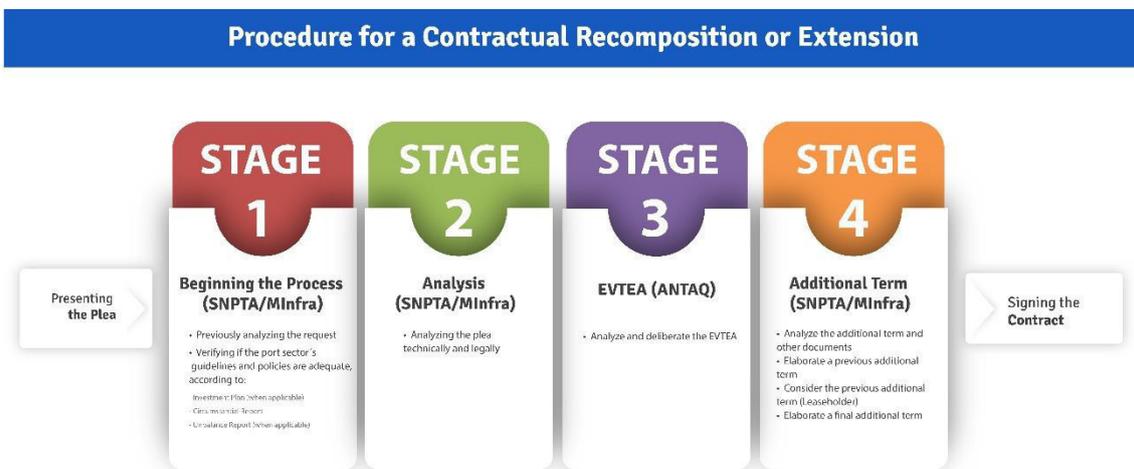


Figure 13 – Procedure to extend contract deadlines

Sources: SEP/PR (Ordinance no. 349, 2014b; Ordinance no. 499, 2015) and ANTAQ (Resolution no.3,220,2014; Resolution no. 5,464, 2017). Elaboration: LabTrans/UFSC (2019).

3.5. Instruments for pleas in port grants

According to legislation related to the port sector, some instruments will enable port grant process.

Facts that generate contractual unbalance, such as the concession of an organized port and the lease of public areas and infrastructures, regular and early extensions, investments not foreseen in original contracts, unification of contracts, and alteration of the leased area must be preceded by the EVTEA, Investments Plan (when applicable) and, when immediate and urgent investments are concerned, the Investors Risk Statement (TRI).

3.5.1. Technical, Economic and Environmental Feasibility Study (EVTEA)

The EVTEA must be presented during certain stages of the grant process, not only for new projects of concessions and port leases, but also for the economic-financial rebalance of the contract that is in force.

This type of study is previous to the creation of enterprises and seeks to demonstrate their viability, indicating its impact on the investor's cash flow, as well as discussing technical and environmental issues related to the explored activity. These studies pay notice to planning guidelines of the port sector as a way of taking into account the rational use of waterway and terrestrial access infrastructure and the characteristics of each enterprise, as well as environmental and engineering risks associated with the complexity of the construction work and the enterprise's location. The models in feasibility studies must observe the complexity of economic activities from different port terminal models, including those associated with other models of economic exploration. The presentation of this instrument is indispensable for the installation of enterprises of the logistic-port sector. The EVTEA is essential as it ensures subsidies for the development of the installation project and for the enterprise's operations, given it identifies society's most viable alternatives between possible solutions initially listed.

