



Immigration Controls on Seafarers in Brazil

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Practical Guidance

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1. Foreword

Until recently, the backbone of the Brazilian government's immigration policy was the so-called Alien's Statute, a law enacted in 1980, when Brazil was still under the yoke of the military ruling, which largely criminalised the violation of migration rules and regarded immigration as a potential threat to the sovereignty of the country.

In November 2017, the new Brazilian Migration Law came into force to replace the obsolete Alien's Statute and embrace the fundamental principles and guarantees that are already enshrined in the Federal Constitution that succeeded the military period, including the promotion of human rights, repudiation of racism and discrimination, equal rights and free access to public services and social benefits to Brazilians and foreigners, along with reduction of bureaucracy.

While the Law has eliminated criminal sanctions for migratory offences, it has substantially increased the value of the fines that can now reach up to BRL 10 thousand for individuals, and up to BRL 1 million for companies that violate the immigration regulations.

New categories of visas have been created, each with multiple types to serve specific purposes. The permanent visa was discontinued, and long-term visitors who wish to live in or work in Brazil can now apply for residency in the country regardless of immigration status or visa type.

Visitors and immigrants in the maritime and offshore sectors will be issued with a visit visa for business (non-remunerated, short-term visitors) or a temporary visa for work (with or without a contract of employment in Brazil) if staying in the country longer than 90 days.

Seafarers entering the country on a deep-sea going ship or a cruise ship sailing along the Brazilian coast for up to 180 days are exempt from a visa provided they carry a valid seaman's book in line with the ILO Convention (C-185). Those who intend to work on a Brazilian ship or platform, irrespective of the duration of the employment contract, or to work aboard a foreign vessel without remuneration from a source in Brazil for more than 90 days must obtain a temporary visa through the Brazilian consulates abroad.

Of interest to the industry were the normative resolutions, which reiterate the obligation on foreign ships and platforms to hire rising proportions of Brazilian seafarers to compose the crew at all levels of qualifications and departments when operating in Brazilian waters for specific periods.

This guide aims to provide a practical overview of the main aspects related to foreign seafarers in Brazil and Brazilian seafarers on board foreign vessels in the light of the new legal framework. Many of the recent rules require specific regulation to be implemented in effect and we will strive to keep an updated version of this publication available for free download on our website.

We hope our clients and associates find this guide to be a useful source of practical information, and we welcome your feedback for corrections and improvements.

REPRESENTAÇÕES PROINDE LTDA.
August 2019

2. Regulatory framework

2.1. Jurisdiction

The Federal Union has exclusive authority to legislate on matters of immigration¹ and the government delegates this constitutional duty to two cabinet-level federal ministries and an interministerial council that rule on various aspects of immigration, nationality, foreigners and international labour.

With the inauguration of the new federal administration in January 2019 and the complete restructuring of the government that followed, the *Ministério do Trabalho* - MT (Ministry of Labour) was dissolved and the functions it exercised in relation to foreign labour and residency policies and controls, including the granting of work and residence permits to foreign seafarers, were transferred to the *Ministério da Justiça e Segurança Pública* – MJ (Ministry of Justice and Public Security), which already had jurisdiction over matters relating to nationality, immigration and foreigners². Different departments within the structure of the MJ deal with specific aspects of immigration and foreign labour matters. [Table 1]

Authority	Functions and duties
Secretaria Nacional de Justiça - SNJ (National Department of Justice)	Elaboration of immigration policies, particularly in respect of nationality, naturalisation and migration and refugees
Departamento de Migração - DEMIG (Migration Department)	Implementation and monitoring of the National Policy for Migrations, Refugee and Stateless; assistance and elaboration of policies on matters of migration controls, migrant smuggling, removal measures, legal status of immigrants and coordination of foreign labour policies through the <i>Coordenação-Geral de Imigração Laboral</i> (General Coordination of Labour Immigration)
Departamento de Polícia Federal – DPF (Federal Police Department)	Maritime policing (including enforcement of the ISPS Code), immigration control, security at ports, airports and crossings, issuance and renewal of passports, visa extensions, amongst other duties; management of the National Migration Registry; investigation and decisions on administrative appeals and levying of fines for violations of immigration laws and regulations
Conselho Nacional de Imigração – CNIg (National Immigration Council)	Collective deliberation of the federal government with representatives of civil society, trade unions, social organisations and other ministries, through a collegiate body linked with the MJ

Table 1: authorities in charge of migratory and foreign labour controls with the Brazilian Ministry of Justice and Public Security

The *Ministério das Relações Exteriores* – MRE (Ministry of Foreign Affairs) is the diplomatic authority that oversees the provision of consular services through its Immigration Division, including the granting of official, diplomatic and courtesy visas by Brazilian consulates and representation offices abroad.

2.2. Main legal framework

The keystone of the Brazilian immigration regulation is Law n° 13,445 of May 2017, known as the *Lei da Migração* (Migration Law)³ that provides for the rights and duties of migrants and visitors, regulates their admission and stay in the country and establishes principles and guidelines for the public policies for emigrants. It entered into force in November 2017 to replace the so-called *Estatuto do Estrangeiro* (Alien's Statute), which was the core legislation ruling on immigration issues since its introduction by the then military government in 1980⁴.

