



Stowaways in Brazil

Stowaways in Brazil

Practical Guidance

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Foreword

People secretly boarding vessels to travel as stowaways, fleeing persecution or seeking a better life elsewhere, have been around since the advent of commercial shipping. Nevertheless, over the past three decades, the frequency and complexity of this type of incident, which was once just a hassle of a relatively cheap and quick resolution, has become a significant burden and cause of great concern for ship's crews who face first-hand the potentially dangerous intruders, as well as shipowners, ship managers, charterers and P&I insurers, apart from having a high impact on the safe operation of the vessel, commercial disruptions and financial losses for which there may be no insurance.

Heightening of security measures in the stowaway hotspots and best shipboard security practices, triggered by the comprehensive regime of the ISPS Code in the wake of terrorist attacks in the USA at the turn of the century, contributed to a slight drop in the number of incidents involving stowaways.

Yet, due to the resources needed not only to prevent unauthorised access to port facilities and ships but also to care for and return illegal immigrants, many of whom stow away for a living, there has been a general increase in costs associated with a growth in the number of stowaways per incident.

As correspondents serving most P&I clubs and marine liability insurers in Brazilian ports for nearly half a century, we have acquired expertise in handling stowaway cases. Based on hands-on experience, we prepared this guide with an overview on how such incidents are processed in Brazil, the applicable legal regime and liabilities involved, as well as measures to be taken once a stowaway has been detected to ensure compliance with local regulations and bring the case to a successful resolution.

We hope our clients and associates will avail of this guide as a useful source of reference and practical information on the effective handling of stowaway cases. We shall endeavour to keep an up-to-date version of this publication available for free download on our website.

REPRESENTAÇÕES PROINDE LTDA.

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1. The stowaway problem

1.1. Extent of incidents

The actual prevalence of shipboard stowaway incidents on a global scale lacks accurate data, not only on the number of cases but also the number of stowaways involved in each event. Yet, the geographic areas with the highest incidence of illegal boarding – and the places of concealment within the ships – are reasonably well-known to the shipowners, their liability insurers, and the coastal countries where stowaways regularly embark or disembark.

The International Maritime Organization (IMO) has introduced an internet-based facility¹ for the voluntary submission of case reports involving stowaways and illegal migrants rescued at sea. It aims to gather and exchange information about stowaway incidents with the parties concerned and affected countries to develop methods and practices to prevent unauthorised access to ships. So far, there has been little adherence to the system, and it is more than likely that the number of cases reported to the IMO database does not reflect the actual extent of the stowaway problem on a worldwide scale.

The International Group of P&I Clubs (IGP&I)², on the other hand, gathered more reliable information on the global reach of the problem by reviewing above-deductible claim files on stowaway incidents arising during the policy years 2007, 2011, 2014 and 2017³. The analysis points out that, although the number of reported incidents has almost halved between 2007 and 2017, the number of stowaways per incident has increased by 44%, while the average cost of each incident went from USD 17,000 to USD 22,000 over this period. [Table 1]

Policy year	2007	2011	2014	2017
▪ Number of incidents	842	774	503	432
▪ Number of stowaways	1,955	1,640	1,274	1,420
▪ Total cost (US\$ million)	14.3	15.3	9.3	9.5
▪ Cost per incident (US\$ thousand)	17.0	19.8	18.5	22.0
▪ Cost per stowaway (US\$ thousand)	7.3	9.3	7.3	6.7
▪ Stowaway per incident	2.3	2.1	2.5	3.3

Table 1: Summary data of the IG analysis of stowaway incidents worldwide 2007-2017 (Source: IG-P&I clubs/IMO-FAL)

Beyond the expenses covered by the Protection and Indemnity (P&I) mutual clubs and commercial insurers, the shipowner transporting stowaways must bear the insurance deductible and face operational losses and commercial frustrations for which they might not be insured. [Chapter 6]