The Resolution ANTAQ 3,220/2014 establishes requirements that must be present in an EVTEA for lease areas and port installations:

Article 3. Lease areas and port installations will always be preceded by the elaboration of a Technical, Economic and Environmental Feasibility Study (EVTEA) aiming at the enterprise's evaluation and functioning as a basis for bidding, which will comprise of:

I - an economic-financial analysis of the enterprise, based on the income and expenses related to the exploration of services to be performed, with the purpose of attesting the enterprise's viability;

II - the lease value and, when it is the case, the maximum value of the Service Tariffs to be applied;

III - technical feasibility analysis, which consists of infrastructure and superstructure projects, location, operational flow and its articulation with other modes of transportation;

IV - initial environmental feasibility analysis, which must consider engineering studies results, certain analysis which have already been carried out by competent environmental organizations and the port operation license, when applicable;

V - description of the operational structure proposed for the project, containing the modalities of transportation involved, the infrastructure for these models cargo transfer to the port (or vice versa), and vessel loading and unloading systems, including cargo storage conditions and/or passenger's transport;

VI - drawing schemes that represent the operational structure and a descriptive memorial of the areas and installations to be leased. They accompany localization and situational plant representations, including improvements and equipment;

VII - cargo flow and/or passengers representative projection of intended demand expectations, whose basis should be founded on market analysis and information from recognizable and competent sources;

VIII - necessary investments for cargo flow's movement and storage and/or predicted passengers for the project;

IX - estimated cost for the movement of cargo and/or passengers for each different stage of port operation; and

X - price and tariff estimates used on the project, as well as the adopted parameters. (ANTAQ, 2014).

Previous technical, economic and environmental feasibility studies of the object of concession or lease may be conducted in a simplified manner as long as: there is no substantial alteration on the designated area or activities performed by the concession or leaseholder; the object and conditions of concession or lease allow the contract value to be 100 times inferior to the limit established by article 23, main section, subsection I, item “c” of Law no. 8,666/1993; and the maximum validity of the contract to be of 10 (ten) years.

EVTEA studies may be conducted by granting power, ANTAQ of the port authority by means of an expression of interest, contract or public administration.

Granting Power may authorize the elaboration of studies by any interested party and, in case these are used for a bidding process, it must ensure that any expenses will be paid for, except in cases of donation (BRASIL, 2013a).

The analysis of the EVTEA will be conducted by ANTAQ based on the Manual of Analysis Procedures of Port Lease’s EVTEA, approved by Resolution no. 5,464-ANTAQ, of June 23rd, 2017.

Granting Power is responsible for the conduction and approval of concession or lease objects feasibility studies, whenever they are deemed necessary.

3.5.2. Investment plan

The Investment Plan is also an instrument used during certain stages of processes related to lease contract early extensions and economic-financial rebalance, when the cause for unbalance is an authorization of investment not originally foreseen in contract, in face of the need to specify investments to be made.

It is the simplified description of minimum-intended investments and their expected capacity and performance, elaborated in conformity with public policies and guidelines, the port sector’s planning and the vocation of leased areas.

The Investment Plan will be approved by Granting Power. In the case of early extensions, the leaseholder must accept the obligation to make new and immediate investments that are not amortized during the original term of the agreement.

3.5.3. Investors Risk Statement (TRI)

The Investors Risk Statement (TRI) is an instrument to be used when there is an authorization for immediate and urgent investments not established in the lease contract, prior to ANTAQ’s analysis.

Investments not foreseen in contracts must be preceded by: 1) in case of concessions and lease contracts, the approval of Granting Power preceded by ANTAQ’s analysis; 2) in case of authorized port installations, communication to ANTAQ.

There are three hypothesis that allow Granting Power to authorize immediate and urgent investments previously ANTAQ’s analysis, which are:

- 1 - necessary investments for the compliance of demands from organizations and institutions that integrate public administration and are competent to intervene in port operations;
- 2 - necessary investments to restore port installation operations due to accidental reasons that prevent or make port service offers more difficult; or
- 3 - Investments for the increase of operational effectiveness or the increase of the port installation capacity when this measure can prove to be urgent for an adequate service to users. (BRASIL, 2017a).

The request that grants authorization for urgent investments in order to increase port capacity's operational effectiveness must include either a favorable demonstration from the port authority regarding the urgency of immediate investments or an investment plan (BRASIL, 2017a).

In cases where investments are necessary to meet demands from organizations and institutions, or to restore a port installation's functionality, the interested party must present to Granting Power the Investments Plan in a previously established deadline (BRASIL, 2017a).

