

GLOBALPANDI

Circular for P & I Clubs

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Correspondents for:

North of England P&I Club, The Steamship Mutual P&I Club, The American Club, The London Club, GARD, Britannia, Shipowners P&I Club, Skuld, Nordisk Defence Club (Through Sabatino Pizzolante), British Marine Luxembourg, Charterers P&I Club, Through Transport Club (TTC), ITIC, Raets Club and Navigators.

Nationalization of Warehouses, Silos and Yards within Public Ports

In our *Globalpandi Circular for P&I Clubs* dated 25th June 2009 it was reported content of Resolution No. 112 issued by the Ministry of Public Works and Housing empowering the new national port authority —Bolivariana de Puertos, S.A.— to initiate the revision of all contractual arrangements between the port operators and the repealed regional port authorities through which they had control on warehouses and container yards.

As a result of this process of revision Bolivariana de Puertos, S.A. has now taken over control of all warehouses, silos and yards within public ports of Puerto Cabello, La Guaira, Maracaibo and El Guamache, pursuant Resolution No. 192 published in the Official Gazette No. 39,231 dated 30th July 2009. Consequently, the day after and in a rapid move, commissions showed up at each warehouse and container yard to replace the acting manager by a public officer in charge of the facility, informing all the personnel about the taking over process and inviting them to be part of the staff of this public entity, and signing a document for delivery of the facility with inventory of existing furniture, machinery and cargo.

According to Resolution No. 192, and for the purposes of ensuring continuity of service, Bolivariana de Puertos, S.A. shall take all necessary steps to that end, with broad powers to ensure that all assets destined for the operations relating to warehouses, silos and yards such as machinery, elevators, forklifts, etc. are "temporarily retained to continue an efficient service". Under this provision port operators have been deprived from their assets, now under the care and custody of the public port authority, until defining its legal status according to the guidelines of the National Executive.

A noticeable point is that this "temporal retention" of assets cannot be regarded as a confiscation, taking into consideration that article 5 of the resolution states that in respect of the port equipment, Bolivariana de Puertos, S.A. is authorized to

purchase or lease some of the retained equipment, for which negotiation can be advanced with the owners, otherwise the expropriation process would take place. Assets could be also returned to the owners as prescribed by the resolution.

It should be noted that the said Resolution No. 192 authorizes the port authority to take over only the warehouses, silos and yards, from which a strict reading would lead to conclude that the loading and unloading of ships or stevedoring services in general will continue at least for now in the hands of the private port operators; nevertheless, there are no clear rules as to how they will carry out these tasks as their equipments are retained by the port authority, and what it is more worrying there are already reported cases showing that Bolivariana de Puertos, S.A. is offering stevedoring services preventing private port operators from doing so.

No doubt that this process of nationalization of warehouses and container yards will impact the reception and delivery of cargo at Venezuelan ports as well as the stevedoring services, and the existing contracts between shipping lines and port operators, for which reason the Members are strongly suggested to discuss this matter with their agents and port operators as a matter of urgency.

Should you need any assistance or further information regarding the topic stated above, please feel free to contact:

GLOBALPANDI, S.A.

Phones: +58-242-3641801/3641026/3641798

Fax: +58-242-3640998

E-mail: mail@globalpandi.com

Webpage: www.globalpandi.com

AOH: +58-412-4210036

Contact: Mr. José Alfredo Sabatino Pizzolante.