¹ Art. 22, XV, of Brazil's Federal Constitution of 1988

² Decree n° 9,662 of 01/01/2019, as amended by Decree n° 9,701 of 08/02/2019

³ Law n° 13,445 of 24/05/2017, herein referred to as Migration Law (*Lei da Migração*), entered into force on 21/11/2017 is regulated by Federal Decree n° 9,199 of 20/11/2017, as amended

⁴ Law n° 6,815 of 19/08/1980 – Alien's Act (*Estatuto do Estrangeiro*), as amended

The Migration Law is regulated by Decree nº 9,199 of 21 November 2017, as amended, and is implemented in the form of *Resoluções Normativas* - RN (normative resolutions) issued by the *Conselho Nacional de Imigração* – CNlg (National Immigration Council).

Since the introduction of the new immigration statute, the CNlg has issued a series of normative resolutions, some of particular interest to the seafarers and their employers, namely RN-01/2017 (general provisions on work and residency permits), RN-05/2017 (crew on cruise ships) RN-06/2017 (crew on cabotage ships, offshore ships and platforms) and RN-22/2017 (crew on fishing ships).

2.3. Visa policy

Brazil discretionarily adopts the principle of reciprocity and, following the provisions of bilateral treaties and agreements, waives the need for a nonimmigrant to obtain an entry visa prior to travelling to Brazil if the stay is for up to 90 days⁵.

Visas are always issued by Brazilian embassies, consulates and diplomatic missions abroad. It is not possible to obtain a visa upon arrival at airports, ports and ground crossings. Travellers who arrive at immigration checkpoints without a valid visa, where one is required, may be denied entry.

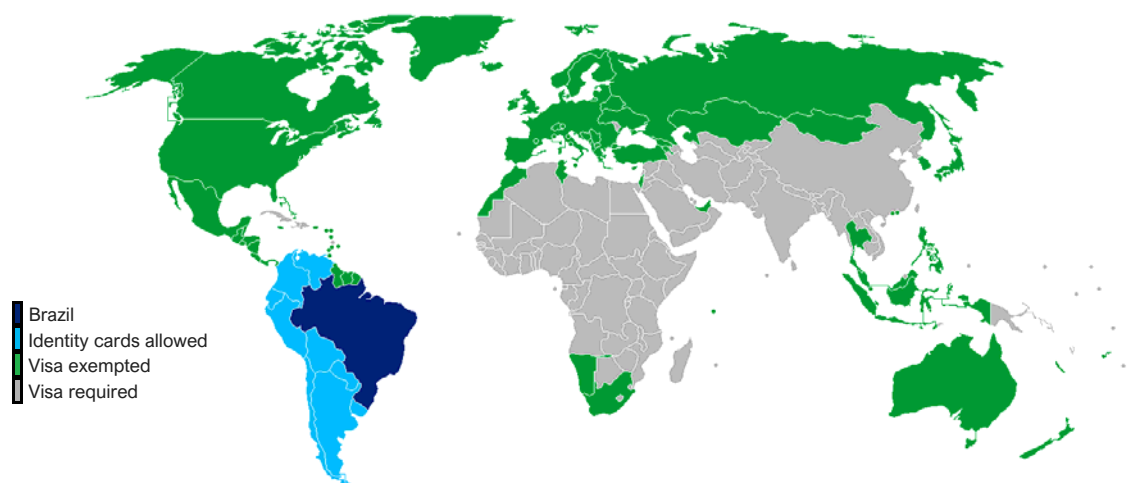


Figure 1: Brazilian visa policy (Source: MRE/DPF/MJ)

2.4. Visa categories

In short, the new law introduced five different categories of visas (visit, temporary, diplomatic, official and courtesy visas) that are issuable by the Brazilian State to foreign nationals who seek to visit, work or live in the country, with multiple subcategories that vary according to the purpose of the travel⁶. The most applicable type of visa for executives, technicians and seafarers in the maritime and offshore industries are visit (business) and temporary (work) visas.

Visit visas are granted to short-stay travellers who do not intend to immigrate or perform paid activities in the country, and are visiting for tourism (including meetings, conferences, seminars and congresses), stopover, and business (including signing of contracts, auditing and consulting services and acting as crew of a ship or aircraft)⁷. The maximum stay allowed under a visit visa is 90 days, renewable for an additional period of up to 90 days, but only if the combined stays in the country do not exceed 180 days in each migratory year⁸. Seafarers are subject to specific regulation [Section 3.2]

⁵ Exceptions to the reciprocity policy are citizens of Australia, Canada, Japan and the U.S. who are unilaterally exempt from visas and may remain in Brazil for a maximum period of 90 days, renewable for 90 days and limited to 180 days per migratory year (Decree nº 9,731 dated 16/03/2019)

⁶ Art. 12 of the Migration Law; art. 5 of Decree 9,199/2017

⁷ Art. 13 of the Migration Law; arts. 29 to 32 of Decree 9,199/2017

⁸ A migratory year is a 12-month period counted from the date of the first entry into the country

Temporary visas are granted to foreigners who wish to live in the country for a certain period for various reasons, such as research, health care, study, holiday-work and work as a seafarer (if not holding an ILO-compliant seaman's book or staying longer than 180 days) among many other specific purposes⁹. Holders of temporary visas must register with the National Migration Registry (RNM) within 90 days after the first entry, under penalty of a fine¹⁰.

2.5. Visa validity

The period of validity of the temporary visa, which should not be confused with the maximum period of stay, is indicated in the visa itself¹¹ and entry will not be allowed with a visa expired unless warranted by exceptional circumstances at the entire discretion of the immigration authority. The various categories of visas permit multiple entries with varying periods of maximum stay for each visa category.

