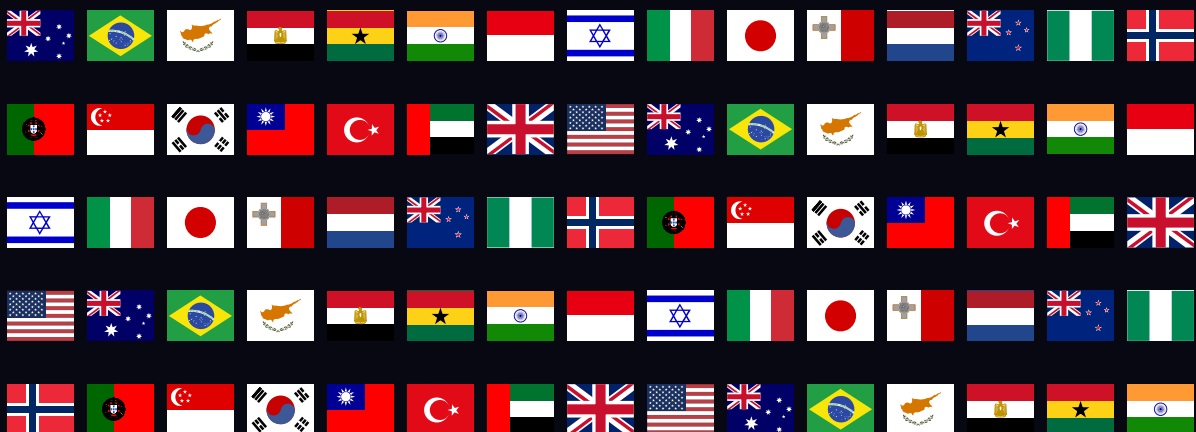


SHIPPING

Brazil



Shipping

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Quick reference guide enabling side-by-side comparison of local insights into newbuilding contracts; ship registration and mortgages; limitation of liability; port state control; classification societies; collision, salvage, wreck removal and pollution; ship arrest; judicial sale of vessels, carriage of goods by sea and bills of lading; shipping emissions; ship recycling; jurisdiction and dispute resolution; international conventions; and recent trends.

Generated 26 June 2023

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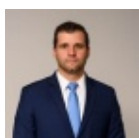
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NEWBUILDING CONTRACTS

Transfer of title

When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

Pursuant to Law No. 7,652/1998, a Brazilian vessel may be acquired through newbuilding, private or public sale or any other way permitted by law. The title will be consolidated and effective only once it is registered with the Admiralty Court, Maritime Court Registry Office, or the competent port captaincy in the case of vessels not subject to registration with the Admiralty Court.

However, the parties may agree at which stage of construction the title will be transferred to owners. Once the agreement between builder and owner regarding the transfer of the vessel or hull under construction is registered before the Admiralty Court, the title will be considered transferred. In fact, it is very common that the preliminary registration of a hull under construction is effected in the name of the shipowner and not the shipbuilder.

Law stated - 30 March 2023

Refund guarantee

What formalities need to be complied with for the refund guarantee to be valid?

There are no legal requirements for refund guarantees, which depend on the negotiations between the parties. However, usually, the shipowner requests that the vessel be certified by a first-class classification society, approved on all the equipment tests, and pass all ocean navigation trials required by the equipment's manufacturer and the Brazilian maritime authorities.

Law stated - 30 March 2023

Court-ordered delivery

Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

If there is a default or an unlawful refusal to deliver the vessel by the shipyard, and the shipowner is capable of providing evidence that they are in compliance with their contractual obligations and have acquired ownership of the vessel or hull under construction, it is possible to pursue an injunction before the competent forum of choice, seeking immediate possession of the vessel and authorisation to move her out of the shipyard. The Brazilian Civil Procedural Code allows the offended party to request a precautionary measure if the plaintiff can demonstrate periculum in mora (an imminent risk) and a fumus boni iuris (a prima facie case) (ie, reasonable grounds for the request).

Law stated - 30 March 2023

Defects

Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

The contractual relationship between the shipyard and the shipowner is regulated by the general provisions of the builders' obligations under the Brazilian Civil Code for piecework contracts and, as per article 618, the builder remains responsible for the integrity and safety of the works for five years. However, any claim that may arise from defects or inherent faults of the design must be filed within 180 days from the date of the discovery of such defects. Some academics argue that the provisions of the Brazilian Consumer Act also apply to such contracts under a 'service and supplier' relationship; however, the time bar period in these cases is also five years.

A third-party claim by a purchaser from the original shipowner against the shipyard would be barred by the absence of a direct relationship and would fail under the *res inter alios acta* principle.

Law stated - 30 March 2023

SHIP REGISTRATION AND MORTGAGES

Eligibility for registration

What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

Brazil has two vessel registration systems for Brazilian-flagged vessels: the Brazilian Vessel Ownership Registry and the Brazilian Special Registry.

The Brazilian Vessel Ownership Registry is an obligatory registry for all Brazilian vessels of over 20 gross tonnage (GT), for seagoing vessels, and of over 50 GT, when employed in any kind of inland waterway. For this purpose, Brazilian vessels are considered to be those owned by Brazilian citizens or Brazilian companies.

This registry is to be effected with the Brazilian Admiralty Court, the purpose of which is to establish the nationality, validity, and to make public their ownership of the vessels. The title to a hull or a vessel under construction under the Brazilian flag may be registered with the Brazilian Special Registry.

The Brazilian Special Registry is an optional registry for Brazilian vessels operated by Brazilian shipping companies, and foreign-flag vessels under bareboat charter to Brazilian shipping companies, with temporary suspension of the foreign flag.

The Brazilian Special Registry is a Brazilian government initiative, which grants several tax and operational benefits for the shipowner and, more precisely, an initiative of the Ministry of Transport and the Naval Ministry to increase the competitiveness of Brazilian shipping companies in relation to foreign shipowners operating their vessels at reduced costs under flags of convenience.

During the construction of a vessel, the shipowner can apply for a registration of its hull with the Brazilian Special Registry, in order to receive legal and tax benefits, especially for the incorporation of imported equipment. The registration of the hull is called 'pre-REB' while the definitive registration with the Brazilian Special Registry (REB) will be issued after the hull becomes a complete vessel, delivered to the owner and in possession of the proper classification certificates.

Law stated - 30 March 2023

Who may apply to register a ship in your jurisdiction?

Individuals resident in the country or Brazilian companies may apply to register a ship in Brazil.

Law stated - 30 March 2023

Documentary requirements

What are the documentary requirements for registration?

