



Executive Summary

Port Sector
Investor's Manual

JUNE
2019



PORTOS
DO BRASIL
MINISTÉRIO DA
INFRAESTRUTURA

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

- Executive Summary -

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

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

INDEX

1. Contextualizing the Port Sector	5
1.1. Investing in the brazilian port sector.....	5
1.2. Main organizations and institutions that mediate the port sector.....	7
1.3. The national port system.....	7
1.4. Sectorial planning	8
2. Investment Opportunities in Port Grants	10
2.1. Types and modalities of port grants.....	10
2.1.1. Organized port.....	10
2.1.2. Port installations located inside the organized port	11
2.1.2.1. Areas related to port operations	11
2.1.2.2. Areas not related to port operations.....	11
2.1.3. Port installations located outside the organized port.....	11
2.2. Investment Partnerships Program	12
2.3. Investment potential identified by the PNLN's capacity deficit	12
3. Requirements and procedures for new business and contractual renovations ...	13
3.1. Organized port concessions and lease of public areas and infrastructures ..	13
3.2. Authorization of port installations located outside the area of the organized port.....	13
3.3. Extension of a port lease contract.....	14
3.4. Economic-financial rebalance of lease contracts	14
3.5. Instruments for pleas in port grants	15
4. Lines of credit and tax incentives	16
References	17
List of abbreviations and initials	19
List of figures.....	20

1. CONTEXTUALIZING THE PORT SECTOR

The Port Sector Investor's Manual intends to introduce the main alternatives for investments in the Brazilian port sector both to national and international investors. It addresses: characteristics inherent to the 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, available lines of credit and tax incentives.

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 the port sector, infrastructure actions have been boosting development, reducing bottleneck logistics and promoting new regional integrations. This allows great centers and the foreign market more access to people and products. These investments are performed in partnership with the private sector, which is the main responsible for the maintenance and operation of terminals. Brazil holds many factors that enable investments, according to the figure below.



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).

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. Also, the country is a strong global actor. It is currently the ninth world economy and it is located 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.

1.2. Main organizations and institutions 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 addition to the Ministry of Infrastructure, other organizations and institutions mediate in the port sector. They are: the National Secretariat of Ports and Waterway Transports (SNPTA), the National Agency of Waterway Transports (ANTAQ), the Planning and Logistics Company Inc. (EPL), the Secretariat of the Investment Partnerships Program (PPI), the Brazilian Development Bank (BNDES) and Caixa Econômica Federal (CEF).

1.3. The national port system

Direct or indirect exploration of organized ports, as well as of port installations located inside or outside ports, takes place according to this sector's legislation: Law no. 12,815, of June 5th, 2013, also known as Law of the Ports. In this sense, the exploration of ports and port services characterizes the national port system according to an internationally recognized model, known as landlord port.

The following figure presents the organized ports and authorized port installations in Brazilian territory, classified as port clusters, according to the 2015 National Ports and Logistics Master Plan (PNLP).