On his/her criteria, the interested party may require the Investment Plan to be accepted only after the urgent investment authorization, a hypothesis that exempts the presentation of an Investment Plan (BRASIL, 2017a).

In this way, before an authorization is granted, the interested party must sign an **Investors Risk Statement**, where he/she will take on the risks of: 1) having his/her investment plan rejected, in case Granting Power deems it incompatible with valid public policies; 2) his/her investment plan needing to be reviewed before it can be approved; 3) having ANTAQ reject his/her presented EVTEA, among other risks that may be enlisted in said statement.

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LIST OF ABBREVIATIONS AND INITIALS

ANTAQ	National Agency of Waterway Transports
ART	Technical Term of Responsibility
BNDES	Brazilian Development Bank
CADE	Administrative Council for Economic Defense
CEF	Caixa Econômica Federal
CNPJ/MF	National Registry of Legal Entities
DOU	Oficial Federal Gazette
EPL	Planning and Logistics Company Inc.
ETC	Cargo Trainshipment Station
EVTEA	Technical, Economical and Environmental Feasibility Study
FGTS	Guarantee Fund for Time of Service
FOB	<i>Free on board</i>
IBGE	Brazilian Institute of Geography and Statistics
INSS	National Institute of Social Welfare
IP4	Small Public Port Installation
IPTur	Tourism Port Installation
MIinfra	Ministry of Infrastructure
MMC	Tick Size Movement
MTPA	Ministry of Transportation, Ports and Civil Aviation
PIB	Gross Domestic Product
PDZ	Port Development and Zoning Plan
PGO	General National Leasing Plan
PMI	Expression of Interest Procedure
PNLP	National Ports and Logistics Master Plan
PPI	Investment Partnerships Program
PPP	Public-Private Partnership
RRT	Technical Registration of Responsibility
SEP	Special Secretariat of Ports

SEP/PR	Secretariat of Ports of the Presidency of the Republic
SNPTA	Secretariat of National Ports and Waterway Transports
SPU	Secretariat of the Union's Patrimony
TCU	Federal Court of Accounts
TLO	Operation Approval Plan
TRI	Investors Risk Statement
TUP	Private Use Terminals

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APPENDIX 1 – LINE OF CREDIT AND TAX INCENTIVES

Lines of credit

Tax incentives



Payroll exemption

What is it?

Eliminated from the employer contribution of the National Institute of Social Welfare (INSS) with a partial tax rate compensation on the exports gross receipt.

Who benefits from it?

Many Economy sectors.

Legislação

Law no. 12,546/2011 – Alters the incidence of social security contributions in debt from mentioned enterprises;
Decree 7,828/2012 e Normative Ruling RFB 1,436/2013;

Law no. 13,043/2014 – Alters the validity of social security contributions, foreseen by Law no. 12,546/2011, and makes them permanent (article 50).

Law no. 13,161/2015 – From December 1st, 2015, the exemption is optional, that is, the taxpayer may choose between the traditional way to tax the payroll (contribution over the payroll) or the exempt way (contribution over receipt).

Source

RENAI - <http://www.investimentos.mdic.gov.br/public/arquivo/arq1388568615.pdf>



Infrastructure Debentures

What is it?

Titles destined to the financing of implementation, increase, maintenance, recover or modernization projects, among others, of the logistics and transports sector, which belongs to the port sector.

Who benefits from it?

Private sector legal entities, as well as dealers, permittees, authorizers or leaseholders of port infrastructure services.

Legislation

Law no. 12,341, of June, 2011. States on the tax incidence over specified operations income;

Decree no. 8,874/2016 - Regulates the conditions for approval os investment projects considered as a priority in the infrastructure area or intensive economic production research, development and innovation;

Ordinance SEP/PR nº 404/2015 – Establishes new requirements to approve port infrastructure priority investment projects, and the procedures for their implementation, according to what’s been established by Decree no. 7,603, of November 9th, 2011, reinstated by Ordinance SEP no. 9, of February 2nd, 2012.