The documentary requirements are as follows:

- filing of an application (Form of the Directory of Ports and Coasts);
- application to the port captaincy requesting the vessel's registration, duly acknowledged by a notary (model provided by the port captaincy);
- the bulletin detailing updates to the vessel;
- a copy of the shipowner's certificate;
- authorisation from the Ministry of Agriculture, Livestock and Supply (for fishing boats);
- a copy of the vessel's safety certificate;
- a copy of the vessel's tonnage certificate or tonnage records;
- a copy of the vessel's freeboard certificate; and
- copy of the vessel's shipbuilding licence or permit, including:
 - the record of technical activities or the responsible engineer's log;
 - the vessel's specifications;
 - the vessel's general plans;
 - the vessel's half-breadth plan;
 - hydrostatic curves and cross curves or tables;
 - the vessel's safety plan;
 - arrangement plan of the vessel's navigation lights;
 - the vessel's capacity plan;
 - the vessel's sheer plan;
 - the vessel's heeling test report; and
 - the vessel's trim and definitive stability;
- proof of owner's nationality:
 - if an individual:
 - copy of ID card;
 - individual taxpayer's ID; and
 - marriage certificate, birth certificate, or military service status certificate; or
 - passport, in the case of foreigners; and
 - for a legal entity:
 - Finance Ministry/corporate taxpayer's ID;
 - articles of incorporation or association;
 - Board of Trade registration; or
 - company by-laws;
- proof of the vessel's acquisition and full and general release;
- a copy of an invoice or receipt of release, or a private instrument, for the engine containing:
 - details on the engine;
 - purchase price;
 - details of the buyer and the seller; and
 - the buyer's and seller's signatures, duly certified and acknowledged by a notary;
- a copy of the invoice and receipt of release, or a private instrument, for the hull containing:
 - the vessel's details;
 - the vessel's purchase price;

- details of the buyer and the seller; and
- the buyer's and seller's signatures, duly certified and acknowledged by a notary;
- proof of residence of the party applying to register the ship in Brazil;
- a dated 15x21-centimetre colour photo of the vessel taken abeam;
- a copy of the compulsory insurance certificate (this must be provided only after the availability of the vessel's intended name has been confirmed with the Port Captaincy);
- payment voucher paid at the bank (original counterpart);
- proof of compliance with all tax obligations;
- Admiralty Court costs payment voucher; and
- the shipowner's, the owner's or their legal representative's email address.

Law stated - 30 March 2023

Dual registration

Is dual registration and flagging out possible and what is the procedure?

Brazilian law does not contemplate the suspension of the Brazilian flag. Therefore, the dual registration and flagging out of Brazilian vessels are not processed by the Admiralty Court and Register. On previous occasions, the Superior Court of Justice has understood the impossibility of suspension of the Brazilian flag in view of the lack of legal provision and also due to a violation of the public interest.

Law stated - 30 March 2023

Mortgage register

Who maintains the register of mortgages and what information does it contain?

The Admiralty Court maintains the register of mortgages on Brazilian vessels.

To be considered valid and in effect under Brazilian law, all maritime mortgages over Brazilian-flagged vessels must be constituted through a public deed and registered with the Admiralty Court. To create a mortgage on a Brazilian-registered vessel, a public deed is required. The deed must contain the following requirements:

- the amount of credit – an estimate or maximum amount thereof;
- the term established for repayment;
- the rate of interest, if any;
- the vessel's specifications, such as gross tonnage, deadweight tonnage and other identifying data; and
- the certificate of insurance of the vessel.

Law stated - 30 March 2023

LIMITATION OF LIABILITY

Regime

What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Brazilian law provides for administrative, civil and criminal liability. The Brazilian Civil Code establishes that anyone who causes damage to the other party must fully compensate the damage caused. If the relationship arises out of a contract of carriage, liability will be limited up to the amount of the cargo value declared in the bill of lading.

Brazilian law also provides for some eventualities of strict civil liability, where the liability for the damage lies regardless of fault, such as the liability of the employer for acts of an employee and liability resulting from the activity carried out by the individual or company. Strict civil liability can only be excluded if it is proven that the damages were caused by force majeure or by the victim's actions.

Regarding the amounts of indemnity, Brazilian law does not provide for punitive damages. Therefore, indemnity is limited to the direct damages suffered, including the actual losses and reasonable loss of earnings. Direct damages include both material and moral damages. Indirect damages or consequential losses are expressly excluded unless otherwise agreed by the parties.

Besides being a party to the 1924 Brussels Convention (1924 International Convention for the unification of certain rules relating to the limitation of the liability of owners of seagoing vessels) and the CLC-69 (International Convention on Civil Liability for Oil Pollution Damage), Brazil is not a signatory of some relevant international conventions that exclude or minimise shipowners' liability, including:

- 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Hague Rules);
- the Hague-Visby Rules;
- the Hamburg Rules;
- the International Convention for the Limitation of Liabilities on Maritime Claims, London 1976; and
- the Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources, London 1977.

Nevertheless, it is possible under Brazilian law for the parties to limit their liability towards each other under a contract.

Law stated - 30 March 2023

Procedure

What is the procedure for establishing limitation?

There is no established procedure for obtaining limitation in Brazil. Parties can limit their liabilities towards each other under a contract. Nevertheless, if the contract is considered abusive, without freedom of negotiation, the clauses that exclude or limit the liability of one of the parties, might be considered null and void by Brazilian courts.

Law stated - 30 March 2023

Break of limitation

In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

Not applicable.

Law stated - 30 March 2023

Passenger and luggage claims

What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

Brazil is not a signatory to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea or its

protocols.

Brazilian and foreign passengers, while being transported or on cruise trips, have their rights supported by the Brazilian Civil Code and the Consumer Act, which establish the right to full reparation of the passenger or consumer.

Law stated - 30 March 2023

PORT STATE CONTROL

Authorities

Which body is the port state control agency? Under what authority does it operate?

Port state control in Brazil is performed by qualified naval inspectors accredited by the Directorate of Ports and Coasts (DPC), as per regulations set forth in the Maritime Authority Standard NORMAM-04 Ordinance (the Ordinance). The DPC has, among other things, the authority to contribute to:

- the guidance and control of the merchant marine and related activities in the interests of national defence;
- the safety of waterway traffic;
- the prevention of pollution by vessels, platforms and the support stations thereof;
- the formulation and enforcement of national policies relating to the sea;
- the implementation and inspection of laws and regulations at sea and in inland waterways; and
- the qualification and certification of personnel for the merchant marine and related activities.

