



# **Immigration Controls on Seafarers in Brazil**

# Immigration controls on seafarers in Brazil

Practical Guidance

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## 1. Foreword

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.

Of interest to the shipping and offshore industries were the normative resolutions that reiterate the obligation on foreign ships and platforms to hire rising proportions of Brazilian workforce to compose the crew at all levels of qualifications and departments when operating in Brazilian waters for specific periods.

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, and reduction of bureaucracy.

While the new Law has eliminated criminal sanctions for migratory offences, it has substantially increased the value of the fines that can now reach up to BRL 10,000 for individuals, and up to BRL 1 million for companies that violate the immigration regulations.

This guide aims to provide a practical overview of the main aspects related to foreign seafarers in Brazil and Brazilian seafarers aboard foreign vessels in the light of the new legal framework. 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 welcome your feedback for corrections and improvements.

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## 2. Regulatory framework

### 2.1. Jurisdiction

The Federal Union has exclusive authority to legislate on matters of immigration<sup>1</sup> and the government delegates this constitutional duty to two cabinet-level federal ministries and an inter-ministerial 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 foreigners<sup>2</sup>. Different departments within the structure of the MJ deal with specific aspects of immigration and foreign labour matters. [Table 1]

Authority	Functions and duties
<b>Secretaria Nacional de Justiça - SNJ (National Department of Justice)</b>	Elaboration of immigration policies, particularly in respect of nationality, naturalisation and migration and refugees
<b>Departamento de Migração - DEMIG (Migration Department)</b>	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)
<b>Departamento de Polícia Federal – DPF (Federal Police Department)</b>	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
<b>Conselho Nacional de Imigração – CNIg (National Immigration Council)</b>	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)<sup>3</sup> 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 1980<sup>4</sup>.

<sup>1</sup> Art. 22, XV, of Brazil's Federal Constitution of 1988

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

<sup>3</sup> 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

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

The Migration Law is regulated by Decree n° 9,199 of 21 November 2017, as amended. It is implemented in the form of *Resoluções Normativas - RN* (normative resolutions) issued by the *Conselho Nacional de Imigração – CNIg* (National Immigration Council).

Since the new immigration statute was introduced, CNIg has issued a series of normative resolutions, some of which of particular interest to seafarers and their employers.

### 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 non-immigrant to obtain an entry visa prior to travelling to Brazil if the stay is for up to 90 days<sup>5</sup>. The list of countries whose citizens need visa to enter Brazil can be found on the website of the [Brazilian Ministry of Foreign Affairs](#).

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.

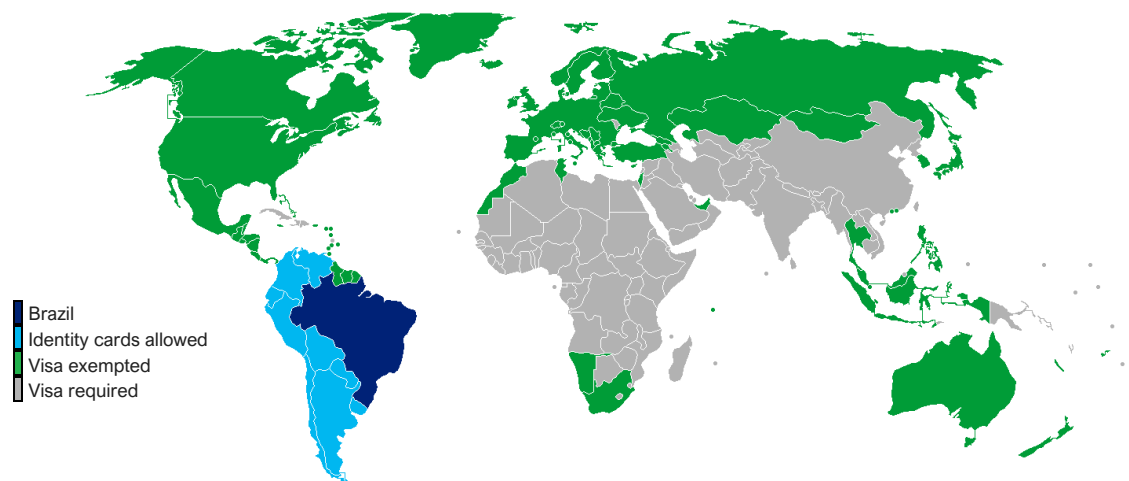


Figure 1: Brazilian visa policy (Source: MRE/DPF/MJ)

### 2.4. Visa categories

The immigration law introduced five different types of visas (visit, temporary, diplomatic, official and courtesy) that are issuable by the Brazilian State to foreign nationals seeking to visit, work or live in the country. The main categories are the Visitor Visas (VIVIS) and the Temporary Visas (VITEM), which has multiple subcategories according to the purpose of the trip and the intended length of stay<sup>6</sup>.