Source

Brazilian Ports website

<https://transportes.gov.br/investimentos-portu%C3%A1rios/89-portos-menu-lateral/5510-debentures-de-infraestrutura-portos.html>



Tax Regime for the Increase and Modernization of the Port Structure Incentive (REPORTO)

What is it?

Special tax regime whose main characteristic is the tax exemption on the acquisition of machinery and equipment, exempt from the IPI, COFINS, PIS/PASED and II (in case of equipment that do not have a similar national model). Validity until December 31st, 2020.

Who benefits from it?

Port Operator; Organized Port Dealer; Public Port Installation Leaseholder; Enterprise Authorized to Explore Port Installation; Railway Transport Holder; Dredging Enterprises in rivers, lakes, seas, bays and docks; Customs Office of Secondary Zones; Professional Training Centers established by the Port Authority Councils (CAPs).

Legislation

Law no. 11,033, of December 21st, 2004 – Establishes the REPORTO;

Decree no. 6,582/2008 – Establishes the relation of machinery, equipment and goods established by Law no. 11,033, article 14, paragraphs 7 and 8.

Normative Ruling RFB no. 1,370, of June 28th, 2013 – Disciplines the application of REPORTO.

Source

<https://www.investimentos.mdic.gov.br/public/arquivo/arq1488568615.pdf>

Linhas de Financiamento

Incentivos fiscais



Accelerated depreciation and contribution discount for PIS/PASEP and COFINS

What is it?

Legal entities that benefit from an IRPI 75% incentive reduction have the right to accelerated depreciation of acquired goods, for Income Tax calculations purposes, and a contribution discount for PIS/PASEP and COFINS. The Regional Superintendence is the one who grants said benefit after an analysis of the beneficiary's solicitation, according to legislation and norms that regulate this incentive.

Who benefits from it?

Priority private investments, production activities and sub-regional development initiatives for regional enterprises of the same area as SUDAM and SUDENE.

Legislation

Federal Constitution, article 43, paragraph 2.
 Provisional Measure no. 2,199-14, of August 24th, 2001: alters legislation over the Income Tax regarding exemption and reduction fiscal incentives, defines guidelines for the application of Income Tax installments on Regional Investment funds.
 Decrees no. 4,212 and 4,213, of April 16th, 2002, which define priority economy sectors for regional development.
 Ministry of National Integration Ordinance, no. 283, of July, 4th, 2013.

Source

SUDAM - <https://www.sudam.gov.br/conteudo/menus/referencias/documento-institucionais/arquivos/legislacaoincentivosfiscais/manual-completo-incentivos-fiscais.pdf>



Special Regimen of Incentives to Infrastructure Development (REIDI)

What is it?

It foresees the suspension of PIS/PASEP and CONFINS contribution in the acquisition of machinery and equipment for infrastructure works. In order to benefit from this, enterprises must present a copy of the Ordinance that approved the Infrastructure works to RFB, published by the Ministry of the sector in question.

Who benefits from it?

Infrastructure works in the sectors of:
 -transports, exclusively reaching highways and waterways: private organized ports and port installations; urban trains and railways, including locomotives and wagons; flight-protection systems installed in public airdromes;
 -energy, exclusively reaching generation, co-generation, transmission and distribution of electric power; and the production and processing of natural gases in any physical state;
 -sanitation, exclusively reaching the supply of potable water and sanitary sewers;
 -irrigation; or
 -pipeline.

Legislation

Law no. 11,488/2007 – Creates REIDI; Decree no. 6,144/2007 and alterations – regulate the Regimen's habilitation and co-habilitation;
 Normative Ruling RFB no. 758/2007 and alterations – establish REIDI;
 Ordinance GM no. 124/2013 – establishes procedures to approve projects.

Source

RENAI – <https://www.investimentos.mdic.gov.br/public/arquivo/arq1488568615.pdf>

Lines of credit

Credit



Support in auctions and public concessions

What is it?

BNDES' s financial support conditions for public auctions and infrastructure concessions.

Who benefits from it?

Public Infrastructure Auctions winning enterprises and public institutions.