According to article 3 of the Ordinance, for the attainment of its purposes the DPC may:

- prepare guidelines for:
 - the qualification and registration of professional and amateur seamen;
 - traffic and stay of vessels in waters under national jurisdiction, and the entry and exit thereof to and from ports, anchorages and marinas;
 - naval inspections and surveys;
 - gross tonnage, the establishment of freeboard, capacity, identification and classification of vessels;
 - vessel registry and inspection of the registry of ownership thereof;
 - ceremonial protocol and use of uniforms on board Brazilian vessels;
 - registry and certification of helipads on vessels and platforms for homologation by the competent agency;
 - execution of works, dredging, research and exploration of minerals under or on the shores of waters under Brazilian jurisdiction to ensure the maintenance of the waterway spaces and safety of navigation, without prejudice of obligations before other competent agencies;
 - registry and functioning of marinas, clubs and nautical sports entities, in respect of the safeguarding of human life and navigational safety in the open sea and in inland waterways;
 - registry of shipping companies, experts and class societies; and
 - application of penalties by the master;
- regulate pilotage services, establish pilotage zones where the use of that service is obligatory and specify the vessels exempted from the service;
- establish the safety crew of vessels, assuring the interested parties the right to appeal when in disagreement with the established complement;
- establish the equipment and accessories that must be homologated for use aboard vessels and platforms and establish the requirements for homologation;
- establish the minimum requirements for safety equipment and accessories for vessels and platforms;

- establish the limits of interior navigation;
- establish the requirements referent to safety and for pollution prevention of vessels, platform or support installations thereof;
- define maritime and interior areas for the construction of temporary refuges where vessels can anchor or beach for the performance of repairs;
- execute surveys either directly or through delegation to specialised entities;
- support the Admiralty Court and the Special Navy Prosecutor's Office regarding inquiries into navigational accidents or facts;
- manage the Maritime Professional Education Development Fund;
- organise and maintain the Maritime Professional Education System;
- exercise the functional supervision of the port captaincies, river captaincies and their respective offices and agencies; and
- maintain exchanges with public or private similar entities, both domestic and foreign, and represent the navy at gatherings related to matters under its responsibility.

In situations of conflict, crisis, state of siege, state of defence, federal intervention and special regimes, it is incumbent upon the DPC to undertake the tasks involving mobilisation and demobilisation attributed to it by the norms and guidelines related to maritime mobilisation and those issued by the director-general of navigation.

Law stated - 30 March 2023

Sanctions

What sanctions may the port state control inspector impose?

The port state control may impede vessels from sailing if there are any technical deficiencies affecting the safety of or exposing any risk to navigation, human life and the environment within Brazilian territorial waters, or if approval of statutory certificates relating to the vessel is pending. Local port captaincies may impose penalties and fines related to oil pollution and violation of the Brazilian Maritime Regulations.

Law stated - 30 March 2023

Appeal

What is the appeal process against detention orders or fines?

Detention orders and fines can be challenged by an administrative defence to be filed with the port captaincy. Furthermore, if the detention is groundless or unlawful, the shipowner or operator may resort to the federal courts and file a writ of mandamus or an annulment lawsuit against the maritime authority aiming to revoke the detention or fine.

Law stated - 30 March 2023

CLASSIFICATION SOCIETIES

Approved classification societies

Which are the approved classification societies?

The classification societies authorised to issue valid certifications of conformity with the applicable law and regulations regarding the safety of navigation, human life and avoidance of environmental pollution on behalf of the

Brazilian government are:

- American Bureau of Shipping;
- Bureau Veritas Ltda;
- Bureau Colombo Ltda;
- DNV GL;
- Lloyd's Register do Brasil;
- Nippon Kaiji Kiokai do Brasil;
- RINA;
- Registro Brasileiro de Navios e Aeronaves (RBNA);
- Certificadora Brasileira de Embarcações e Sistemas (CBES);
- Autoship;
- ABS Group Services do Brasil;
- Record Certificação Naval Ltda;
- AWS Engenharia, Consultoria, Inspeção e Certificação;
- JVC Engenharia, Consultoria e Certificação;
- Certificadora CBS Ltda; and
- Certificadora Intercontinental Bureau Classification Ltda (IBC);

Such entities are authorised by the Brazilian Navy Authority, through Navy Ordinance Rule NORMAM 6.

Each classification society is authorised to perform one or more certifications and it is important to verify whether the chosen classification society is authorised to issue the required certification. In addition to the classification societies, the Brazilian Navy also recognises some certification entities, duly accredited by the Directory of Ports and Coasts.

Law stated - 30 March 2023

Liability

In what circumstances can a classification society be held liable, if at all?

The activities and duties of the classification societies are regulated by DPC under the Maritime Authority Standards NORMAM-06 Ordinance.

Classification societies, in general, do not undertake any liability in respect of the vessels certified by them and there is no specific law regulating their responsibility to third parties and to the government. However, if an affected party is able to evidence gross negligence or an unlawful act by a classification society, it is possible to file a claim under section 189 of the Brazilian Civil Code.

Law stated - 30 March 2023

COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

Wreck removal orders

Can the state or local authority order wreck removal?

Yes. The wreck removal procedural rules are regulated by Law No. 7,542/1986, which grants the Brazilian maritime authorities, or any other authority with delegated powers, the power to order wreck removal by the responsible party, if it is deemed to be a danger or an obstacle to navigation or a threat of damage to third parties or to the environment.

Navy Ordinance NORMAM-10 also establishes the requirements and procedures for obtaining a permit for wreck removal.

Law stated - 30 March 2023

International conventions

Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

Brazil has signed the following international conventions regarding the liability of shipowners and carriers, in relation to collisions, salvage and pollution:

- the International Convention of Private Law (Bustamante Code), executed 1928;
- the Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea (Brussels 1910);
- the Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (Brussels 1928);
- the Convention for the Unification of Certain Rules relating to Immunity of State-owned Vessels (Brussels 1928);
- the Convention for the Unification of Certain Rules related to Limitation of Liability of Owners of Seagoing Vessels (Brussels 1924);
- the International Convention for the Safety of Life at Sea (SOLAS 74);
- the SOLAS Protocol of 1978;
- the International Convention on Load Lines (London 1966);
- the International Convention on Tonnage 1969;
- the International Convention on Regulation for Preventing Collisions at Sea 1983;
- the International Regulations for Preventing Collisions at Sea;
- the International Convention on Civil Liability due to damages caused by Oil Pollution 1969;
- the Convention on Facilitation of International Maritime Traffic;
- the International Convention on Maritime Search and Rescue;
- the International Convention on prevention of pollution caused by ships – MARPOL (73-78), OMI 1973;
- the United Nations Convention on Law of the Sea 1982;
- the Agreement to implement the United Nations Convention on Law of the Sea; and
- the International Convention on Salvage 1989.

Brazil is not a signatory to the following conventions:

- the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Hague Rules);
- the Hague-Visby Rules;
- the Hamburg Rules;
- the International Convention for the Limitation of Liabilities on Maritime Claims (London 1976);
- the Convention on Civil Liability due to Oil Pollution resulting from exploration and exploitation of subsea mineral resources (London 1977);
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) 1971;
- the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996;
- the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention) 2001; and

- the Nairobi International Convention on the Removal of Wrecks 2007.