The most common visas for professionals in the maritime and offshore industries are the VIVIS, for stays of up to 90 days, and the VITEM, for stays exceeding 90 days. Nationals from countries with visa exemption agreements with Brazil do not need a VIVIS as long staying for a maximum of 90 days.

VIVIS are granted to short-stay travellers who do not intend to immigrate or perform paid work. It includes visits for tourism (involving meetings, conferences, seminars and congresses), stopover, or business (signing contracts, auditing and consulting services)<sup>7</sup>. They are valid for maximum stays of up to 90 days, renewable for an additional period of 90 days, provided the combined visits do not exceed 180 days in each migratory year<sup>8</sup>, counted from the first entry, multiple entries permitted.

<sup>5</sup> 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. (Decree n° 9,731 dated 16/03/2019)

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

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

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

VITEM visas are issued to foreigners who wish to live in the country for a certain period for activities such as research, health care, study and holiday-work, among many other specific purposes<sup>9</sup>. Holders of temporary visas must register with the National Migration Registry (RNM) within 90 days after the first entry, under penalty of a fine<sup>10</sup>.

Depending on the length of their stay and nationality, seafarers without a seafarers' identity document, or staying longer than 180 days, need to be issued either with a VIVIS (Business) visa, if staying up to 90 days, or a VITEM Type 'V' (Work) if staying longer than 90 days. [Sections 3.2 & 3.3]

### **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<sup>11</sup>. Entry will not be allowed with an expired visa unless warranted by exceptional circumstances at the discretion of the immigration authority. The various categories of visas permit multiple entries with varying periods of maximum stay.

Depending on the purpose and nationality of the applicant, the visa may be valid for one year up to 10 years, noting that granting of a visa is a mere expectation of a right and does not guarantee that the visa holder will effectively enter Brazilian territory at any time<sup>12</sup>.

### **2.6. Maximum period of stay**

The maximum period that a foreign citizen 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 territory<sup>13</sup>.

The length of stay without a visa varies from country to country. It is always subject to the discretion of the immigration authority upon entry. For instance, a visitor from a visa-waived country, who could theoretically stay in Brazil for up to 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 effectively granted by the Federal Police is stamped on the immigration card (or emailed to the applicant in the case of e-visas). It is strictly controlled through a database that interconnects immigration checkpoints across the country. Therefore, it must be 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 order<sup>14</sup>.

### **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 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 Police<sup>15</sup>. Fines for overstay are the most common type of immigration penalty on foreign seafarers in Brazil.

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

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

<sup>11</sup> 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

<sup>12</sup> Art. 6 of the Migration Law

<sup>13</sup> Art. 19 of Decree 9,199/2017

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

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



### 3. Foreign seafarers

#### 3.1. Definition of seafarer and crewmember

As defined in the international conventions adopted by the [International Labour Organization \(ILO\)](#), any member of the crew holding a valid seafarers' identity document and performing professional functions onboard a ship is considered to be a seafarer<sup>16</sup>.

Brazil's relevant regulations consider a seafarer as any member of the crew who operates vessels in the open sea, cabotage (coastwise navigation), offshore and port support and inland navigation<sup>17</sup>. They also define as "non-crew professional" those who perform occasional services on board vessels or platforms. "Non-seafaring crewmembers", in turn, are the members of the maritime crew of mobile offshore units performing duties related to the operation of these units. [Table 2]

#### 3.2. Seafarers' identity document

Under Brazilian immigration regulations, a Seafarers' Identity Document ("SID"), often colloquially – and misleadingly – referred to as a "Seaman's Book" (seafarer discharge book/seaman's service book), is accepted as a stand-alone travel document with the same standing as a passport, laissez-passer, and other forms of personal identification provided by law<sup>18</sup>.