Depending on its purpose and the nationality of the applicant, the visa may be valid for one year to ten years, noting that granting a visa is a mere expectation of a right and does not guarantee that the visa holder will effectively enter Brazilian territory at any time¹².

2.6. Maximum period of stay

The maximum period that a foreign national can stay in Brazil is defined by the Federal Police's immigration officer at the first immigration checkpoint in the country. The period of stay begins to count from the date of the first entry and stops when the visitor leaves the national territory¹³.

The length of the stay without a visa varies from country to country but, again, is always determined at the discretion of the immigration authority upon entry. For instance, a visitor from a visa-waived country, who could theoretically stay in Brazil for a maximum of 90 days without a visa, may be allowed to remain in the country for only 30 days, if the immigration officer so determines.

The term of stay effectively granted by the Federal Police is stamped on the immigration card (or e-mailed to the applicant in the case of e-visas) and is strictly controlled through a database that interconnects immigration checkpoints across the country.

It is essential that the maximum period of stay is carefully monitored so that the application for a time extension is submitted in due time or the traveller leaves the country before the permitted stay expires, to avoid a daily fine and a possible deportation order¹⁴.

2.7. Extension of period of stay

The extension of the period of stay, where one is possible, is not automatic. The foreign national must attend at a Federal Police station and request for an extension, where one is permitted, before the expiration of the period of stay granted upon entry. The applicant must submit the time extension form together with a valid travel document and proof of payment of the fee to the Federal Police¹⁵.

Fines for overstay are the most common type of immigration penalty on foreigner seafarers in Brazil.

⁹ Art. 14 of the Migration Law; arts. 33 & 38 of Decree 9,199/2017

¹⁰ Arts. 40 & 41 of the Migration Law; arts. 14 to 18, 172, 174, 175 & 307 III of Decree 9,199/2017

¹¹ E-visas may be requested and issued electronically without the corresponding consular sticker being affixed to the travel document. E-visas are only for visit visas and are available to a few nationalities. Application can be done over through VSF Global website

¹² Art. 6 of the Migration Law

¹³ Art. 19 of Decree 9,199/2017

¹⁴ Art. 109 II of the Migration Law; art. 307 II of Decree 9,199/2017

¹⁵ Arts. 19 to 23 of Decree 9,199/2017

3. Foreign seafarers

3.1. Seafarer's identity documents

As defined in the international conventions adopted by the International Labour Organisation (ILO), and for the purposes of the Brazilian immigration regulations, any member of the crew holding a valid seafarer's identity document (seaman's book) and performing professional duties onboard a ship is considered a seafarer¹⁶. Brazilian Migration Law accepts seaman's book as a valid travel document with the same standing as a passport, a laissez-passer and other forms of personal identification¹⁷.

In 2010, Brazil ratified the ILO Convention C185 of 2003¹⁸, resulting in the automatic denunciation of the ILO Convention C108 of 1958¹⁹. ILO C185 eventually came into force in the country in 2015, when it expressly repealed the decree that regulated the earlier convention in the domestic legislation²⁰.

Despite the revocation of ILO C108, the Federal Police have been accepting seaman's books issued under this Convention to permit shore leave, transit or transfer of seafarers, though only ILO C185 is legally in force in Brazil. Seafarers holding a seaman's book not issued under any of the ILO Conventions may remain on board the vessel but may not come ashore²¹.

3.2. Visa requirements for seafarers

Visit visas for seafarers who are not engaged in paid activities in Brazil on board foreign ocean-going vessels, cruise ships and platforms are limited to a maximum, non-extendable period of stay of 90 days each year²². Seafarers on ocean-going vessels and cruise ships holding a valid seaman's book issued under the terms of the ILO Convention are exempt from visit visas for stays of up to 180 days per year²³.

To work aboard a Brazilian-flagged vessel or platform, regardless of the duration of the contract of employment, or aboard a foreign-flagged vessel²⁴ for more than 180 days per migratory year, the seafarer must apply for a temporary work visa²⁵.

3.3. Migratory controls on seafarers

The Federal Police monitor and control seafarers entering and leaving the country and are also responsible for maritime policing and the security of Brazilian ports, airports and ground crossings.

Control of maritime migration is carried out at the first and last ports of call (or at the first or last international airport of arrival or departure, in the event of a crew change)²⁶.

¹⁶ Art. 6 of ILO C185; art. 4, sole paragraph of Normative Resolution n° 5 of December 2017 (IN 5/2017)

¹⁷ Art. 5, V, of the Migration Law

¹⁸ ILO C185: Seafarers' Identity Documents Convention (Revised), 2003 (n° 185). Entry into force: February 2005

¹⁹ ILO C108: Seafarers' Identity Documents Convention, 1958 (n° 108), was introduced in the Brazilian domestic legislation by way of Decree n° 58,825 of June 1966. This Convention established that seafarers holding a seaman's book issued by their home country, by the vessel's flag state or by the country where the seafarers' employer is domiciled. Entry into force: February 1961

²⁰ ILO C185 was adopted in June 2003 to revise C108 with the purpose of enhancing security and affording uniformity to the seafarer's identification document. Brazil ratified ILO C185 in 2010 and enacted it through Decree n° 8,605 of December 2015 that expressly revoked Decree 58,825/1966 which regulated ILO C108. Unlike the ILO C108, the new Convention provides that the seaman's book can only be issued to a national or to a permanent resident of the issuing country