1.2. International reach

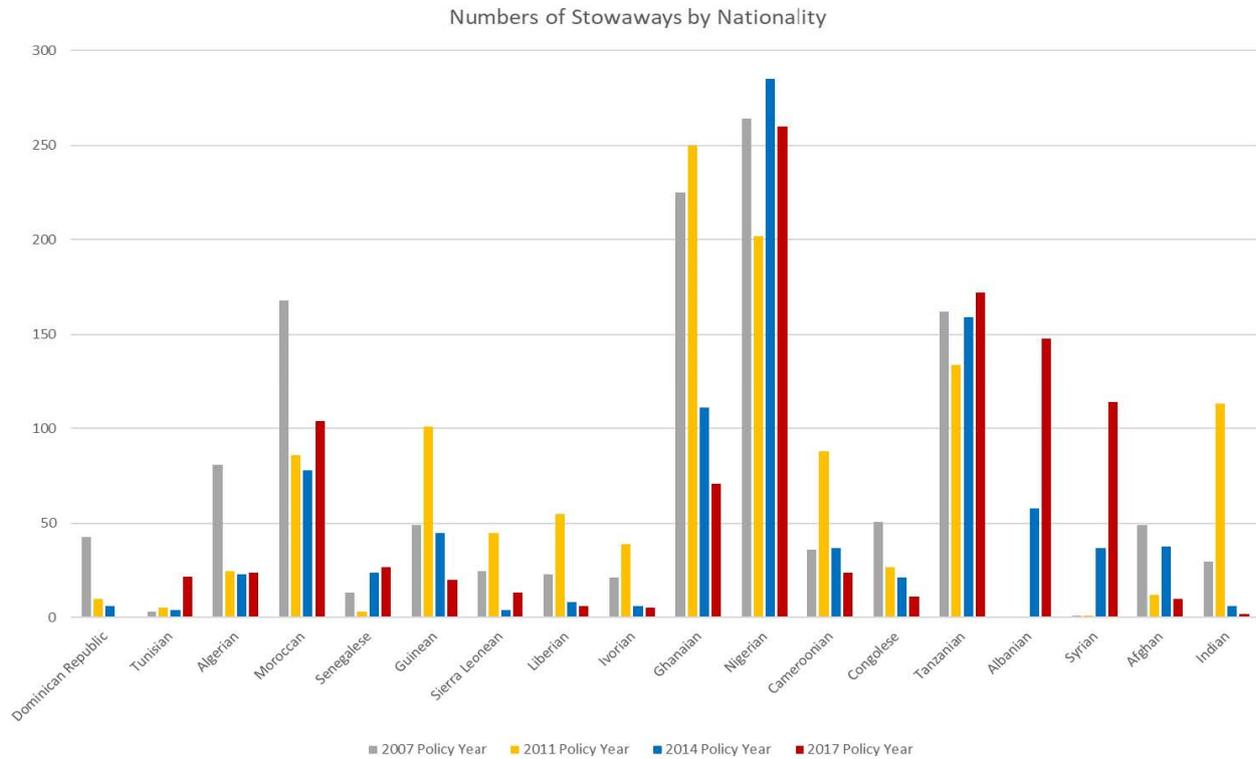
According to the IGP&I analysis, most of the illegal immigrants on ocean-going vessels across the globe came from African countries, with the highest numbers in recent years arriving from Nigeria, Ghana, and Tanzania. The policy year 2017 also saw a sharp increase in the number of stowaways from Syria and Albania. There are no publicly available data on the extent of the stowaway problem in the last couple of years. [Graph 1]

¹ The International Maritime Organization (IMO), through the Facilitation Committee (FAL) introduced the Facilitation Database (FALD) as part of the IMO Global Integrated Shipping Information System (GISIS) to facilitate reporting and global access to information as well as exchange and analysis of data (IMO-FAL Circular Letter 3281/2012)

² The International Group of P&I Clubs (IGP&I) groups thirteen of the major P&I clubs altogether providing liability cover to approximately 90% of the world's ocean-going tonnage). Subject to the terms and conditions of their rules, P&I clubs typically cover the costs incurred by a member in respect of legal liabilities for the maintenance, landing and repatriation stowaways, including fines imposed by local authorities