In 2010, Brazil ratified ILO Convention 185 of 2003 (C185) on SIDs<sup>19</sup>, which resulted in the automatic denunciation of ILO Convention 108 (C108) of 1958<sup>20</sup>. ILO C185, with increased security features, eventually entered into force in 2015, having revoked the federal decree that regulated the previous Convention in the domestic legislation<sup>21</sup>.

Therefore, only SIDs issued in the format provided for by ILO C185 are legally valid in Brazil as a travel document to exempt working seafarers from the need to obtain a visa, regardless of their nationality and for cumulative stays of up to 180 days per migratory year. [Sections 2.6 & 3.3]



Picture 1: Front and reverse side of a TD1-size specimen of C185 seafarers' identity document (SID) in card format. Source: ILO/ICAO

The list of countries that have ratified ILO C185 can be found in the [ILO database](#).

<sup>16</sup> Art. 6 of ILO C185

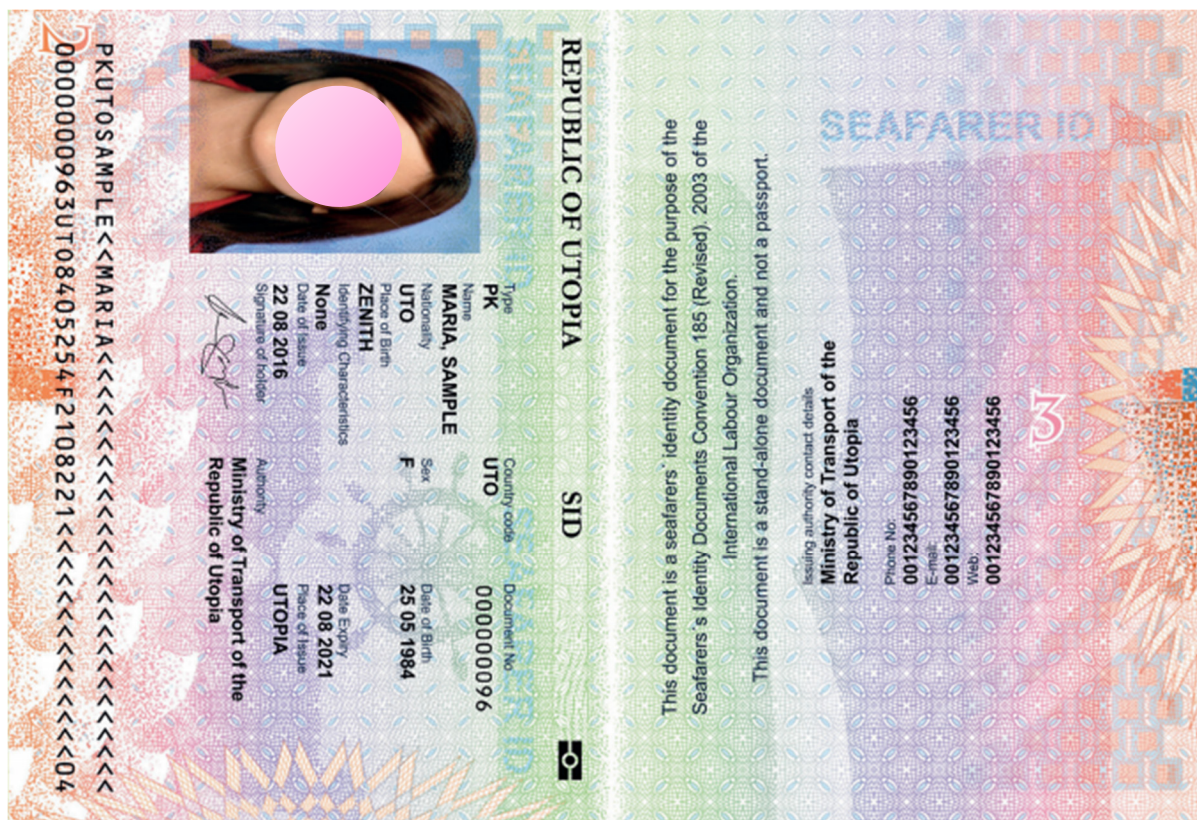
<sup>17</sup> *Normas da Autoridade Marítima para Aquaviários – NORMAM-13/DPC* (Brazilian Maritime Authority Standards for Waterway Workers), issued by the Brazilian Navy's Directorate of Ports and Coasts (DPC). RN 06/2017, as amended