Law stated - 30 March 2023

Salvage

Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

According to Brazilian law, all vessels are obliged to assist others in distress, in accordance with the International Convention on Salvage 1989. The traditional international salvage companies are usually engaged in such operations. Lloyd's standard salvage agreement is acceptable. Brazilian law accepts the 'no cure, no pay' clause. However, Brazilian law provides that all the expenses resulting from the incident, if damage to third parties and the environment was avoided, shall be reimbursed by the owner.

Law stated - 30 March 2023

SHIP ARREST

International conventions

Which international convention regarding the arrest of ships is in force in your jurisdiction?

Brazil has not ratified any international convention regarding the arrest of ships. Neither the International Convention to the Arrest of Seagoing Ships 1952 nor the International Convention on Arrest of Ships 1999 have been ratified.

Law stated - 30 March 2023

Claims

In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

If the arrest is in rem, the creditor shall have the privileged credit properly constituted. If the arrest is filed in personam, the claimant shall demonstrate the likelihood of success on the merits of the case through the presentation of a clear and indisputable debt (a prima facie claim), while the danger in delay may be shown by providing evidence that the debtor might leave Brazilian territorial waters without having other assets in the country; that the debtor might dispose of its assets; or any other mean to justify an immediate court injunction, rather than awaiting the developments on the proceedings until a decision is rendered on the merits.

There are no provisions dealing with the arrest of sister ships in Brazilian law. If the claim is exclusively based on privileged credits with effects in rem on the vessel, the claimant would be unlikely to obtain the arrest of another vessel of the debtor's fleet. However, if the arrest is in personam, it may be possible to file a precautionary lawsuit against the shipowner to detain a sister ship and request security, even if the obligations are not directly related to such vessel.

In respect to a bareboat or time-chartered vessel, considering that the arrest order is normally rendered ex parte, it is possible for a Brazilian judge to be convinced to order the arrest of the vessel as a means of guarantee for a substantive claim, although the head owner can eventually intervene in the proceedings in the capacity of a third party harmed by the arrest measure, and to try to lift the arrest of its vessel.

Maritime liens

Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Maritime liens in Brazil are governed by the Commercial Code and the 1926 Brussels Convention on Maritime Liens and Mortgages. Under the code and the convention, the claims that give rise to maritime liens and the priority of same under Brazilian jurisdiction are as follows:

- federal taxes;
- legal costs and expenses;
- claims resulting from the employment of master, crew and ship personnel;
- indemnities due for salvage;
- general average contributions;
- obligations undertaken by the master outside the port of registry for actual maintenance needs or continuation of the voyage;
- indemnities due as a result of collisions, or any other maritime accident;
- ship mortgages;
- port dues, other than taxes;
- outstanding payments due for depositaries, storage and warehouse rentals and ship equipment;
- expenditure for the upkeep of the ship and her appurtenances, maintenance expenses at the port of sale;
- short delivery and cargo losses;
- debts arising out of the construction of the vessel;
- expenses incurred for repairs of the vessel and her appurtenances; and
- the outstanding price of the vessel.

Law stated - 30 March 2023

Wrongful arrest

What is the test for wrongful arrest?

The arrest is granted by means of an injunction that precedes the discussion of the merits of the claim. If an arrest is granted and, afterwards, the injunction is overturned or the claim is dismissed, the Civil Procedural Code allows the defendant to seek an indemnity for the losses suffered due to the wrongful arrest. This indemnity can be assessed and liquidated in the same legal proceedings.

Law stated - 30 March 2023

Bunker suppliers

Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

Under Brazilian Law, credits arising out of ship suppliers out of the port of registry, including bunkers, are considered privileged. Therefore, based on the nature of such credits, they have in rem effects and follow the vessel, not the debtor, being possible to arrest the vessel if the bunker supply contract was entered with the charterer and not with the

owner.

Law stated - 30 March 2023

Security

Will the arresting party have to provide security and in what form and amount?

A guarantee may be required by the court from claimants that present an arrest request, to compensate eventual losses sustained by the vessel's interests in the case of a 'wrongful arrest'. However, this will be at the judge's discretion, in the light of the evidence of the credit and the legal grounds of the claim presented by the plaintiff.

Other guarantees will be requested in the form of a pro expensis for foreign claimants having no assets within the Brazilian territory. In this case, the judge may demand security of between 10 and 20 per cent to guarantee the legal costs and opponent lawyer's fees.

Normally, the guarantee is granted by means of a judicial deposit in cash or a letter of credit issued by a first-line bank headquartered in Brazil. P&I club letters of undertaking are not recognised by the Brazilian courts but may be admitted by the judge if it is accepted by the opposing party and translated into Portuguese.

Law stated - 30 March 2023

How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

In substitution for the arrest of the vessel, the court may allow the arrested party to provide a security, which is normally established in accordance with the amount of the claim indicated by the plaintiff or at an amount the judge understands reasonable. Since it is at the court's discretion, the amount of this security can eventually exceed the value of the ship, although it is not usual nor reasonable. This security can be reviewed subsequently.

Law stated - 30 March 2023

Formalities

What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

The appointment of a lawyer to represent a party in an arrest claim must be made through a power of attorney, issued by a representative of the company, duly empowered as per the by-laws or certificates. Such documents must be signed, notarised or certified with an apostille by the competent authorities at the place of Issuance, to be presented to the courts in Brazil. In the case of urgent measures, such as an arrest, the Brazilian Code of Civil Procedures allows the party 15 days to present the power of attorney to the records, following the presentation of the claim. This deadline can be extended for an additional 15 days.

Preparing an arrest application should not take longer than one business day, including the draft of the claim and the payment of the court costs. However, the challenge is to gather all the supporting documents and meet the formal requirements for the presentation of those at court, which, depending on the number of documents, may take some additional days.

Foreign documents that support the claim will have to be translated into Portuguese by a sworn translator. In the case of insufficient time to comply with such formality before the filing of the arrest application, it is possible to set the arrest procedure in motion and request the judge to grant an extension for the presentation of these documents. However, should the judge understand that these supporting documents were necessary for the analysis of the arrest request, he or she may postpone the decision on the matter until all documents are properly translated.

Some Brazilian courts are fully operational with electronic proceedings, thus accepting electronically filed documents. This means that, in principle, scanned copies may be sufficient and originals are not necessarily needed unless requested by the court.

Finally, Brazil is a signatory to the Apostille Convention, which helps to avoid time and costs with legalisation and consularisation procedures.

Law stated - 30 March 2023

Ship maintenance

Who is responsible for the maintenance of the vessel while under arrest?

Usually, the debtor or owner of the arrested vessel will be responsible for keeping the vessel duly crewed, maintained and in class. The court may appoint a local representative or agent of the owner to act as a faithful custodian while the arrest is in place.

Law stated - 30 March 2023

Proceedings on the merits

Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

Brazil has not ratified the International Arrest Convention, thus preventing a party from seeking security in Brazil for a claim or arbitration to be submitted to a foreign jurisdiction.

