

# The Brazilian Maritime Law Reform



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A new Brazilian Commercial Code is being considered which will provide an update to the code originally enacted in 1850. This article looks at the key areas of the reform affecting shipowners.

## Background

Brazil is the largest economy in Latin America and the seventh-largest in the world, but it still struggles with bureaucracy and a very complex legal system that is not entirely up to date with international practice. The Brazilian Commercial Code – the main regulation relating to maritime law – was enacted in 1850 when Brazil was still under an empire regime, and Brazil often does not ratify international conventions related to shipping and carriage of cargo.

In 2011, a project of law for the enactment of a new Commercial Code was initiated before the Brazilian Congress. This project revoked the part of the current Commercial Code that remained in force, but in its initial draft, it did not include a single line in respect to maritime law. In response, the maritime sector has prepared a draft amendment to the project of law in order to include a section entirely dedicated to maritime law. The bill is still under analysis before the Brazilian Congress.

## Main highlights of the reform

### Time Bar

One of the most important aspects regulated by the new Commercial Code is the definition of the timebar period for claims arising out of a maritime carriage. Currently, this matter is often disputed before the Brazilian courts, with diverging interpretations regarding a one-year, three-year or even five-year time bar.

For the avoidance of doubt and to solve any controversy, the suggested amendment for the Commercial Code expressly provides for the applicability of a one-year timebar period for any claim arising out of the maritime carriage, thus bringing more legal security in respect to this matter.

### Brazilian Consumer Code and the carriage of goods by sea

The draft for the new Commercial Code provides that, as a rule, the Brazilian Consumer Act does not apply in the carriage of goods by sea. This provision would solve several court disputes and would consolidate the understanding that is already adopted by the majority of the courts in Brazil, that the Consumer Act should not be applied when the service – of maritime transport – is used as part of the production chain of the particular industry or commerce.

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### **Limitation of liability**

In terms of limitation of liability on maritime claims, the 1850 Commercial Code did not bring any specific provision rather than the abandonment of the vessel. Subsequently, Brazil ratified the Brussels 1924 International Convention for the Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-going Vessels, but did not ratify the Hague-Visby Rules, the Hamburg Rules, the Rotterdam Rules or the 1976 London Convention.

The suggested update to the Commercial Code brings express provisions pertaining to the shipowner's limitation of liability, establishing procedures for the constitution of a limitation fund and providing similar limits as the ones provided by the 2012 amendment to the 1996 Protocol to the 1976 London Convention.

Such limitation would be applicable to injury or death during maritime operations, cargo losses, damage to third-party property and tort claims. However, the limitation would not be applicable to salvage, General Average, wreck removal, liability for environmental pollution, nuclear damages or crew wages.

### **Arrest of vessels**

Brazil has not ratified the international arrest conventions of 1952 and 1999

and, in accordance with the Civil Procedure Rules in force, in order for a party to be able to arrest a vessel in Brazil, it is necessary to obtain jurisdiction of the Brazilian courts.

Hence, it is currently not possible to seek the arrest of a vessel in Brazil as a means of security for a claim subject to the jurisdiction of a foreign court. An arrest would only be possible in circumstances where the substantive claim and the merits of the case can be decided under the jurisdiction of the Brazilian courts. In order to soften these procedural requirements and align Brazilian law with some of the concepts applied internationally, the New Commercial Code will allow the arrest of vessels in Brazilian waters as a security for a foreign claim or dispute, as well as incorporating new provisions related to the arrest of sister ships, the arrest of bunkers and wrongful arrest.

### **Conclusion**

The hope of the Brazilian maritime community is that, with the reform of the Maritime Law, Brazil will be more aligned with international practice and increase legal certainty for shipowners, charterers, cargo interests and insurers. This will have a significant impact on businesses and positively influence the country's domestic and international trade.