<sup>18</sup> Art. 5, V, of the Migration Law

<sup>19</sup> ILO C185: Seafarers' Identity Documents Convention (Revised), 2003 (n° 185). Entry into force: February 200. In 2016, C185 was amended to align with Document 9303 Machine Readable Travel Document<sup>7</sup>, 7<sup>th</sup> Edition, 2015, issued by the UN International Civil Aviation Organization (ICAO)

<sup>20</sup> 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' identity documents could be 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 (revoked in Brazil by ILO C185)

<sup>21</sup> 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 8,605/2015 that expressly revoked Decree 58,825/1966 which used to regulate ILO C108. C185 provides that the seaman's book can only be issued to a national or to a permanent resident of the issuing country



Picture 2: Front and reverse side of a TD1-size specimen of C185 seafarers' identity document (SID) in card format. Source: ILO/ICAO

Unlike the repealed ILO C108, SIDs under ILO C185 are not issued by the flag State, but by the seafarer's State of nationality or permanent residence. They have an embedded contactless chip containing biometrics to authenticate the identity of the holder and the legitimate seafaring status to enjoy the right to visa-free shore leave and facilitated controls to cross borders to join or leave vessels and access ports and airports.

ILO C185 SIDs are harmonised in form and content and meet the specifications for machine-readable travel documents of the [International Civil Aviation Organization \(ICAO\)](#)<sup>22</sup>. All major Brazilian international airports are compatible with ICAO standards for reading the SID's biometric data.

### 3.3. Visa requirements for seafarers

Despite the express revocation of the ILO C108, until recently, the immigration authority (Federal Police) continued to accept SIDs issued under this Convention to allow shore leave, transit and transfer of seafarers, even though only the ILO C185 is legally in force in Brazil.

However, triggered by a regulatory amendment to Normative Resolution RN 06/2017, effective from October 2020<sup>23</sup>, the Federal Police adopted a rigorous approach to seafarers' documents and no longer accept SIDs issued under ILO C108. They reiterated that to enter, transit in or leave Brazil foreign seafarers working as crewmembers aboard cargo vessels, cruise ships or platforms in Brazilian jurisdictional waters will require:

<sup>22</sup> The technical standard for machine-readable travel document is contained in "Doc 9303 Machine Readable Travel Document", 7<sup>th</sup> Edition, 2015, issued by the UN International Civil Aviation Organization (ICAO)

<sup>23</sup> Normative Resolution 06 of 2017, (RN 06/2017), was amended by RN CNIG MJSP nº 43 of July 2020, which entered into force in October 2020



**a) When holding a valid C185 SID:**

- Temporary Work Visa type 'V' (VITEM V)<sup>24</sup> for stays greater than 180 days aboard foreign ships or platforms<sup>25</sup>
- VITEM V visa for working onboard Brazilian-flagged ships or platforms, regardless of the term of employment<sup>26</sup>

**b) When NOT holding a valid C185 SID:**

- Visitor Business Visa (VIVIS) for stays up to 90 days per migratory year, non-extendable<sup>27</sup>
- VITEM V visa for stays exceeding 180 days aboard foreign cargo vessels and cruise ships<sup>28</sup>
- VITEM V visa for stays exceeding 90 days per year on platforms and aboard vessels other than cargo and cruise ships<sup>29</sup>
- VITEM V visa for working onboard Brazilian-flagged ships or platforms, regardless of the term of employment

**c) No visa will be required from:**

- ◆ Crewmembers and other foreign shipboard professionals whose nationality exempts them from a VIVIS visa, for stays of up to 90 days per migratory year, when producing a passport valid for the duration of the stay
- ◆ Crewmembers holding a valid C185 SID, for a maximum stay of 180 days per migratory year, provided they enter the country on a vessel or demonstrate that the purpose of entry is to embark on a platform, a cargo vessel or a cruise ship sailing along the coast

Foreign seafarers carrying a SID not in conformity with ILO C185 standards may remain on board the vessel, but may not come ashore, at the discretion of the Federal Police<sup>30</sup>. Breach to the immigration regulations may subject the seafarer and the sea carrier to immigration fines. [Table 2 & Section 5.3]