This means that the arresting party will have to evidence the jurisdiction of the Brazilian courts not only for the arrest but also for judging the merits of the claim. Arbitration clauses are exceptions, where the party may seek a preventive arrest before the Brazilian courts as a preparatory measure for a future arbitration to be initiated.

Law stated - 30 March 2023

Injunctions and other forms of attachment

Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Yes. The Brazilian Civil Procedural Code establishes other forms of measures and injunctions sought to obtain security, either by attachment of values or seizure of assets and values.

Law stated - 30 March 2023

Delivery up and preservation orders

Are orders for delivery up or preservation of evidence or property available?

Yes. The Brazilian Civil Procedural Code provides for the possibility of precautionary measures and injunctions to allow, among other things, the urgent production of evidence, disclosure of documents and preservation of evidence or assets.

Law stated - 30 March 2023

Bunker arrest and attachment

Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Although it is possible, the arrest of bunkers is not a common practice in Brazil and there is no specific domestic provision dealing with such measure.

The arrest of bunkers, therefore, should follow the general rules of the Brazilian Procedural Code.

Under these rules, a party is entitled to request the arrest of assets or security in general if that party is able to demonstrate both the liquidity of its credits (unpaid bills or a promissory note) and a risk that the debtor and its assets may disappear in the near future (in the instance of an insolvency or similar situations).

The other important aspect is the jurisdiction of the Brazilian judge to rule the merits of the dispute.

The arrest of bunkers may involve logistic and costs difficulties for the arresting party as the claimant will be obliged to nominate a fiduciary agent to be responsible for the bunker and arrange a licensed facility to unload and receive the bunker eventually arrested.

Law stated - 30 March 2023

JUDICIAL SALE OF VESSELS

Eligible applicants

Who can apply for judicial sale of an arrested vessel?

Mortgages on ships are enforced through judicial actions and a forced sale at public auction.

The creditor or arresting party may apply for the judicial sale of an arrested vessel if the debt is not paid.

Law stated - 30 March 2023

Procedure

What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The judicial sale of vessels follows the same general rules as asset bidding. Court bidding procedures are conducted by the public auctioneer, who charges between 2 and 5 per cent of the value of the sale. The minimum initial bid is set by the judge based on the accounting report. The vessel cannot be sold at the first auction for an amount below its official appraisal. However, at the second auction (10 to 20 days after the first auction), the vessel may be sold at any

price that the court considers proper (within a limit of 40 per cent of the appraised value). The highest bidder deposits 20 per cent of the bid in cash or by certified cheque immediately after the auction, with the balance to be paid within a certain deadline. If the residual amount is not paid, the auction may be aborted and the vessel offered to the next bidder.

Once the sale has been duly performed, the judge will release an order of sale and the bidder will register ownership with the Admiralty Court.

Law stated - 30 March 2023

Claim priority

What is the order of priority of claims against the proceeds of sale?

When distinct privileged creditors claim the product of the judicial sale, the release of the amount deposited by the winning bidder will obey the order of priority and the chronology of each judicial attachment.

The order of priority, based on the harmonious application of the rules of the Brazilian Commercial Code and the Brussels Convention of 1926 is the following, from highest to lowest:

- federal taxes;
- legal costs and expenses;
- claims resulting from the employment of master, crew and ship personnel;
- indemnities due for salvage;
- general average contributions;
- obligations undertaken by the master outside the port of registry for actual maintenance needs or continuation of the voyage;
- indemnities due as a result of collisions or any other maritime accident;
- ship mortgages;
- port dues, other than taxes;
- outstanding payments due for depositaries, storage and warehouse rentals and ship equipment;
- expenditure for the upkeep of the ship and her appurtenances, maintenance expenses at the port of sale;
- short delivery and cargo losses;
- debts arising out of the construction of the vessel;
- expenses incurred for repairs of the vessel and her appurtenances; and
- the outstanding price of the vessel.

Law stated - 30 March 2023

Legal effects

What are the legal effects or consequences of judicial sale of a vessel?

The judicial sale extinguishes any claims on the vessel that existed on the date of sale under section 477 of the Commercial Code. The acquisition of an asset at a judicial auction is equivalent to the initial acquisition of the asset: all prior burdens, liens and encumbrances are extinguished and thus are not transferred to the new owner of the asset. The cancellation of burdens on the vessel must be requested before the Admiralty Court through the appropriate procedures.

Once the vessel has been acquired at public auction, the purchaser must initiate proceedings before the court for the cancellation of the mortgage. Foreign buyers must initiate export procedures for the transfer of ownership of the vessel

within 15 days of the effective acquisition.

Law stated - 30 March 2023

Foreign sales

Will judicial sale of a vessel in a foreign jurisdiction be recognised?

All foreign decisions and awards concerning vessels registered in Brazil must be previously ratified by the Superior Court of Justice in order to become valid and effective in Brazil. Furthermore, the title over a vessel is only consolidated and effective in Brazil once that title is registered with the Admiralty Court, the maritime court registry office, or a competent port captaincy for vessels not subject to registration with the Admiralty Court. This registry establishes the nationality and validity of ownership of the vessel and makes these details public.

If these requirements are met, a judicial sale of a Brazilian vessel in a foreign jurisdiction can be recognised in Brazil. Judicial sales of foreign vessels in foreign jurisdictions, however, are recognised by Brazilian courts if the vessel is duly registered at the flag state registry.

Law stated - 30 March 2023

International conventions

Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

Brazil is not a signatory to the International Convention on Maritime Liens and Mortgages of 1993.

Law stated - 30 March 2023

CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

International conventions

Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

Brazil is not a signatory of the main international conventions that exclude or minimise the responsibility of carriers, including the 1924 International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Hague Rules), the Hague-Visby Rules and the Hamburg Rules.

Brazil has followed the discussions concerning the Rotterdam Rules with formal representation at the United Nations but has not yet signed the Rules. The concept adopted by the Rotterdam Rules is already in force under the Brazilian domestic law and under the multimodal law (Law No. 9,611/98) the responsibility of the carrier begins when cargo is received and only ends with final delivery to the consignee.

Law stated - 30 March 2023

Multimodal carriage

Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

Law No. 9,611/98 regulates the multimodal transport of cargo in Brazil and sets out the rules for issuance of the multimodal bill of lading and rights and obligations of the multimodal transport operator.

Law stated - 30 March 2023

Title to sue

Who has title to sue on a bill of lading?

All parties to the contract of carriage represented by the respective bill of lading have title to sue. The consignee, the shipper or the carrier are entitled to file a claim in the case of a breach of the respective contractual obligations. The endorsee of the bill of lading also has title to sue and the subrogated underwriters of the cargo are also entitled to a recovery action against the carrier under the bill of lading.

Law stated - 30 March 2023

Charter parties

To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

According to Brazilian law, the bill of lading has three characteristics:

- receipt of the cargo shipped and delivered;
- it evidences the contract of carriage; and
- it represents a title of credit and ownership of the goods by its holder.