Organized Ports and Authorized Installations

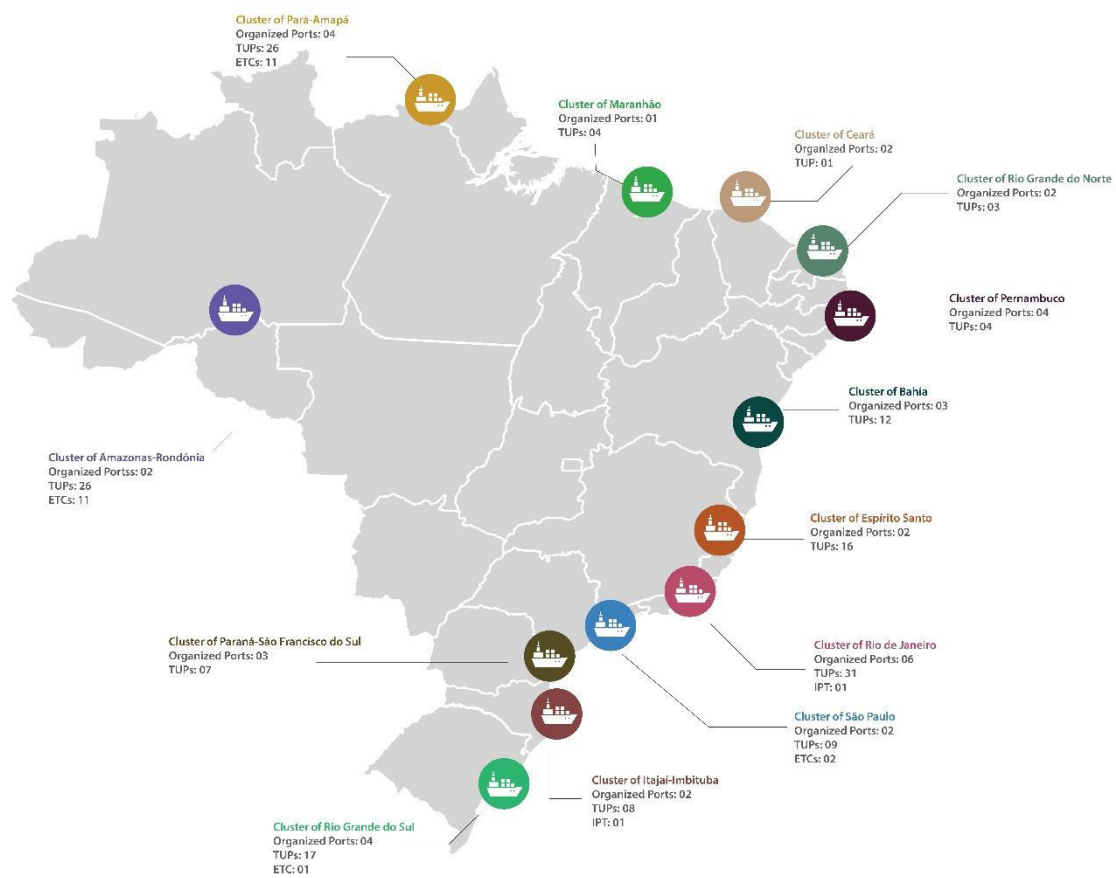


Figure 2 – Distribution of organized ports and authorized installations in Brazilian territory
 Source: Ministry of Infrastructure; LabTrans/UFSC (PNLP, 2018). Elaboration: LabTrans/UFSC (2019).

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. It also holds approximately 193 authorized port installations, which are managed by authorizers themselves.

1.4. Sectorial planning

From this sector’s new regulatory mark (Law no. 12,815/2013), 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 port sector’s planning tool definitions and main goals are described in the following figure.



Figure 3 – Definitions and main goals of the port sector’s planning tools
Source: Brasil (2014). Elaboration: LabTrans/UFSC (2019).

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, 2016) 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 listed in the figure below.

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, 2013; Decree no. 8,033, 2013) and ANTAQ (Normative Resolution no. 7, 2016).
Elaboration: LabTrans/UFSC (2019).

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

2.1.1. Organized port

An organized port is defined by the new Law of the Ports 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, 2013). 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 assignment of the organized port for the administration and exploration of its infrastructure for a certain period, always preceded by a bidding process.

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

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

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. According to the port’s PDZ, they are not directly destined to activities of passengers’ movement and movement or storage of goods whose destination or origin come from waterway transport. 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 or an onerous assignment (BRASIL, 2013).

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, 2013). This comprehends the modalities of Private Use Terminals (TUP); Trainshipment Cargo Stations (ETC); Small Public Port Installations (IP4)¹; and Tourism Port Installations (IPTur).

¹ Activity related to the PGO’s update and improvement foreseen by TED no. 02/2018. It aims to update and systematize the Guide for Port Grants Internal Procedures, published by SNP/MTPA in July 2017, reason why the Small Public Port Installations (IP4) are not addressed in this study. These installations were excluded from the PGO in the terms of the First Additional Term TED no. 1/2015, later made available in July 2017.

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, leases, 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.

Within the port sector, this project will enable business opportunities and help Brazil 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.

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.

Therefore, the Investor's Manual presents maps with data on projection of demand, capacity and capacity deficit extracted from the PNLP. These 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 and product groups.

3. REQUIREMENTS AND PROCEDURES FOR NEW BUSINESS AND CONTRACTUAL RENOVATIONS

New business and contractual renovations demand requirements and procedures, which are further detailed below.

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

Indirect exploration of organized ports and port installations will take place by means of concessions and leases. Procedures for new investments on concessions of organized ports or lease of public areas and infrastructure can be seen in the following figure.



Figure 5 – Procedure for new leases

Source: Brasil (Law no. 12,815, 2013; Decree no. 8,033, 2013) and ANTAQ (Resolution no. 3.220, 2014; Normative Resolution no. 7, 2016; 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. The flow chart below shows the procedures for investments in port installation authorizations.



Figura 6 – Procedure for new authorizations

Source: Brasil (Law no. 12,815, 2013; Decree no. 8.033, 2013) and ANTAQ (Normative Resolution no. 20, 2018).
 Elaboration: LabTrans/UFSC (2019).