Foreigner status and document	Stay	Visa requirement
<b>Seafarer holding C185 SID (or passport issued by ILO C185 member state qualifying holder as seafarer)</b>	< 180 days	No visa required
	> 180 days	Temporary work visa type 'V' (VITEM V) required
<b>Seafarer of ILO C185 state holding a C108 SID (or passport issued by ILO C185 state qualifying holder as seafarer)</b>	< 180 days	No visa required (at least until 15/06/2021)
	> 180 days	VITEM V required
<b>Seafarer not holding a SID (or passport issued by ILO C185 state qualifying holder as seafarer)</b>	< 90 days	Visit (maritime) visa (VIVIS) required, unless exempted by nationality
	> 90 days	VIVIS required; VITEM V required on platforms and vessels other than cargo and cruise ships
	> 180 days	VITEM V required aboard cargo and cruise ships
<b>Seafarer or maritime professional working on board a Brazilian flagged ship or platform</b>	Any	VITEM V required
<b>Maritime professional with no paid work in Brazil</b>	< 90 days	Visit (business) visa (VIVIS) required, unless exempted by nationality
	> 90 days	VIVIS (or VITEM V) required

Table 2: visa requirements for seafarers, non-seafaring crewmembers and other maritime professionals (Source: MJSP/DPF)

<sup>24</sup> Work visas (VITEM V) are subject to prior approval by the Ministry of Justice and Public Security (MJSP). The process is initiated in Brazil, by the sponsoring company. Once approved, MJSP transmits the authorisation to the Consulate and only then the applicant lodges application itself

<sup>25</sup> Art. 29, § 7, I, of Decree 9,199/2017

<sup>26</sup> Art. 29, § 7, II, 'a', of Decree 9,199/2017

<sup>27</sup> Art. 29, § 7, II, of Decree 9,199/2017

<sup>28</sup> Art. 38, § 2, VII, 'a', of Decree 9,199/2017

<sup>29</sup> Art. 38, § 2, VII, 'b', of Decree 9,199/2017

<sup>30</sup> Art. 173 Decree 9,199/2017

To comply with Brazil's bilateral trade pacts with other nations, the Federal Police may permit landing of crewmembers whose nationality requires a visa, or whose country has not signed the ILO C185, as is the case for seafarers from the People's Republic of China. However, although Chinese crewmembers on board Chinese-flagged vessels are allowed shore leave within the city where the vessel is berthed, a transit visa is still required for crew changes<sup>31</sup>.

A temporary exception to the rule are ILO C185 member states whose national seafarers have not received SIDs in the format prescribed by the Convention and are otherwise still carrying SIDs in ILO C108 format, which is the case for Indian seafarers, for example<sup>32</sup>.

### **3.4. 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)<sup>33</sup>.

Regardless of whether the seafarer holds an ILO-compliant SID or a 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 stay<sup>34</sup>. 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 with the seafarer's stay and subsequent repatriation<sup>35</sup>.

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 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 stay<sup>36</sup>. [Sections 2.6 & 5.3]

### **3.5. Employment contracts**

Foreign seafarers working on Brazilian ships must hold a temporary work visa (VITEM V) 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 employment<sup>37</sup>.

The contract should be entered with a company established in Brazil, which will be legally responsible for the operation and manning of the vessel.

<sup>31</sup> Regulated by Decree 85,314/1980, the Maritime Transport Agreement between the governments of Brazil and PR China applies to vessel flying the flags of the respective countries (or vessels chartered to Brazilian or Chinese companies). It provides that crewmembers with their national document ("Seafarer's Passport", in the case of China) seaman's book can go ashore but cannot leave the town where the vessel is berthed. They can disembark for medical treatment, but can only arrive or leave by air to sign on or off a vessel or if they are issued with a transit visa which is only granted by Brazilian consular offices abroad

<sup>32</sup> According to Circular 51/2020/DCIM/CGPI/DIREX/PF issued by Federal Police on 10 December 2020, seafarers from India and other member states to the ILO C185 are allowed entry and shore leave in Brazil with SIDs issued under ILO C108 at least until 15 June 2021

<sup>33</sup> Art. 38 of the Migration Law; art. 168 of Decree 9,199/2017

<sup>34</sup> Art. 6, Paragraph 9 of ILO C185; art. 45 of the Migration Law; arts. 170 & 171 of Decree 9,199/2017

<sup>35</sup> Arts. 41 & 42 of the Migration Law; arts. 172, 174 & 175 of Decree 9,199/2017

<sup>36</sup> Art. 109 II of the Migration Law; art. 307 II of Decree 9,199/2017

<sup>37</sup> 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)

### **3.6. Residence permits**

Seafarers who sail professionally along the Brazilian coast without a contract of employment in the country must 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)<sup>38</sup>.