²¹ Art. 173 Decree 9,199/2017

²² Arts. 20 and 29, § 3 & § 7 of Decree 9,199/2017

²³ Art. 14, § 7 of the Migration Law; art. 29, § 7, I, of Decree 9,199/2017, as amended by Decree 9,500/2018

²⁴ Art. 38 of Decree 9,199/2017: "For the application of provision of subsection VII of § 2, foreign vessels or platforms are considered, among others, those used in offshore support navigation, exploration, exploitation, cabotage navigation, geophysical survey, dredgers and fishing vessels" (free translation)

²⁵ Arts. 29, § 7, II & 38, § 1, § 2, VII, of Decree 9,199/2017, as amended by Decree 9,500/2018

²⁶ Art. 38 of the Migration Law; art. 168 of Decree 9,199/2017

Regardless of whether the seafarer holds an ILO-compliant seaman's book or a valid passport, the immigration authority may require evidence of the seafarer's intent in the country and proof of financial standing and may also limit the length of the stay in the country²⁷.

A seafarer who does not meet the requirements for admission may exceptionally be allowed to enter the country provided that the carrier or its agent undertakes before the immigration authority to pay the expenses incurred during with the seafarer's stay and subsequent repatriation²⁸.

The maximum period within which a seafarer may stay in the country without a visa begins to count from the date of the immigration clearance in the first Brazilian port of call and only stops counting when the vessel leaves the last national port, or when the seafarer is repatriated. The period of stay of on-signers and off-signers is counted from the date of arrival or departure in the first or last immigration checkpoint. Daily fines may be imposed on seafarers who exceed the maximum period of stay²⁹. [Section 2.6]

3.4. Employment contracts

Foreign seafarers working onboard Brazilian ships must hold a temporary work visa and have an individual contract of employment signed in Brazil under the *Consolidação das Leis do Trabalho* – CLT (Brazilian Consolidation of Labour Laws), irrespective of the term of employment³⁰.

The contract of employment should be made with a company established in Brazil, which will be responsible before the Brazilian authorities and unions for the operation of the vessel and the management of the crew.

3.5. Residence permits

Seafarers who sail professionally along the Brazilian coast without a contract of employment in the country are entitled to obtain a residence permit from the Brazilian immigration authority when their stay in the country exceeds 90 days (for platforms) or 180 days (for cargo vessels and cruise ships)³¹. The application for a residence permit can be made in-country and will be valid for up to two years for seafarers serving on board all types of ships and platforms³².

The permit may be issued to multiples addresses and the seafarer may work on different ships or platforms within the fleet of the same crew managers.

Holders of a residence permit must register with the National Migration Registry (*Registro Nacional Migratório* - RNM) within 30 days of the granting of the permit, subject to a daily fine for non-compliance³³.

Foreign seafarers with residence permits are liable to taxation in Brazil. Those without a contract of employment in Brazil who stay for more than 183 days, consecutively or not and within a 12-month period, are deemed to be a resident for the purpose of paying (or refunding) Brazilian income tax, regardless of the type of visa obtained³⁴.

²⁷ Art. 6, Paragraph 9 of ILO C185; art. 45 of the Migration Law; arts. 170 & 171 of Decree 9,199/2017

²⁸ Arts. 41 & 42 of the Migration Law; arts. 172, 174 & 175 of Decree 9,199/2017

²⁹ Art. 109 II of the Migration Law; art. 307 II of Decree 9,199/2017

³⁰ Arts. 29 § 7 II, 38 § 1 II § 2, VII & 147 § 1, II of Decree 9,199/2017; Law-Decree n° 5,452 of 01/05/1943 as amended, known as the *Consolidação das Leis do Trabalho* – CLT (Consolidation of the Labour Laws)

³¹ Art. 147, § 2, VII of Decree No. 9,199/2017, as amended by Decree 9,500/2018

³² CNlg RN-01/2017 (granting of residence permits to foreigners), RN-05/2017 (cruise ships), RN-06/2017 (cabotage ships, offshore ships and platforms) and RN-22/2017 (fishing ships)

³³ Arts. 66 & 307 IV, 'a' & 'b' of Decree 9,199/2017

³⁴ Federal Revenue Department (*Secretaria da Receita Federal*) Normative Instruction n° 208 dated 27/09/2002, as amended (IN SRF 208/2002)

4. Brazilian seafarers

4.1. Compulsory hiring regulations

With the publication of Normative Resolutions RN-5/2017, RN-6/2017 and RN-22/2017, the CNlg reaffirmed the obligation that already existed under the repealed regulatory framework³⁵ according to which if a foreign vessel or platform remains in continuous operation within Brazilian jurisdictional waters³⁶ for specific periods, part of the crew must be composed of Brazilian seafarers at all technical levels (officers, graduates and non-graduates) and in all departments (deck and machinery) of the ship or platform in rising proportions according to the time of operation in Brazil.

