



BRAZILIAN GOVERNMENT ENACTS NEW CABOTAGE ACT (BR DO MAR)

On 10 January 2022, the Brazilian President sanctioned Law No. 14.301/2022, the “Cabotage Act”, with the aim of diversifying Brazil’s transportation services through increased incentives, locally known as BR do Mar.

The purpose of the Act is to develop the quality of, and encourage competition within, transportation services, expand the fleet for navigation, stimulate the development of the national naval industry, and encourage investments arising from operations in port facilities.

The Cabotage Act has brought necessary and long-awaited innovations, with a focus on transforming the local market into a dynamic and attractive destination for investors, especially foreign ones. Brazilian Navigation Companies (“EBN”) are no longer required to possess their own fleet and will be allowed to bareboat charter foreign vessels. Chartering is subject to the terms and conditions set out in the Cabotage Act.

Another positive, novel rule is that EBNs are permitted to charter foreign vessels without the need for proof of tonnage, as in the previous legislation EBNs were limited to charter foreign vessels up to Regulation 41’s rules of the Brazilian Waterway Transport Agency (“ANTAQ”). According to the Act, from 2024, it will be possible to charter two foreign vessels, increasingly annually to up to a maximum of four vessels by 2026. From 2027 onwards, this type of chartering will be limitless.

The motivation behind the removal of the requirement for Brazilian-flagged vessels to carry out waterway transport between national ports is to decrease costs by increasing the availability of vessels. Furthermore, the Act allows flag suspension of bareboat chartered foreign vessels, to release the EBN from the original flag states’ various legal obligations of a commercial, fiscal, tax and environmental nature.

Aligned with the rules abovementioned regarding foreign vessels, the Cabotage Act enables the time and voyage chartering of vessels by EBNs, without authorisation, provided they are to be used in

cabotage navigation in the place of another vessel undergoing renovation in a national or foreign shipyard. In time charter cases, there will be no limit to the number of trips, and the EBN will be required to indicate the vessel to be used, which may then only be replaced in the event its operation becomes unfeasible.

Vessels will be required to undergo periodic inspections by the Brazilian Maritime Authority, to determine their conformity.

Although most of the legislation has been welcomed by the shipping market, the Presidential veto to the tax benefit to ports, called REPORTO, resulted in some criticism of the Cabotage Act. The REPORTO would relieve investments in equipment and other expenses in Brazilian ports, considered essential by workers and experts in the sector. Modernising cabotage navigation creates a need for ports that can dock complex, larger vessels, and this was mistakenly considered a tax issue and not an incentive one.

The labour aspects of the new Cabotage Act have also been subject to scrutiny. The updated regulation maintained requirement of at least two-thirds of Brazilian crewmembers, including the vessel’s master, chief engineer and engine technician.

Finally, EBNs applying to the program must prove compliance with federal taxes and agree to periodically present information on the expansion of their activities, improvements in the quality of their service, their level of local employment, sustainability, and transparency regarding the values of freight.

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