The application for a residence permit can be made in-country and will be valid for up to two years for seafarers serving onboard all commercial ships and platforms<sup>39</sup>. It may be issued to multiples addresses, and the seafarer may work on different ships or platforms within the fleet of the same crew managers.

Seafarers who have entered the country with a business visa (VIVIS) and intend to exceed the 90-day maximum stay must apply for a residence permit<sup>40</sup>.

Holders of a residence permit must register with the National Migration Registry (*Registro Nacional Migratório* - RNM) within 30 days of the granting, subject to a fine for non-compliance<sup>41</sup>.

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 obtained<sup>42</sup>.

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<sup>38</sup> Art. 147, § 2, VII of Decree No. 9,199/2017, as amended by Decree 9,500/2018

<sup>39</sup> 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)

<sup>40</sup> Art. 11, § 1, OF CNlg RN-06/2017, as amended

<sup>41</sup> Arts. 66 & 307 IV, 'a' & 'b' of Decree 9,199/2017

<sup>42</sup> Federal Revenue Department (*Secretaria da Receita Federal*) Normative Instruction n° 208 dated 27/09/2002, as amended (IN SRF 208/2002)

## 4. Brazilian crewmembers

### 4.1. Compulsory hiring regulations

With the reformulation of its regulatory framework<sup>43</sup> in the wake of the new Immigration Law, the National Immigration Council (CNIg) introduced subcategories for foreign seafarers and other marine professionals on board cargo, cruise and fishing ships, and non-seafaring crews on mobile offshore units, for granting of temporary work visas (VITEM V) and residence permits. [Table 3]

Category	Definition	Department	Rank
Seafarer	Crewmember operating vessels classed for:  a) Open sea navigation, including cabotage, offshore support and port support; and  b) Inland navigation in channels, lagoons, bays, coves, inlets and sheltered seas	Deck	<b>Officers:</b> ocean-going captain; cabotage captain; chief officer; 2 <sup>nd</sup> officer...
			<b>Ratings:</b> cabotage skipper; bosun; deck officer; able seaman; ordinary seaman...
		Engine Room	<b>Officers:</b> chief engineer; 1 <sup>st</sup> engineer; 2 <sup>nd</sup> engineer...
			<b>Ratings:</b> motorman; oiler; wiper; electrician...
		Catering (Stewardship)	<b>Messroom:</b> chief cook; chief steward...
			<b>Hospital:</b> nurse; health aide...
Non-crew professional	Anyone who, without performing duties linked to the operation, provides occasional services on ships and platforms		
Non-seafaring crewmember	A professional qualified and accredited by the Brazilian maritime authority who is a member of the marine crew of mobile offshore units and performs duties related to the operation of these units		

Table 3: Categories of foreign workers on board ships and platforms operating in Brazil

The CNIg reaffirmed the obligation that already existed according to which if a foreign vessel, cruise ship or platform remains in continuous operation in Brazilian jurisdictional waters<sup>44</sup>, a proportion of the workforce must be composed of Brazilian seafarers and other professionals, at all technical levels and in all departments, in rising percentages according to the length of operation in the country.

The respective fractions of Brazilian workforce must be observed in each department (deck, engine and stewarding) and apply to each set of officers, subordinates (ratings) and other professionals on the vessel or platform. The proportion must be rounded up to the next number if a fraction is equal to or greater than five-tenths. [Table 4]

#### 4.1.1. Offshore support ships

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

<sup>43</sup> Normative Resolutions CNIg No.71, 72 and 81 of 2006 were expressly revoked by CNIg 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), respectively. Resolutions CNIG MJSP N° 42 & 43 of 23/07/2020 (published in the Official Gazette on 14/10/2020) amended RN-5/2017 and RN-6/2017

<sup>44</sup> 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

**4.1.2. Offshore oil units and platforms**

Foreign units employed in oil exploitation, prospecting, drilling, production and storage as well as fixed or floating platforms must employ one-fifth of Brazilians in their workforce when operating in jurisdictional waters for more than 180 days. After 360 days of continuous operation, one-third must be hired and, from 720 days onwards, at least two-thirds of Brazilian nationals.