The bill of lading is evidence of the contract of carriage includes some of the terms and conditions of the charter party. According to the Brazilian Commercial Code, the following information must be necessarily included in the bill of lading:

- name of the issuer;
- number of the bill of lading;
- name and head offices of the carrier of the cargo;
- name and flag of the vessel;
- port of shipment and delivery port;
- name and head offices of the receiver of the cargo;
- description of the cargo;
- conditions and status of the cargo;
- value of freight and form of payment; and
- name and signature of the master.

Notwithstanding the above, because of the speed of the negotiations, often some of these requirements are not fulfilled. However, the absence of some of the requirements does not result in the annulment or invalidity of the bill of lading.

The reverse of the bill of lading must contain the general terms and conditions of the transportation agreement and can include additional information by reference, such as the terms of a charter party as agreed by the parties. In this sense, it is important to include a clause specifying which document (charter party or bill of lading) will prevail in the case of conflict, as the general rule is that in the case of conflict the bill of lading will prevail.

However, the shipowners usually have standard bills of lading, it being rather difficult in practical terms to include the terms of each specific charter party in the related bill of lading.

A bill of lading may be considered an adhesion contract under Brazilian law if the issuer (shipowner) establishes its clauses without minimum negotiation with the owner of the cargo. Negotiations and remarks made during the booking stage may fulfil these requirements. Jurisdiction or arbitration clauses are valid and binding in adhesion contracts if the contracting parties expressly agree. This requirement being observed, the arbitration clause could be binding on any third party holding the bill of lading.

Law stated - 30 March 2023

Demise and identity of carrier clauses

Is the 'demise' clause or identity of carrier clause recognised and binding?

Under Brazilian law, the bill of lading may be considered an adhesion contract; in this sense, the clauses to exclude or transfer liability from issuer or carrier to any third party, including the owner, can be considered not written, that is, null and void, depending on the circumstances of each case.

Law stated - 30 March 2023

Shipowner liability and defences

Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

Brazilian courts understand that the carrier bears strict liability for the due delivery of the cargo. This strict liability can only be excluded due to force majeure, an inherent defect of the goods, or exclusive fault of the shipper or consignee (eg, bad packaging of the cargo by the shipper) or a third party.

When the carrier is not the owner, the carrier is liable for the cargo damage. However, as mentioned above, the vessel itself may respond for such damages, just as the shipowner may eventually be liable in regard to the cargo owner, even when a non-vessel operating common carrier is acting as the contractual carrier. In this sense, it is reasonable to state that the owner may respond for such damage under a joint liability regime, reserving the right of redress action against the carrier.

Law stated - 30 March 2023

Deviation from route

What is the effect of deviation from a vessel's route on contractual defences?

Under Brazilian law, deviation from the vessel's route can result in claims for late delivery of the goods if parties with an interest in the cargo can demonstrate that the normal period of the sea voyage was affected and if losses are proven by consignees. The deviation may also generate administrative penalties from the National Waterway Agency against the carrier and may constitute a fact of navigation to be investigated by the Navy Authority. The contractual terms will prevail if the deviation clause is not considered abusive and in this case, the fixture conditions and previous negotiations between carrier and cargo interests will have an important function if a dispute is brought to Brazilian courts.

Law stated - 30 March 2023

Liens

What liens can be exercised?

The liens that can be exercised against the vessel include some relevant liens in the context of a discussion of carriage of goods by sea and bills of lading.

Maritime liens in Brazil are governed by the Commercial Code and the 1926 Brussels Convention on Maritime Liens and Mortgages. Under the code and the convention, the claims that give rise to maritime liens and the priority of same under Brazilian jurisdiction are as follows:

- federal taxes;
- legal costs and expenses;
- claims resulting from the employment of master, crew and ship personnel;
- indemnities due for salvage;
- general average contributions;
- obligations undertaken by the master outside the port of registry for actual maintenance needs or continuation of the voyage;
- indemnities due as a result of collisions, or any other maritime accident;
- ship mortgages;
- port dues, other than taxes;
- outstanding payments due for depositaries, storage and warehouse rentals and ship equipment;
- expenditure for the upkeep of the ship and her appurtenances, maintenance expenses at the port of sale;
- short delivery and cargo losses;
- debts arising out of the construction of the vessel;
- expenses incurred for repairs of the vessel and her appurtenances; and
- the outstanding price of the vessel.

Law stated - 30 March 2023

Delivery without bill of lading

What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

The bill of lading is the receipt of the cargo received and also names the consignee. In this sense, if the carrier delivers the cargo without the presentation of an original bill of lading, the carrier may be subject to liability for not fulfilling its duty and for delivering the cargo to the wrong party.

The presentation of the original bill of lading is mandatory under Brazilian law for the release of cargo in a private commercial relationship, despite a minority of court decisions allowing the release by consignees without such production. Although the presentation of the original BL may be exempted for Custom's purposes, this does not prevent the need for presentation to the carrier or its representative, as established in the Commercial and Civil Codes. In the case of wrongful delivery the carrier may be liable for all direct material damages, including the value of the cargo, loss of earnings, and eventual moral damages, without limitation, unless otherwise provided in the bill of lading or in an agreement between the carrier and owner of the cargo.

Law stated - 30 March 2023

Shipper responsibilities and liabilities

What are the responsibilities and liabilities of the shipper?

As per the Brazilian Civil Code, the shipper is obliged to provide an accurate description of the cargo embarked, indicating its nature, value, weight and quantity, with the correct particulars of the consignee. The cargo must be adequately packaged. The shipper is responsible before the carrier for damaged or packaged goods and also for any error on the cargo or consignee particulars or information. The shipper is also given an opportunity to choose to declare the cargo value in the BL, and consequently pay an ad valorem freight, or not to declare it in the BL, and consequently pay a lower freight based on the cargo weight, but triggering the effects of a limitation of liability clauses established in the BL.

Law stated - 30 March 2023

SHIPPING EMISSIONS

Emission control areas

Is there an emission control area (ECA) in force in your domestic territorial waters?

Brazil follows International Maritime Organization 2020 requirements established in Annex VI of MARPOL, throughout its jurisdictional waters. There are no other specific emission control areas in force in Brazilian territorial waters.

Law stated - 30 March 2023

Sulphur cap

What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

The cap on the sulphur content of fuel oil in Brazilian waters is 0.5 per cent m/m, as of 1 January 2020, as provided by the National Oil, Natural Gas and Biofuels Agency (ANP), National Standards Organisation Technical Norms and Annex VI of MARPOL, unless if the vessel contains gas cleaning systems (scrubbers), to prevent irregular emissions.