The timeframes and proportion of the Brazilian workforce to be hired on foreign vessels and platforms have been virtually unchanged under the new regulation and a period of grace has been granted to allow cruise ship operators to adapt to the new set of regulations. [Table 2]

Ship type/trade	Period of operation	Proportion of Brazilian crew ³⁷
Offshore supporting vessels ³⁸	More than 90 days	1/3 (one third-34%)
	More than 180 days	1/2 (one half-50%)
	More than 360 days	2/3 (two thirds-67%)
Exploration and prospecting vessels and platforms ³⁹	More than 180 days	1/5 (one fifth-20%)
	More than 360 days	1/3 (one third-34%)
	More than 720 days	2/3 (two thirds-67%)
Vessels in cabotage trade ⁴⁰	More than 90 days	1/5 (one fifth-20%)
	More than 180 days	1/3 (one third-34%)
Cruise ships ⁴¹	More than 30 days	15% until December 2021 25% after December 2021
Fishing ships ⁴²	More than 90 days	2/3 (two thirds-67%)

Table 2: Proportion of engagement of Brazilian seafarers on board foreign ships and platforms operating in Brazilian waters

For counting the period of operation of cruise ships in Brazil, the departure and return of the vessel within less than 15 consecutive days will not be considered as an absence from Brazilian jurisdictional waters and, therefore, the time will continue to count as if the vessel had never left the national territory⁴³.

4.1.1. Foreign ships and platforms⁴⁴

Offshore support vessels that remain in continuous operation longer than 90 days must employ Brazilian seafarers for one-third of the crew; after 180 days of uninterrupted operation, half the crew must be Brazilians; and from 360 days onwards, two-thirds of the hands-on board must be composed of Brazilian nationals.

³⁵ Normative Resolutions CNlg No.71, 72 and 81 of 2006 were expressly revoked by CNlg RN-5/2017, RN-6/2017 and RN-22/2017, respectively

³⁶ The Brazilian territorial waters comprehend a 12-mile wide strip of the ocean, measured as of the low tide line of the continental and insular shelf, such as indicated in large-scale nautical charts officially acknowledged by Brazil

³⁷ The number of crewmembers required will be dictated by the safety manning certificate issued by the Flag State

³⁸ Vessels used in maritime logistic support to vessels and facilities engaged in research and mining activities and hydrocarbons

³⁹ Exploration or prospecting vessels, platforms, fixed or floating installations or structures, intended for activities directly or indirectly related to the research, exploitation and exploration of resources coming from inland waterbed, subsea and sea, including continental shelf and its subsea

⁴⁰ Vessels used in cabotage (carriage of persons or goods between ports or points within Brazil through the sea and/or inland waterways)

⁴¹ Cruise vessels used for tourism within the Brazilian territorial waters for more than 30 days

⁴² Fishing vessels chartered to Brazilian company and operating within the Brazilian territorial waters for more than 90 days

⁴³ Art. 8 of RN-5/2017. CNlg regulations in respect of offshore, ocean-going and fishing vessels do not expressly define the term during which the ship is deemed absent from the country or in continuous operation in national waters. It is anticipated that the immigration authority may consider the issue on a case-by-case basis or by analogy with the 15-day rule of the cruise ship regulation.

⁴⁴ CNlg RN-6/2017

Exploitation or prospecting vessels and platforms must employ one-fifth of Brazilian crewmembers when operating in Brazil for more than 180 days; after 360 days of continuous operation, one-third of the crew must be Brazilians; from 720 days, the crew must be composed of at least two-thirds of Brazilian seafarers.

Vessels engaged in the cabotage trade for more than 90 days of continuous operation must employ one-fifth of Brazilian seafarers, and after 180 days, the rate must be one-third of Brazilian crewmembers. [Table 2]

4.1.2. Foreign cruise ships⁴⁵

Cruise vessels operating in Brazilian jurisdictional waters longer than 30 days must have a minimum of 25% of the crew composed of Brazilian seafarers at various technical levels and in multiple activities, as defined by the shipowner or his representative. Vessels cruising between overseas ports and Brazil for up to 45 days carrying mostly tourists who embark or disembark in foreign ports are exempt from this obligation.

CNIg allowed a period of grace for the cruise seasons of 2018/2019, 2019/2020 and 2020/2021 during which time the proportion of Brazilians will be kept at 15%, with the prospect of an increase in the number of calls of cruise ships. From December 2021, the rate of Brazilian seafarers on board foreign-flagged cruise ships should be 25%.

Operators with multiple vessels may compensate the percentage of the proportion of the Brazilian workforce considering the average rate of the fleet. [Table 2]

4.1.3. Foreign fishing ships⁴⁶

In foreign fishing vessels chartered to a Brazilian company and operating continuously in Brazilian jurisdictional waters for more than 90 days, two-thirds of the seafarers must be made of Brazilians at all technical levels and departments. [Table 2]

4.2. Brazilian employment contracts

Brazilian seafarers recruited in Brazil to work only during the cruise season must be hired by a company established in the country in accordance with national labour laws and regulations or a local agent responsible before the Brazilian authorities for the operation of the vessel and crew management⁴⁷.

4.3. Compulsory insurance

Under the Migration Law, the Brazilian seafarer hired by a foreign ship or shipowner with headquarters or branch in Brazil operating in Brazilian waters to work on a foreign vessel in the cabotage or ocean-going trade is entitled to insurance at the expense of the employer.

The insurance policy must be valid for the duration of the contract of employment and in accordance with the provisions of the *Registro Especial Brasileiro* - REB (Brazilian Vessel Register), and provide cover for occupational accident, total or partial disablement and death, without prejudice to the benefits afforded by a more favourable insurance policy in force abroad⁴⁸.

