

## Brazil's New Port Law

Brazil's new Port Law (Law No. 12.815/13) was enacted and became effective on June 5, 2013, bringing significant changes to Brazil's port regulatory regime and aiming to increase private investment in Brazilian ports, essential to tackling one of the country's most prominent logistical bottlenecks.

The law settled one of the sector's main legal disputes concerning the handling by private terminals of cargo belonging to third parties. The former Port Law (Law No. 8.630/93) was unclear on this and was construed by some as requiring private terminals to handle principally their own shipments. Law No. 12.815/13 now clearly states that private terminals outside established ports are authorized to handle any type of cargo, including those of other companies, thus increasing competition among port operators and boosting greenfield site development via new investment, as the new regulations stipulate.

Rules regarding public terminals were also modified by the new law, aiming at reducing handling charges and promoting efficiency of port operations. Public terminals are typically within established ports and belong to the Federal Government. The infrastructure is leased under long term agreements to private operators. The lessee is chosen via public bid. Under the previous law, the criterion was the highest tender price. The new law now requires that the criteria/criterion to selecting the winner is the lowest handling charge and/or other parameters regarding the operation of the terminal.

The new law also establishes that the bids are to be organized and conducted by the federal regulatory agency in charge of port matters – the National Agency for Waterway Transportation (ANTAQ) – and no longer by the port authorities that manage each established port. The rationale behind this is that such concentration of bidding oversight and control to a single agency will result in more standardized and uniform procedural implementation. It is uncertain, however, if ANTAQ will have the means to expeditiously perform this task given the reality of the terminals being spread out over various different coastline regions of the country.

New bids are expected to take place soon as dozens of existing leases have already expired. President Dilma Rousseff has vetoed parts of the bill approved by the Brazilian Congress signing Law No. 12.815 into effect, including provisions for the automatic renewal of these leases, the Federal Government stating that all leases executed prior to 1993 shall not be renewed and shall be subject to new bids. For leases executed after 1993, renewal shall be evaluated on a case-by-case basis and relevant investment shall be required as a condition for any additional lease term that is granted.

To increase efficiency of port operations, the law further requires companies owned by the Federal Government and that act as port authorities in several of the main Brazilian ports (*Companhias Docas*) to execute performance contracts with the Secretariat of Ports (SEP) – an administrative body under the direct supervision of the President – establishing clear targets and objectives to be achieved in their management.

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