

# Foreign flag vessels temporarily operating in Brazil under charter to Brazilian companies – Visa for crew members

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Foreign flag vessels temporarily operating on the Brazilian coast, under charter to Brazilian companies, are often subject to problems originating from visa requirements for the crew.

The vessels subject to such problems can be of any type, i.e., tankers, bulk carriers, supply boats, tugs, dredgers, etc., provided they fly a foreign flag, have foreign crew and are temporarily operating on the Brazilian coast.

The understanding of local immigration authorities (Federal Police) is that all foreigners coming to work temporarily in Brazil, including crew members, must have a temporary visa, the so-called visa V, or "visto 5".<sup>1</sup> The visa must be obtained abroad, prior to the arrival of the foreigner in Brazil, at any Brazilian Diplomatic Mission, Consulate or Honorary Consulate. Although the law is not clear on this point, it may be implied that the Brazilian charterers should apply for the visa on behalf of the crew members. Charterers are based in Brazil and therefore aware of the demands of local legislation. In addition, most of the demands in the application are to be accomplished by them. In two recent cases the visas were obtained without major problems having been encountered:

(1) The Brazilian charterers of a foreign flag barge applied for the visas at the Ministry of Labour in the capital of the state where the barge was operating. The visas were collected by the crew at a Brazilian Embassy abroad.

(2) Through a subsidiary company based in Rio de Janeiro, the owners of a foreign flag dredger chartered to a Brazilian entity applied for the visas at the Ministry of Labour in Brasilia. The visas were also collected by the crew at a Brazilian Embassy abroad.

So in practice both charterers and owners are able to apply for the visas, but considering the bureaucracy involved it would be much more sensible for charterers and owners to jointly appoint a local clearance agent ("despachante") to take care of the matter. For the time being at least, such an arrangement should be made prior to the vessel's arrival in Brazil. In addition, a clause could be incorporated in the charterparty imposing an obligation on the Brazilian charterers to arrange the necessary visas for the crew.

If it is ascertained during routine inspections on board a vessel that the crew is in an irregular situation in as far as the visa V is concerned, the immigration officers will fine the owners of the vessel, who are considered responsible. The amount of the fine is equivalent to 777.89 UFIR<sup>2</sup> per individual found without the visa V.

A fine is also imposed on charterers, who are considered responsible for having employed foreigners (the crew) in an irregular situation. The amount of the fine on

charterers is 2,333.67 UFIR per individual.

In theory, as soon as the irregular situation is detected, the foreigner is expected to leave the country at short notice. Failure to do so will result in deportation.

An appeal against the Deed of Infringements imposing the fines may be lodged with the immigration officer who applied the fine. In case this appeal is turned down, which is normally the case, an additional appeal can be lodged with the Chief of Federal Police, but the verdict is also usually against owners and charterers. However, in order to lodge the second appeal the amount equivalent to the total fine must be deposited with the Federal Police.

The legislation presently in force governing this matter is the following:

- (a) Law No. 6.815 of 19th August 1980;
- (b) Decree No. 86.715 of 10th December 1981;
- (c) Resolution No. 19 of 24th June 1988 – National Council of Immigration.

A draft new regulation revoking Resolution No. 19 is presently being considered by the Brazilian Congress and is expected to be approved shortly. Basically, the new Resolution will not eliminate the need for the visa V for crew members working temporarily in Brazil, but will facilitate its procurement, as according to the new regulation the application for the visa may be lodged by charterers within 8 days (although the draft of the Resolution is not clear, it is presumed this means eight days after the vessel's arrival) and the Ministry of Labour shall issue a protocol, valid for 30 days, which will maintain the foreigner requesting the visa in regular situation in the country. The period of validity of the protocol may be extended by the Ministry of Labour. The visa may be collected by an attorney, by charterers or by owners. It is to be valid for two years and may be extended for another two years. ■

<sup>1</sup> A related problem encountered by owners of foreign flag vessels temporarily operating in Brazil concerns the legal requirement that vessels have on board at least one third of the crew composed by Brazilian citizens. Although this issue is not under the jurisdiction of the Federal Police, there is always the risk of an inspection on board by the Ministry of Labour, in which case fines may be imposed.

<sup>2</sup> UFIR is an index used by the Tax Department and Customs for monetary correction. Presently one UFIR is equivalent to BRR 0.977. USD 1 is equivalent to BRR 1.80.

## EDITOR'S NOTE

An English translation of Law No. 6.815, Decree No. 86.715, Resolution 19 and the new draft Resolution may be obtained from the Association upon request.