⁴⁵CNIg RN-5/2017

⁴⁶CNIg RN-22/2017

⁴⁷ Art. 7 of CNIg RN-5/2017, sole paragraph, defines a cruise season as "the period from 30 days before departure of the vessel to the first Brazilian port of call until 30 days after the departure of the vessel from the last Brazilian port of call, including the period of eventual absence from Brazilian waters" (free translation)

⁴⁸ Art. 80 of the Brazilian Migration Law; art. 261 of Decree 9,199/2017

5. Offences and penalties

5.1. Legal grounds

The Federal Police Department is responsible for the assessment of infractions to the regulations and imposition of sanction varying from a fine to compulsory removal measures ascertained through an administrative proceeding where the infractor is entitled to a full defence in the contradictory system⁴⁹.

5.2. Misconducts and sanctions

Under the immigration regulations, the following conducts are considered administrative infractions⁵⁰:

Gradation of offences	
Misconduct	Penalty
i. Enter the country without permission (without a valid travel document or visa)	Deportation if the offender does not leave the country or does not regularise his migratory situation within the legal term
ii. Stay in the country after the maximum period of stay allowed	Fine per day of overstay and deportation if the offender does not regularise his migratory situation within the legal term
iii. Failure to register within 90 days of entry to the RNM when directed to do so	Daily fine
iv. Failure to register within 30 days to the RNM for a permit when directed to do so	Daily fine
v. Transport to Brazil a person who is without a valid travel document	Fine per person carried
vi. Carrier's failure to comply with an undertaking for irregular persons	Fine
vii. Evade migratory control when entering or departing the country	Fine

Table 3: offences to immigration regulations and corresponding penalties under the Brazilian Migration Law

5.3. Immigration fines

There are no set values for each category of immigration offence; however, the new Migration Law sets minimum and maximum values from BRL 100 to BRL 10,000 to individuals and from BRL 1,000 to BRL 1 million to legal entities, per infraction and with a minimum unit of BRL 100⁵¹. [Table 3]

5.3.1. Assessment and fixing of fines⁵²

The quantification of the immigration fine must take into consideration the economic condition of the infractor, the eventual recidivism and the seriousness of the infraction. The quantum of the penalty may be increased to the maximum extent possible if the immigration authority finds that, as a result of the comfortable economic situation of the offender, the application of the minimum amount would render the punishment ineffective.

5.3.2. Recidivism⁵³

Offenders who commit more than one immigration infraction within one year are considered recidivists for the purpose of grading the fine. In the first recurrence, the amount will be doubled, in the second triplicated, in the third quadrupled and from the fourth occurrence, the amount of the fine will be quintupled.

⁴⁹ Arts. 106 to 108 of the Migration Law; art. 300 to 306 of Decree 9,199/2017

⁵⁰ Arts. 109 to 110 of the Migration Law; art. 307 of Decree 9,199/2017

⁵¹ Art. 108 of the Migration Law; art. 301 of Decree 9,199/2017

⁵² Arts. 304 & 305 of Decree 9,199/2017

⁵³ Art. 306 of Decree 9,199/2017

For assessment of relapsing of corporate persons, the criterion to be used will be the repetition of the misconduct and not the number of foreigners involved⁵⁴.

5.4. Irregular crewmembers

In certain circumstances, the Federal Police may exceptionally allow the entry of a visa-required crewmember (or passenger) without a proper visa providing he holds a valid travel document (a seaman's book, a passport or a laissez-passer).

The Federal Police may also admit a foreign national without a valid travel document providing the carrier or his agent signs a bond of responsibility undertaking to defray the ensuing costs and expenses with the irregular traveller⁵⁵.

A crewmember who, due to a force majeure, needs to interrupt an international trip, would be allowed entry in Brazil if the carrier or its agent undertakes to pay for the expenses during the stay⁵⁶.

5.5. Stowaways

The Federal Police may authorise the landing of stowaways provided the carrier undertakes to bear the costs incurred with their stay in Brazil, without prejudice to a fine being levied against the carrier for each stowaway carried⁵⁷. These include victualing, lodging, security and health care, plus the costs associated with identification, documentation and repatriation of the stowaways if they are not eligible to apply for refugee status in Brazil⁵⁸.

5.6. Illegal immigration

While criminal sanctions against an illegal traveller were removed from the Migration Law⁵⁹, the new legislation introduced provisions in the Brazilian Criminal Code to impose a penalty of prison of three to five years for companies and individuals responsible for admitting irregular foreigners in what the law has termed 'promotion of illegal immigration', which consists of arranging or facilitating the unlawful entry of a foreign national in the country with the objective of obtaining a financial gain⁶⁰.

5.7. Compulsory removal measures

Subject to the terms of the Refugee Convention⁶¹ and legal provisions and treaties dealing with stateless persons and other humanitarian situations, the Brazilian immigration authorities may order the removal of foreign nationals to their country of nationality or origin or to another country that accepts them in compliance with the international treaties signed by Brazil⁶². [Table 4]

⁵⁴ Arts. 302 and 303 of Decree 9,199/2017

⁵⁵ Arts. 40 & 41 of the Migration Law

⁵⁶ Arts. 41 & 42 of the Migration Law

⁵⁷ Art. 172 of Decree 9,199/2017

⁵⁸ Detailed information on stowaways in Brazil can be found at: <https://proinde.com.br/manuals/stowaways-in-brazil-practical-guidance-and-statistical-review/>

⁵⁹ Art. 123 of the Migration Law establishes that no one shall be deprived of his liberty for migratory reasons, except in the specific cases provided for in the Law