**4.1.3. Cabotage, port support and FSRU units**

Foreign vessels trading within Brazilian coast and inland waterways, port supporting ships, and ships engaged in regasification of liquefied natural gas Brazil for more than 90 days of continuous operation must employ one-fifth of Brazilian workers and, after 180 days, the fraction must be one-third of Brazilians.

**4.1.4. Cruise ships**

Foreign cruise vessels operating in Brazil for longer than 30 days must have a minimum of 25% of the total workforce composed of Brazilian professionals, as defined by the shipowner or its representative. The CNlg may justifiably and exceptionally authorise a change of this percentage. During the 2020/2021 cruise season, the proportion will be 15% of all professionals on board.

Operators with multiple vessels may compensate the percentage of the proportion of the Brazilian workforce considering the average rate employment of the fleet; however, there should be a minimum of 10% of Brazilians on each vessel.

Brazilian seafarers recruited in Brazil to work during the cruise season must be hired by a company established in the country per national labour laws that will be responsible before the Brazilian authorities for the operation and manning of the vessel<sup>45</sup>.

**4.1.5. Fishing ships**

Foreign fishing vessels chartered to a Brazilian company and operating continuously in jurisdictional waters for more than 90 days, must employ two-thirds of Brazilian crew.

Ship type/trade	Period of operation	Proportion of Brazilian workforce <sup>46</sup>
<b>Offshore support ships</b>	> 90 days	1/3 one third (34%)
	> 180 days	1/2 one half (50%)
	> 360 days	2/3 two thirds (67%)
<b>Offshore oil units and platforms</b>	> 180 days	1/5 one fifth (20%)
	> 360 days	1/3 one third (34%)
	> 720 days	2/3 two thirds (67%)
<b>Cabotage, port support and FSRUs</b>	> 90 days	1/5 one fifth (20%)
	> 180 days	1/3 one third (34%)
<b>Cruise ships</b>	> 30 days	15% until December 2021 25% after December 2021
<b>Fishing ships</b>	> 90 days	2/3 two thirds (67%)

Table 4: Proportion of the Brazilian workforce on foreign ships and platforms operating in Brazilian waters (Source: MJSP/CNlg)

<sup>45</sup> Art. 6, § 2 of CNlg RN-5/2017, 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)

<sup>46</sup> The number of crewmembers required will be dictated by the safety manning certificate issued by the Flag State



For counting the period of operation of ships and platforms, the departure and return from Brazil for periods of less than 15 consecutive days will not be considered as absence from Brazilian waters and, therefore, time will continue to count as if the ship or platform had not left the national territory<sup>47</sup>.

#### **4.2. Compulsory insurance**

Under the Law, the Brazilian crewmember hired to work on a foreign vessel operating in Brazil, or for a foreign shipowner headquartered and operating in Brazil, is entitled to insurance at employer's expense.

The insurance policy must be valid for the duration of the contract following 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 benefits afforded by a more favourable policy in force abroad<sup>48</sup>.

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<sup>47</sup> Art. 7 of CNIg RN-05/2017 & art. 10 of RN-06/2017

<sup>48</sup> Art. 80 of the 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 system<sup>49</sup>.

### 5.2. Misconducts and sanctions

Under the immigration regulations, the following conducts are considered administrative infractions<sup>50</sup>:

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 5: 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 100<sup>51</sup>. [Table 5]

#### 5.3.1. Assessment and fixing of fines<sup>52</sup>

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. Recidivism<sup>53</sup>

Offenders who commit more than one immigration infraction within one year are considered recidivists for the grading of 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.

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

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

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

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

<sup>53</sup> 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 involved<sup>54</sup>.

#### **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 seafarer's identity document, 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 traveller<sup>55</sup>.

A crewmember who, due to 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 stay<sup>56</sup>.

#### **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 carried<sup>57</sup>. 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 Brazil<sup>58</sup>.

#### **5.6. Illegal immigration**

While criminal sanctions against an illegal traveller were removed from the Migration Law<sup>59</sup>, the new legislation introduced provisions in the Brazilian Criminal Code to impose a penalty of imprisonment 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 to obtain a financial gain<sup>60</sup>.