The producers and importers of fuel oil must analyse a sample of the product being put up for sale and issue a certificate of quality, to be numbered and signed by a chemical expert and to be kept available to the ANP for a minimum of 12 months. Invoices for the fuel oil must indicate the product description and the certificate number,

followed by a copy of the same. At any time ANP may hold technical inspections to investigate whether the legal requirements are met. In the case of non-compliance, in addition to administrative sanctions (fines from 5,000 reais to 5 million reais depending on the infraction; seizure of goods, suspension of activities and others), civil and criminal penalties may be applied.

Law stated - 30 March 2023

SHIP RECYCLING

Regulation and facilities

What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted in Brazil through Decree No. 875/1993, being regulated by CONAMA Resolution No. 452/2012. On 8 July 2016, Normative Instruction No. 02/2017 of the Ministry of Defence and Ministry of Environment was published, which provides rules for the export of hulls of former vessels that should follow the Basel Convention. This normative instruction establishes some rules for the export of hulls of former vessels for recycling, such as the need to request authorisation from the Environmental Agency.

The Brazilian Navy Authority has already understood that the normative instruction should not be applied to vessels that are still operating, with crew and class in place and destined for recycling.

In Brazil, the National Policy for Solid Waste (Law No. 12,305/2010) is also applicable, establishing directives for the handling of solid waste.

Despite having a consolidated shipbuilding industry, so far there are no special ship recycling facilities in Brazil yet. Nonetheless, there is a Bill No. 1584/21 under way before the National Congress seeking to regulate dismantling and recycling of vessels and offshore installations and aiming to stimulate these activities and this market in Brazil.

Law stated - 30 March 2023

JURISDICTION AND DISPUTE RESOLUTION

Competent courts

Which courts exercise jurisdiction over maritime disputes?

The Brazilian legal system provides for a state court system. In this sense, each state organises its courts as best suits their needs. Generally, maritime disputes are subject to the state's civil courts, except in Rio de Janeiro, which has specialised courts for corporate and commercial issues and such courts are competent to rule on maritime disputes. When a state-owned or naval vessel is involved, the federal courts have jurisdiction. Nevertheless, it is also important to point out that Brazil has an Admiralty Court with jurisdiction to rule on maritime accidents and facts and to resolve the culpability of shipowners, officers and seamen, imposing fines and penalties. The Admiralty Court is an administrative tribunal subordinate to the Ministry of Defence and, although considered relevant technical evidence by judicial courts, its decisions are challengeable by the state or federal courts.

Law stated - 30 March 2023

Service of proceedings

In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

In the event of a defendant being domiciled abroad and with no branch office, agency, or any legal representative in Brazil, summons on said defendant have to be served by a letter rogatory issued by the Brazilian court and addressed to the foreign judicial authority through diplomatic channels after having been translated into the language of the country where the summons is to be served.

In 2018, Brazil acceded to the Hague Service Convention (1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters), which, as of 1 June 2019, establishes a more simplified means for parties to effect service in other contracting states.

Law stated - 30 March 2023

Arbitration

Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

There are domestic arbitral institutions with arbitrators specialising in maritime matters, such as:

- the Brazilian Centre of Mediation and Arbitration (CBMA);
- the Centre for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC);
- the Brazilian Maritime Law Association (ABDM);
- the Brazilian Centre of Maritime Arbitration (CBAM); and
- the Mediation and Arbitration Chamber of the Getúlio Vargas Foundation (FGV).

The CBMA, for instance, has a specialised commission to deal with maritime and port-related disputes, with qualified practitioners and arbitrators with expertise to attend to the growing number of disputes in this sector.

This method of conflict resolution is increasingly practised in Brazil, following the enactment of the arbitration law (Law No. 9,307/96), the ratification of the New York Convention in 2002, the ratification of the United Nations Convention on Contracts for the International Sale of Goods in 2013, the enactment of a mediation law in 2015, the reform of the Arbitration Act in 2015, and the Civil Procedural Code of 2015, which provides for a mandatory mediation procedure prior to judicial disputes.

Brazilian arbitral institutions are increasingly active in maritime arbitration, to the extent that CBMA is not only included in ICMA's list of maritime arbitration associations, but it also co-hosted the ICMA XXI conference in 2020 in Rio de Janeiro with CAM-CCBC.

Law stated - 30 March 2023

Foreign judgments and arbitral awards

What rules govern recognition and enforcement of foreign judgments and arbitral awards?

Brazil has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 10 June 1958). The enforcement of foreign judgments and awards in Brazil depends on an exequatur to be obtained through a procedure regulated by the internal procedural rules of the Superior Court of Justice and by the

provisions of the new Civil Procedural Code of 2015. The exequatur is the authorisation granted by the Superior Court of Justice for all procedures requested by a foreign judicial authority to be validly executed in the jurisdiction of the competent Brazilian judge.

If the exequatur is granted, the foreign judgments and awards will be forwarded to the federal judge of the state in which the foreign award will be enforced and complied with.

The Brazilian Superior Court of Justice recognises foreign judgments and awards and their enforceability, provided they are not contrary to the Brazilian legal order, public policy, national sovereignty and good moral conduct.

Law stated - 30 March 2023

Asymmetric agreements

Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

In principle, an agreement with different forum selection clauses for each party to choose from would be valid in Brazil, as long as the parties have equal bargaining power in negotiating the contractual provisions and express consent in a way that the will and real intent of the parties are preserved.

Law stated - 30 March 2023

Breach of jurisdiction clause

What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

The defendant may challenge the jurisdiction in the defence, alleging the lack of jurisdiction of the court owing to the existence of a jurisdiction clause. Since the enactment of the 2015 New Civil Procedural Code, an express rule has been inserted in section 25 providing that 'no Brazilian judicial authority is responsible for the processing and trial of the lawsuit when there is a choice of exclusive foreign jurisdiction clause in the case of international contracts, if raised by the defendant in the defence'. This provision was not inserted in the previous Civil Procedural Code and, therefore, for the contracts entered after the enforcement of the new Civil Procedural Code (ie, after January 2016) in the event of a foreign jurisdiction having been elected, the lawsuit filed in Brazil will be extinguished should the mentioned clause be considered valid.

If the selected jurisdiction is in Brazil, the records of the proceedings will be forwarded to the competent court.

Law stated - 30 March 2023

What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

It is for the defendant to challenge the court's jurisdiction during the defence, alleging that the foreign court or arbitral tribunal election clause should be observed.

If the judicial lawsuit is filed in breach of an arbitration clause, the case can be extinguished in accordance with the Brazilian Procedural Code, if the defendant invokes the arbitration clause in the defence. Since the enactment of the 2015 Civil Procedural Code, an express rule has been inserted in section 25 providing that 'no Brazilian judicial authority is responsible for the processing and trial of the lawsuit when there is a choice of exclusive foreign jurisdiction clause in the case of international contracts if raised by the defendant in the defence'.