⁶⁰ Art. 115 of the Migration Law introduced an article of law in the Brazilian Criminal Code (Law-Decree n° 2,848 of 1940) to regulate the crime of promotion of illegal migration, it reads as follows: "Art. 232-A – To promote, by any means, with the purpose of obtaining an economic advantage, the illegal entry of foreigners in the national territory or of Brazilian in a foreign country. Penalty: imprisonment, from 2 (two) to 5 (five) years, and a fine. § 1. In the same penalty, anyone who promotes, by any means, for the purpose of obtaining an economic advantage, the exit of the foreigner from the national territory to enter illegally into a foreign country. § 2. The penalty is increased from 1/6 (one-sixth) to 1/3 (one-third) if: I. the crime is committed with violence; or; II. The victim is subjected to an inhuman or degrading condition. § 3. The penalty foreseen for the crime shall be applied without prejudice to those corresponding to the related offences" (free translation)

⁶¹ UNHCR's 1951 Convention Relating to the Status of Refugees was adopted in Brazil through Law n° 9,474 of 22/07/1967

⁶² Arts. 46 to 48 of the Migration Law; arts. 178 to 180 of Decree 9,199/2017

Measure	Situation
Repatriation ⁶³	<ul style="list-style-type: none"> It is an administrative measure for the return of a person whose situation is not in conformity with immigration regulations, such as the traveller without a valid travel document or a visa adequate to the length and purpose of the stay in the country. Repatriation would typically be the case of a stowaway or a seafarer without an ILO-compliant seaman’s book or an adequate visa where one is required.
Deportation ⁶⁴	<ul style="list-style-type: none"> It derives from an administrative procedure and is preceded by the personal notification to the deportee, expressly stating the irregularities verified and a term for regularisation of the migratory situation, not less than 60 days, extendable for an equal period upon an undertaking of the impeded person to keep information up-to-date. When the deportee voluntarily leaves the country, the deportation order is deemed as complied with; otherwise and after the expiration of the legal term without regularisation of the migratory situation, the deportation will be carried out by the Federal Police.
Expulsion ⁶⁵	<ul style="list-style-type: none"> It consists of an administrative measure whereby the impeded person is removed from the country without the right to re-entry for a specific period. Expulsion measures apply to those condemned by a final and unappealable judgment regarding the practice of genocide, crimes against humanity, war crime or crime of aggression as defined by the Rome Statute⁶⁶, and common intentional offences that are punishable with a penalty of imprisonment.

Table 4: compulsory removal measures foreseen in the Brazilian Migration Law

In July 2019, the Ministry of Justice and Public Security (MJ) issued an ordinance regulating the impediment for entry, reduction or cancellation of the period of stay and summary repatriation and deportation of migrants who are suspected of being dangerous persons or who have committed an act contrary to the principles and objectives set forth in the Constitution⁶⁷. Those framed under the regulation will be subject to a very short term to voluntarily leave the country or present a defence [Section 6.2.2]. The ordinance ensures that no one will be prevented from entering the country, repatriated or summarily deported on the grounds of race, religion, nationality, relevance to a social group or political opinion, or due to criminal persecution abroad for purely political or opinion crime.

MJ’s administrative act is under harsh criticism from human rights organisations, the Federal Public Defender’s Office and the Federal Public Prosecutor’s Office, which recommended the revocation of the Ordinance, which was considered illegal, unconstitutional and contrary to the welcoming spirit of the new Migration Law⁶⁸.

The costs and expenses incurred with the removal measures will be borne by the Federal Union, but only if all efforts to recover them from the migrant, the carrier or a third-party responsible have failed⁶⁹.

⁶³ Art. 49 of the Migration Law; arts. 185 and 189 of Decree 9,199/2017

⁶⁴ Arts. 50 & 51 of the Migration Law; arts. 187 to 191 of Decree 9,199/2017

⁶⁵ Art. 54 of the Migration Law; arts. 192 to 206 of Decree 9,199/2017

⁶⁶ The 1998 Rome Statute of the International Criminal Court was promulgated in Brazil through Decree n° 4,388 of 25/09/2002

⁶⁷ Under art. 2 of the *Portaria* n° 666 of 25/07/2019, a dangerous person or a person who has committed an act contrary to the principles and objectives set forth in the Constitution are those suspected of involvement in I- terrorism; II- an organised criminal group or armed criminal association; III- trafficking of drugs, people or firearms; IV- pornography or sexual exploitation of children or youngsters; and V- sports fans with a history of stadium violence

⁶⁸ Technical Note n° 6 – DPGU/SGAI DPGU/GTMR DPGU issued by the Federal Public Defender’s Office (*Defensoria Pública-Geral da União – DPU*) on 26/07/2019; Recommendation n° 09/2019/PFDC/MPF, issued by the Federal Public Prosecutor’s Office (*Ministério Público Federal – MPF*) on 02/08/2019

⁶⁹ Art. 212 of Decree 9,199/2017

6. Defences and safeguards

6.1. Safeguards available

The carrier is legally responsible for the crew members, passengers, stowaways and refugees carried on board the vessel and the only exclusion of liability available is when the violation of the immigrant regulations arose as a direct consequence of *force majeure* or a fortuity.

Penalties resulting from offences to the immigration laws may be challenged through an administrative or legal proceeding where the accused party infractor is ensured ample defence in the adversarial system with the right of appeal.

