

MEMBER ALERT



Shipowners Claims Bureau, Inc., Manager
One Battery Park Plaza 31st Fl., New York, NY 10004 USA
Tel: +1 212 847 4500
Fax: +1 212 847 4599

www.american-club.com

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BRAZIL – IMMIGRATION CONTROLS ON SEAFARERS

Your Managers have become aware that the immigration authorities in Brazil appear to be taking inconsistent action as to whether seafarers' identity documents comply with relevant ILO conventions.

Brazil was reported to have ratified the ILO Convention 185/2003 in January 2010 and, concomitantly, denounced the earlier Convention of 1958 (108/1958). Article 2 of the 2003 Convention provides that states must issue to each of their seafarer nationals (or to seafarers who have been granted permanent residence in such state's territory), a seafarer's identity document. Unlike the earlier 1958 Convention, the more recent treaty does not permit flag states to issue identity documents to non-national, or non-resident, persons.

The Brazilian authorities, however, appear to be taking the view that, because the ILO Convention of 2003 has not been sanctioned by the President of Brazil, it is not actually in force. Accordingly, the view is being taken that the earlier Convention 108/1958 continues to apply.

Notwithstanding this, your Managers are aware of instances where immigration officials in Rio de Janeiro appear to regard the ILO Convention of 2003 as being in force, and have imposed fines on crew members, and required deportation of such crew, if they do not leave Brazil within eight days, on the grounds that their seafarer's identity documents do not comply with the 2003 Convention.

This position has been taken despite the fact that:

- The documents in question in fact complied with the earlier convention (being issued by the flag state to crew serving on board); and
- The crew members never actually left their vessels while they were in the territory of Brazil.

This latter point is important since, even if a seafarer's identity document is invalid, this merely means that the state authorities are not required to allow entry to that seafarer. Neither the 1958 nor the 2003 Conventions give a right to impose fines. In fact, the Club's sources in Brazil advise that the official position of the immigration authorities is that fines should not be imposed as long as the seafarer in question remains on board.

Accordingly, there is inconsistency as to practice within the immigration authorities in Brazil not only as to which Convention is in force, but also as to whether or not fines should be imposed simply by reason of the presence of the crew within Brazilian territory, even though such crew remain on board and have no intention of leaving the vessel.

While the matter continues to be reviewed, the following advice would appear sensible:

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- In the case of vessels flagged by a state which is party to the ILO Convention 185/2003 and which are proceeding to Brazil, Members should ensure that all crew have seafarers' identity documents issued by the state of which they are nationals, or within which they have permanent resident status; and
- Members should take and follow advice as to the period of time that the vessel can remain within the territory of Brazil without incurring fines (there is a general 30 day restriction on ocean-going vessels remaining within Brazilian jurisdiction or waters); and
- In the case of other vessels proceeding to Brazil, Members should ensure that seamen who do not hold seafarers' identity documents valid under either the 1958 or 2003 Conventions do not disembark from the vessel for any reason unless permitted to do so by the local authorities.

Further developments will be reported as they occur. In the meantime, your Managers will be pleased to answer any further questions Members may have in relation to this particular problem, or generally.