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.

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.

3.4. Economic-financial rebalance of lease contracts

Granting power may promote economic-financial rebalance of port installations’ lease contracts if the following facts that bring about unbalance take place: impacts on the economic-financial equation derived from an alteration of the contractual risks matrix; risks took over by Granting Power; leaseholder did not comply with contractual obligations regarding economic-financial impacts; when investments or provision of services of public interest not originally established in contract are determined or authorized, including outside the leased area; impacts on the economic-financial equation originated from contract extensions; impacts on the economic-financial equation originated from consolidated contracts; and impacts on the economic-financial equation originated from a leased area that has not originally been foreseen in contract. (SEP/PR, 2015).

The flow chart below shows the procedures for a contract’s early extension and economic-financial rebalance.

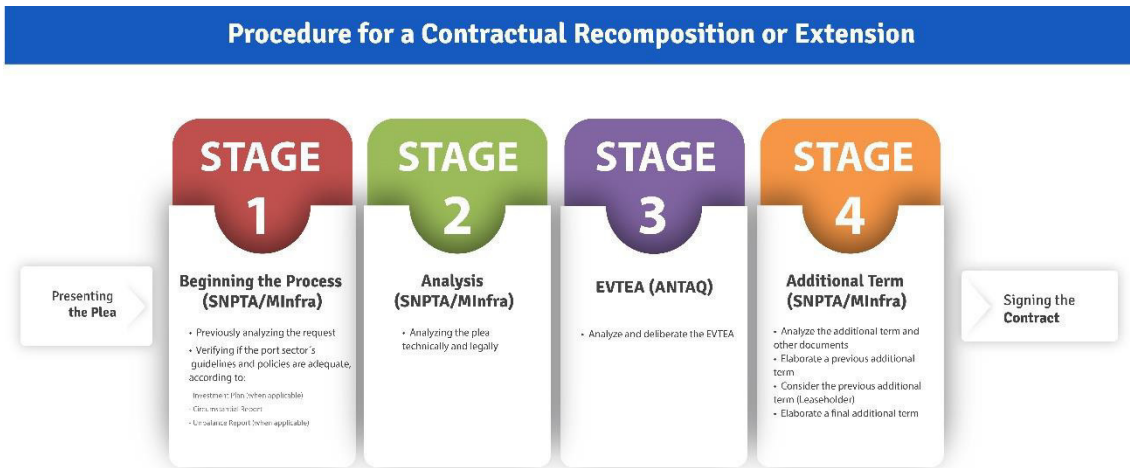


Figure 7 – Procedure to extend contract deadlines

Source: SEP/PR (Ordinance no. 349, 2014; 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).

4. LINES OF CREDIT AND TAX INCENTIVES

In order to encourage and attract investments, the Federal Government has created tax incentives for the port sector, such as: exemption of payroll, infrastructure debentures, Tax Regime for the Modernization and Increase of Port Structure (REPORTO), accelerated depreciated assets and contribution discount for PIS/Pasep and COFINS, and Special Regimen for the Development of Infrastructure (REIDI).

Regarding lines of credit, the government offers: financial support conditions with the Brazilian Development Bank (BNDES) for public auctions and infrastructure concessions; funding to expand and modernize infrastructure through the BNDES Finem; and funding to support projects by means of the BNDES Project Finance.

REFERENCES

AGÊNCIA NACIONAL DE TRANSPORTES AQUAVIÁRIOS (ANTAQ). **Anuário Estatístico Aquaviário – 2016**. 2016a. Disponível em:

<http://web.antaq.gov.br/Portal/PDF/Anuarios/ApresentacaoAnuario2016.pdf>. Acesso em: 22 abr. 2019.

AGÊNCIA NACIONAL DE TRANSPORTES AQUAVIÁRIOS (ANTAQ). Resolução Normativa nº 7- ANTAQ, de 30 de maio de 2016. Aprova a norma que regula a exploração de áreas e instalações portuárias sob gestão da administração do porto, no âmbito dos portos organizados. **Diário Oficial da União**, Brasília/DF, maio. 2016b. Disponível em: http://www.suape.pe.gov.br/images/publicacoes/resolucao/Resolucao_Normativa_007_2016.pdf. Acesso em: 22 abr. 2019.

AGÊNCIA NACIONAL DE TRANSPORTES AQUAVIÁRIOS (ANTAQ). Resolução Normativa nº 20- ANTAQ, de 15 de maio de 2018. Aprova a Norma que dispõe sobre a autorização para a construção e exploração de terminal de uso privado, de estação de transbordo de carga, de instalação portuária pública de pequeno porte e de instalação portuária de turismo. **Diário Oficial da União**, Brasília/DF, maio 2018. Disponível em: http://www.lex.com.br/legis_27647139_RESOLUCAO_NORMATIVA_N_20_DE_15_DE_MAIO_DE_2018.aspx. Acesso em: 17 abr. 2019.