Legislation

Fonte

Brazilian Ports website – <https://www.portosdobrasil.gov.br/assuntos-1/investimentos/incentivos-fiscais/debentures-de-infraestrutura>



BNDES Finem – Logistics Infrastructure

What is it?

Funding from R\$20 million for the country' s modernization and expansion of logistic infrastructure.

Who benefits from it?

Enterprises with headquarters in the country, public institutions and organizations.

Legislation

Source

BNDES website – <http://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/bndes-finem-infraestrutura-logistica>



BNDES Project Finance

What is it?

Funding for a project whose contract is supported by cash flow.

Who benefits from it?

Business corporations whose purpose is to implement a financed project, as a way to segregate cash flows, patrimony and project risks.

Legislation

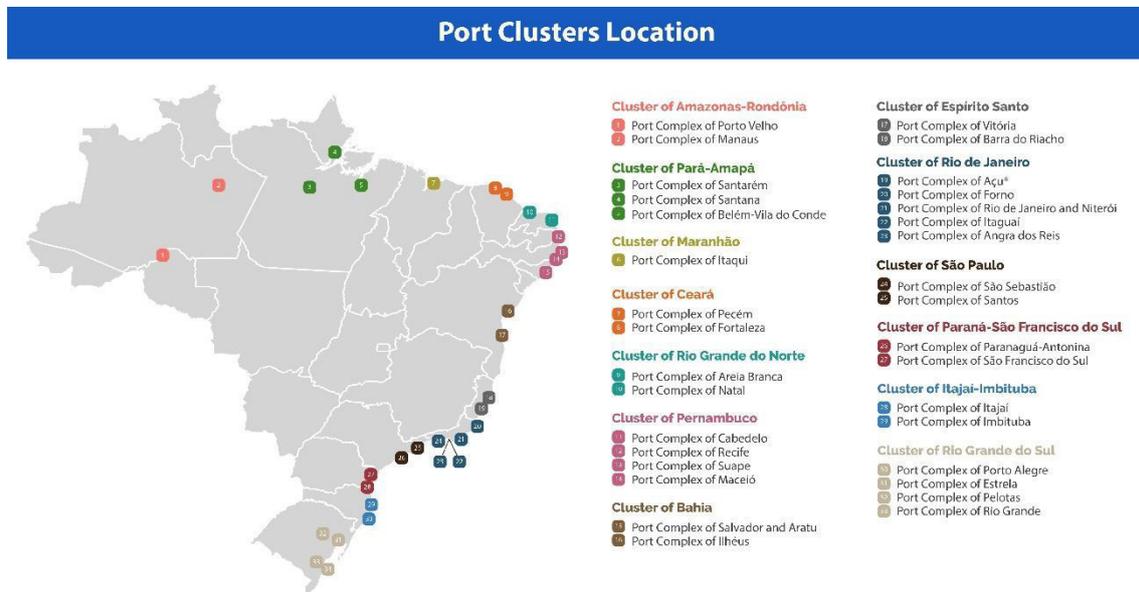
Source

BNDES Website – <http://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/bndes-project-finance>

Elaboration: LabTrans/UFSC (2019).

APPENDIX 2 – PORT CLUSTERS

Intending to calculate cargo projections and facilitate logistic flow planning, the installations were put together into *clusters* based on its geographical locations, including public ports and Private Use Terminals (TUPS), according to the following image.