#### **5.7. Compulsory removal measures**

Subject to the terms of the Refugee Convention<sup>61</sup> 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 Brazil<sup>62</sup>. [Table 6]

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

<sup>55</sup> Arts. 40 & 41 of the Migration Law

<sup>56</sup> Arts. 41 & 42 of the Migration Law

<sup>57</sup> Art. 172 of Decree 9,199/2017

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

<sup>59</sup> 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

<sup>60</sup> 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)

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

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

Measure	Situation
<b>Repatriation</b> <sup>63</sup>	<ul style="list-style-type: none"> <li>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.</li> <li>Repatriation would typically be the case of a stowaway or a seafarer without an ILO-compliant seaman's book or a visa where one is required.</li> </ul>
<b>Deportation</b> <sup>64</sup>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>
<b>Expulsion</b> <sup>65</sup>	<ul style="list-style-type: none"> <li>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.</li> <li>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 Statute<sup>66</sup>, and common intentional offences that are punishable with a penalty of imprisonment.</li> </ul>

Table 6: 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 outlined in the Constitution<sup>67</sup>. Those framed under the regulation will be subject to a short term to leave the country voluntarily or present a defence<sup>68</sup>. [Section 6.2.2]

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, considered illegal, unconstitutional and contrary to the welcoming spirit of the new Law<sup>69</sup>.

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 failed<sup>70</sup>.

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

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

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

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

<sup>67</sup> Under art. 2 of the *Portaria* (Ordinance) 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" (free translation)

<sup>68</sup> Ordinance 666/2019 provides 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

<sup>69</sup> 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

<sup>70</sup> 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 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 case of permanent or continuous violation, the term to comply will count from the time on which the misconduct has ceased<sup>71</sup>.

### 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 decision<sup>72</sup>.

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 Federal Police must hear the defences, and the timing varies according to the workflow of the police station in charge of the procedure.

#### 6.2.1. Notice of infraction

The *auto de infração* (notice of infraction)<sup>73</sup> 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 procedure<sup>74</sup>.

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 website<sup>75</sup>.

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<sup>71</sup>Art. 304 of Decree 9,199/2017

<sup>72</sup> Art. 107 of the Migration Law; art. 300 of Decree 9,199/2017

<sup>73</sup> Art. 309 of Decree 9,199/2017

<sup>74</sup> Arts. 309 § 5 & 311 of Decree 9,199/2017

<sup>75</sup> Art. 309 § 9 of Decree No. 9,199/2017



In case of repatriation or deportation, 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 proceeding<sup>76</sup>.

### 6.2.3. Enforcement of fines

After the rendering of the final administrative decision, the infractor will have 30 days to pay the fine failing which the debt will be referred to the *Procuradoria-Geral da Fazenda Nacional* - PGFN (Attorney General of the National Treasury) for enrolment on the federal debt roster and tax foreclosure<sup>77</sup>.

### 6.3. Court proceedings

The alternative to challenge arbitrary decisions of the immigration authority is to refer the dispute to a federal court<sup>78</sup>, where the chances of overturning the fines are more prominent than in the administrative sphere, for no better reason than the fact that the defence is heard by the same immigration authority that levied the fine.

In order to suspend 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, curbing the effects of inflation and indexation, challenging fines judicially 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 administrative procedure and court proceedings may be discontinued at any stage 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, at Federal Police's discretion. Payment of the fine does not prevent the immigration authority from denying entry or a visa if the visitor exceeds the maximum period of stay for each migratory year<sup>79</sup>.

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<sup>76</sup> Arts. 3 and 4 of Ordinance 666/2019

<sup>77</sup> Art. 309 § 11 of Decree 9,199/2017

<sup>78</sup> 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

<sup>79</sup> Art. 300 § 2 & § 3 of Decree 9,199/2017

## 7. Conclusion

The Migration Law has significantly rewritten the Brazilian immigration policy and regulations. While the novelties introduced by the new regulatory framework are predominantly positive for the maritime and offshore industries, as they shed light on grey areas that existed under the previous legislation, some issues need to be addressed.

Owners, charterers and manning agents doing business in Brazil must be aware of the new regulations in respect of visa policy, seafarers' identity documents, work and resident permits, maximum periods of stays and compulsory hiring of Brazilian crewmembers.

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.

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