BRASIL. Decreto nº 8.033, de 27 de junho de 2013. Regulamenta o disposto na Lei nº 12.815, de 5 de junho de 2013, e as demais disposições legais que regulam a exploração de portos organizados e de instalações portuárias. **Diário Oficial da União**, Brasília/DF, jun. 2013a. Disponível em: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Decreto/D8033.htm. Acesso em: 17 abr. 2019.

BRASIL. Lei nº 12.815, de 5 de junho de 2013. Dispõe sobre a exploração direta e indireta pela União de portos e instalações portuárias e sobre as atividades desempenhadas pelos operadores portuários; altera as Leis nºs 5.025, de 10 de junho de 1966, 10.233, de 5 de junho de 2001, 10.683, de 28 de maio de 2003, 9.719, de 27 de novembro de 1998, e 8.213, de 24 de julho de 1991; revoga as Leis nºs 8.630, de 25 de fevereiro de 1993, e 11.610, de 12 de dezembro de 2007, e dispositivos das Leis nºs 11.314, de 3 de julho de 2006, e 11.518, de 5 de setembro de 2007; e dá outras providências. **Diário Oficial da União**, Brasília/DF, jun. 2013. Disponível em: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12815.htm. Acesso em: 17 abr. 2019.

BRASIL. Lei nº 13.334, de 13 de setembro de 2016. Cria o Programa de Parcerias de Investimentos - PPI; altera a Lei nº 10.683, de 28 de maio de 2003, e dá outras providências. **Diário Oficial da União**, Brasília/DF, set. 2016a. Disponível em: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Lei/L13334.htm. Acesso em: 22 abr. 2019. COMEX STAT. 2019. Disponível em: <http://comexstat.mdic.gov.br>. Acesso em: 22 abr. 2019.

MINISTÉRIO DA INFRAESTRUTURA; LABORATÓRIO DE TRANSPORTES E LOGÍSTICA DA UNIVERSIDADE FEDERAL DE SANTA CATARINA (LabTrans/UFSC). **Plano Nacional de Logística Portuária – PNLP 2018: Projeção de Demanda e Carregamento da Malha (Ano Base 2017)**. Brasília: SNPTA, 2018.

SECRETARIA DE PORTOS DA PRESIDÊNCIA DA REPÚBLICA (SEP/PR). Portaria SEP/PR nº 499, de 5 de novembro de 2015. Estabelece regras e procedimentos para a recomposição do equilíbrio econômico-financeiro de contratos de arrendamento de instalações portuárias e dá outras providências. **Diário Oficial da União**, Brasília/DF, nov. 2015. Disponível em: <https://www.abtp.org.br/upfiles/legislacao/portaria-sep-499-de-2015.pdf>. Acesso em: 17 abr. 2019.

LIST OF ABBREVIATIONS AND INITIALS

ANTAQ	National Agency of Waterway Transports
BNDES	Brazilian Development Bank
CEF	Caixa Econômica Federal
EPL	Planning and Logistics Company Inc.
ETC	Cargo Trainshipment Station
EVTEA	Technical, Economical and Environmental Feasibility Study
FOB	<i>Free on board</i>
IBGE	Brazilian Institute of Geography and Statistics
IP4	Small Public Port Installation
IPTur	Tourism Port Installation
MInfra	Ministry of Infrastructure
MTPA	Ministry of Transportation, Ports and Civil Aviation
PIB	Gross Domestic Product
PDZ	Port Development and Zoning Plan
PGO	General National Leasing Plan
PNLP	National Ports and Logistics Master Plan
PPI	Investment Partnerships Program
PPP	Public-Private Partnership
SEP	Special Secretariat of Ports
SEP/PR	Secretariat of Ports of the Presidency of the Republic
SNPTA	Secretariat of National Ports and Waterway Transports
TRI	Investors Risk Statement
TUP	Private Use Terminals

LIST OF FIGURES

Figura 1 – Investing in Brazil: Why?	6
Figura 2 – Distribution of organized ports and authorized installations in Brazilian territory	8
Figura 3 – Definitions and main goals of the port sector’s planning tools	9
Figura 4 – Types of grants	10
Figura 5 – Procedure for new leases	13
Figura 6 – Procedure for new authorizations.....	14
Figura 7 – Procedure to extend contract deadlines.....	15