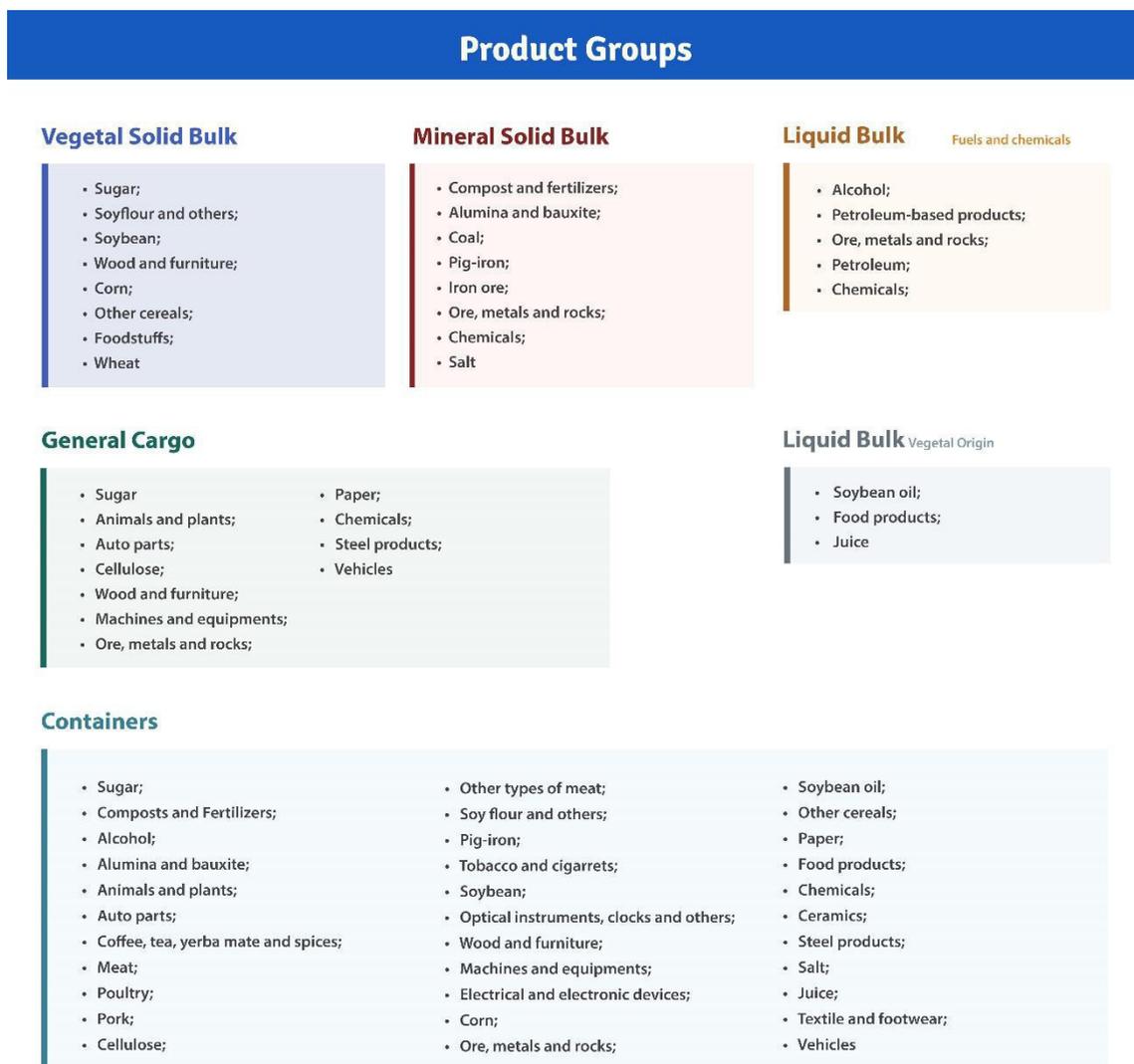


Port Clusters: public ports and TUPS
Elaboration: LabTrans/UFSC (2019).

APPENDIX 3 – NATURES OF CARGO

So as to facilitate results interpretation, the 38 groups of analyzed products were assembled into six natures of cargo. It's important to emphasize that some products may be transported by more than one nature of cargo, depending on the way they are transported by maritime modal. For example, sugar is transported as a vegetal solid bulk when transported in bulk, as general cargo when transported in sacks (in *break bulk* vessels) and it can also be transported in containers, participating, thus, in three different natures of cargo.

The following image shows the division of products between different classified natures of cargo.



Products Groups per nature of cargo

Elaboration: LabTrans/UFSC (2019).

APÊNDICE 6 – EXECUTIVE SUMMARY - PORT SECTOR INVESTOR'S MANUAL 2018