It is also notable that this type of clause, when inserted in contracts that can be construed as contracts of adhesion (ie, contracts that provide no room for negotiation by the contracting party), can be rejected by the Brazilian courts on the understanding that the will of the contracting party was not freely expressed.

Law stated - 30 March 2023

LIMITATION PERIODS FOR LIABILITY

Time limits

What time limits apply to claims? Is it possible to extend the time limit by agreement?

In general, in relation to indemnity and civil lawsuits related to unlawful acts, the Brazilian Civil Code provides three years for filing the judicial lawsuit. Specifically, for cargo claims resulting from ocean carriage, the Federal Decree No. 116/1967 provides a one-year time bar as of the date of discharge, similarly to the Law on Multimodal Transportation (Law No. 9.611/98) and the Law for inland carriage (Law No. 11.442/2007). However, when the Consumers Act applies, the time bar is five years.

It is not possible to extend the time limit by an agreement between the parties, as this is a question of public policy that cannot be changed by the will of the parties. What is admitted is a time-bar interruption at court, through a judicial notification. Once interrupted, the time bar is renewed for an equal period. The interruption can occur only once.

Law stated - 30 March 2023

Court-ordered extension

May courts or arbitral tribunals extend the time limits?

The time limit can be interrupted by the party only in a single opportunity. This must be made before a Brazilian court and will renew the time limit for an additional equal period. Agreements between the parties in respect to time limits are not valid in Brazil. The time limit is a question of public policy that cannot be extended by the parties, nor arbitral tribunals, but can only be extended and renewed by an equal period by the Brazilian courts in a single opportunity.

Law stated - 30 March 2023

MISCELLANEOUS

Maritime Labour Convention

How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

The Maritime Labour Convention entered into force in Brazil on 7 May 2021, being applicable to vessels flying the Brazilian flag.

Law stated - 30 March 2023

Relief from contractual obligations

Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

Yes. One of the instruments that may be used in contract renegotiations in the case of an excessive burden is the 'unpredictability theory', which is provided for in the Civil Code, articles 478 to 480, under the title 'Dissolution for Excessive Onerousness'.

Those articles establish that in contracts with continuing or deferred performance, if the obligation of one of the parties becomes excessively onerous, with extreme advantage to the other by virtue of extraordinary or unforeseeable events, the debtor may apply for dissolution of the contract. The effects of the judgment that declares dissolution shall be retroactive to the date of notification.

Dissolution may be avoided if the defendant offers to modify the conditions of the contracts on an equitable basis. However, this theory may only be applied in very specific cases, where supervening, extraordinary, irresistible and unforeseen acts alter the balance of the original financial and economic equation of the contract.

Law stated - 30 March 2023

Other noteworthy points

Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

As per Law No. 9,432/97, Brazil has a closed market for cabotage, port support and maritime support navigation, which are restricted to Brazilian shipping companies duly authorised by the government authority National Waterway Transport Agency. Brazil is also closed to the import or export of certain goods on foreign-flagged vessels.

In this sense, foreign-flagged vessels can only operate in cabotage, port support and maritime support navigation when chartered by a Brazilian shipping company, and provided that there are no Brazilian-flagged vessels available, or if it is a matter of public interest or the foreign vessel is being chartered as a substitute of a vessel owned by the Brazilian shipping company under construction at a Brazilian shipyard. Another possibility for a foreign vessel to operate in Brazil is if she is bareboat-chartered by the Brazilian shipping company and flies the Brazilian flag in place of her original flag.

Law stated - 30 March 2023

UPDATE AND TRENDS

Key developments of the past year

Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

A hot topic that is affecting almost all global markets is the ever-growing environment, social and governance (ESG) initiative, which is shifting the way to develop businesses with the purpose of making them more sustainable, inclusive, transparent and trustworthy.

Environmental protection, specifically, is enhanced by the targets set out in global pacts, such as the United Nations Sustainable Development Goal, the Paris Agreement, signed in 2015, and the International Convention for the Prevention of Pollution from Ships (MARPOL) in 1973, enacted into Brazilian law in 1998, which is specific to the shipping industry.

These international agreements have several provisions aiming to slow climate change, especially the reduction of carbon dioxide emissions. In the shipping sector, for example, the MARPOL was recently amended to introduce provisions to reduce carbon dioxide emissions in the short term, such as the Energy Efficiency Existing Shipping Index (EEXI) and the Carbon Intensity Indicator (CII), both aimed to rate the energy efficiency of the ships. In general, based

on that rate, the ships will be ranked, and depending on their evaluation, they can be prohibited to navigate.

It is important to mention that compliance with these rules creates a relevant interface with the charter contracts and maritime transport contracts. Aiming to address the potential impact, the Baltic and International Maritime Council created standard clauses in related to the EEXI and CII provisions.

The clauses mentioned refer to compliance with regulatory requirements regarding the decarbonisation applicable to the shipping sector. However, we emphasise that there is potential demand for other contractual adjustments arising from specific and voluntary requirements of charterers and shippers, especially to reflect other ESG demands.



















Moreover, the International Maritime Organization (IMO) indicates as possible measures for the reduction of carbon emissions by vessels that use fossil fuel: (1) cleaning the hull; (2) speed optimisation and routing; and (3) installation of auxiliary solar or wind energy, among other measures.

Aligned with these new criteria, several countries are making changes in their domestic laws and regulations to incentivise the reduction of carbon dioxide emissions and to oversee if the companies are following the set guidelines.

In Brazil, we also expect upcoming changes in domestic law and regulation, especially since Brazil is part of international conventions and has to align domestic law with the international commitments signed.

Law stated - 30 March 2023

Jurisdictions

| | | |
|---|-----------------------------|---|
|  | Australia | Holding Redlich |
|  | Brazil | Kincaid Mendes Vianna Advogados |
|  | Cyprus | Chrysses Demetriades & Co LLC |
|  | Egypt | Eldib Advocates |
|  | Ghana | Kimathi & Partners Corporate Attorneys |
|  | India | Phoenix Legal |
|  | Indonesia | Budidjaja International Lawyers |
|  | Israel | J.SPRINZAK Maritime Law Firm |
|  | Italy | Studio Legale Mordiglia |
|  | Japan | Okabe & Yamaguchi |
|  | Malta | Dingli & Dingli Law Firm |
|  | Netherlands | Van Steenderen MainportLawyers |
|  | New Zealand | Hesketh Henry |
|  | Nigeria | Creed & Brooks |
|  | Norway | Advokatfirmaet BAHR AS |
|  | Portugal | Ana Cristina Pimentel & Associados Sociedade de Advogados SP RL |
|  | Singapore | Haridass Ho & Partners |
|  | South Korea | Cho & Lee |
|  | Taiwan | Lee and Li Attorneys at Law |
|  | Turkey | Cavus & Coskunsu Law Firm |
|  | United Arab Emirates | Afridi & Angell |
|  | United Kingdom | MFB Solicitors |
|  | USA | Seward & Kissel LLP |