Immigration fines are subject to a limitation period of five years, counted from the date of the alleged infraction. In the event of a permanent or continuous violation of the rules, the term will count from the time on which the misconduct has ceased⁷⁰.

6.2. Administrative procedure

The party accused of violating immigration regulations is entitled to file an administrative defence directly with the Federal Police, which will hear the appeal and render a decision⁷¹.

The visitor or immigrant who is a pauper in the legal meaning of the term has the right to a full defence through a public defender.

There are no defined timeframes within which the defences must be heard by the Federal Police, and the timing varies according to the police station in charge of the administrative procedure.

6.2.1. Notice of infraction

The *auto de infração* (notice of infraction)⁷² is the document issued by the immigration authority to record an infringement to the regulation. It must contain a detailed description of the offender's misconduct and legal framing.

6.2.2. Term for defence

The deadline to file an administrative appeal is ten days counted from the date the offender (or legal representative, i.e. the shipping or manning agent) took knowledge of the notice of infraction.

No bond or security needs to be placed with the immigration authority, and the enforcement of the fine will be halted until a final decision.

The infractor who does not lodge a defence within the legal term will be considered in default and his departure from the country does not halt the regular running of the administrative procedure⁷³.

If the Federal Police maintain their decision, an appeal against this decision may be submitted to the Federal Police's Regional Superintendence within ten days from the date the decision is published on their website⁷⁴.

⁷⁰Art. 304 of Decree 9,199/2017

⁷¹ Art. 107 of the Migration Law; art. 300 of Decree 9,199/2017

⁷² Art. 309 of Decree 9,199/2017

⁷³ Arts. 309 § 5 & 311 of Decree 9,199/2017

⁷⁴ Art. 309 § 9 of Decree No. 9,199/2017

In the case of summary repatriation or deportation [Section 5.7], the offender will be notified to present a defence (or voluntarily leave the country), within 48 hours from the notification, failing which a public defender will be notified to promote the defence. The decision may be appealed, with suspensive effect, within 24 hours, and there should be no room for further administrative appeal. The Federal Police Department may apply for an arrest order or another measure at any stage of the proceeding⁷⁵.

6.2.3. Enforcement of fines

After the rendering of the final administrative decision, the infractor will have thirty days, counted from the day the decision was officially published, to make the payment failing which the debt will be referred to the Attorney General of the National Treasury (*Procuradoria-Geral da Fazenda Nacional* - PGFN) for enrolment on the federal debt roster and tax foreclosure⁷⁶.

6.3. Court proceedings

The alternative to the administrative procedure to challenge arbitrary decisions of the immigration authority is to refer the dispute to a federal court⁷⁷, where the chances of overturning the fines are greater than in the administrative instance, for no better reason than the fact that the defence is heard by the very same authority that levied the fine and, consequently, would hardly reconsider its position.

To suspend the enforcement of the immigration fine, it is necessary to place security in court (in the form of a bank guarantee, surety bond usually with a 30% uplift or cash deposit in a court-controlled interest-bearing account) as the legal proceeding unfold. If the immigration fines are confirmed, the amount deposited or the security posted will be cashed and released by the federal court to the Federal Union; if the penalties are found groundless, the security will be cancelled or the cash deposit refunded along with legal accruals.

The downside to resort to litigation is that the federal courts are usually overly busy and may take two to five years in average for a first instance decision, plus another four to six years for the second instance decision. Nevertheless, in case the security was posted in cash, where the effects of inflation and indexation on the original amount are curbed, challenging immigrations fines in court may be a better choice because the federal courts tend to rule according to the prevailing jurisprudence of the higher courts and the best legal doctrine.

6.4. Payment of fine

Both the administrative procedure and the court proceedings may be discontinued at any stage of the process by paying the fine for the updated amount according to the official government index.

Fines for overstay may be converted into a reduction proportional to the length of stay, in case of re-entry in the country, at the discretion of the Federal Police. Payment of the fine does not prevent the immigration authority from denying entry if the visitor exceeds the maximum period of stay allowed for each migratory year⁷⁸.

⁷⁵ Arts. 3 and 4 of Ordinance 666/2019

⁷⁶ Art. 309 § 11 of Decree 9,199/2017

⁷⁷ The federal justice system comprises a three-tiered structure: the trial court at the first instance, the Regional Federal Court (*Tribunal Regional Federal* - TRF) at the second instance and, at the highest level of appeal, there are the Superior Court of Justice (*Superior Tribunal de Justiça* - STJ) and the Federal Supreme Court (*Supremo Tribunal Federal* - STF) is the last resort which would only have jurisdiction to resolve conflicts involving eventual violation of constitutional principles

⁷⁸ Art. 300 § 2 & § 3 of Decree 9,199/2017

7. Conclusion

The Migration Law has significantly rewritten the Brazilian immigration policy and regulations, and while the novelties introduced by the new regulatory framework are predominantly positive for the maritime and offshore industry, as they shed light on some grey areas that existed under the previous legislation, there are still some issues that need to be addressed and new procedures implemented through normative resolutions and other administrative acts from the immigration authorities.

Owners, charterers and manning agents doing business in Brazil must be aware of the new regulations in respect of visa policy, seaman's books, work and resident permits as well as maximum periods of stays.

We are monitoring the application of the immigration regulations and the impact on the maritime and offshore industry. This manual will be updated regularly, so we encourage you to visit our website regularly to download the most up-to-date version of this publication.

August 2019

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