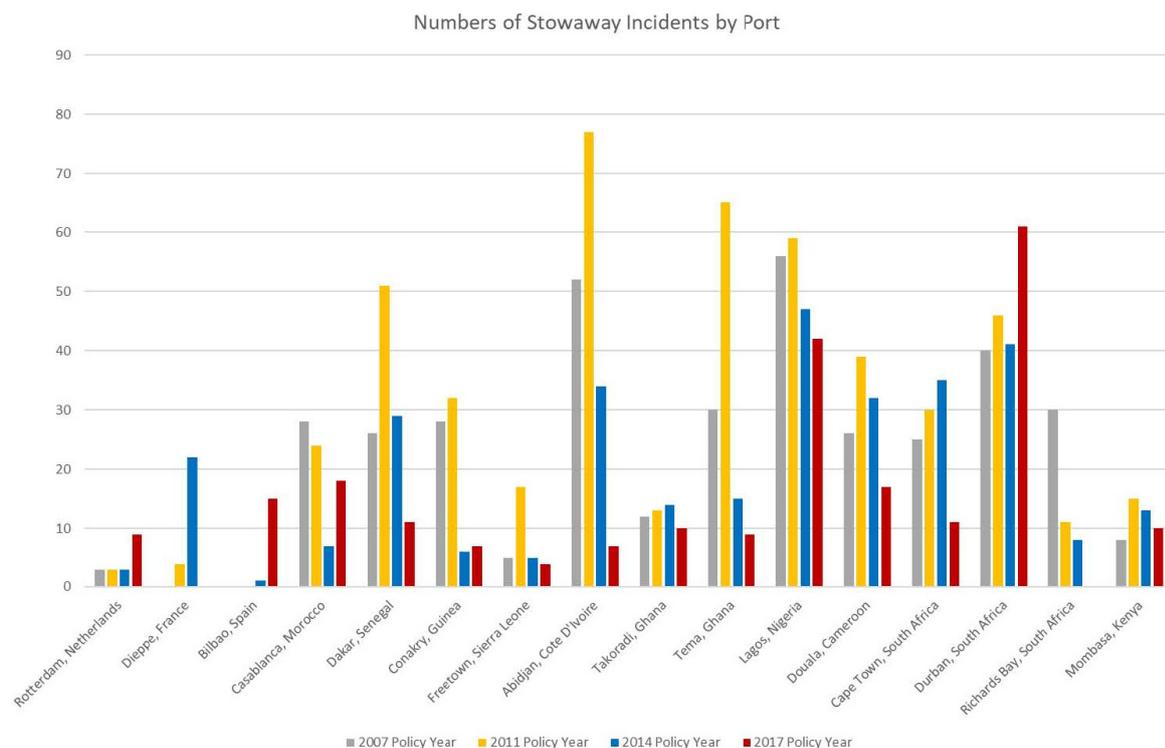
³ FAL 43/13 Feb/2019 (Formalities connected with the arrival, stay and departure of persons: stowaways. IGP&I data on stowaway cases submitted by the P&I Clubs)

IGP&I statistics do not include cases below the deductible, or those case handled by fixed-premium P&I providers; consequently, the stowaway cases amid the ongoing immigration crisis in Eastern Europe and the Mediterranean Sea do not appear in the International Group statistics.



Graph 1: Number of worldwide incidents per stowaway nationality, policy years 2007, 2011, 2014 & 2017 (Source: IGP&I/IMO-FAL)

Typical ports of embarkation of stowaways are primarily on the African continent, with Nigerian, Ghanaian and Tanzanian ports leading the ranking with the highest number of stowaways. However, some European ports are now significantly adding up to the statistics. [Graph 2]



Graph 2: Number of incidents by port of stowaway boarding, policy years 2007, 2011, 2014 & 2017 (Source: IGP&I/IMO-FAL)

1.3. Situation in Brazil

Brazil is traditionally a point of arrival of stowaways. In the few incidents involving people illegally boarding vessels in Brazilian ports, most of the intruders were not Brazilians. They were foreign nationals, mainly from Africa, who stowed away to Brazil, went ashore unnoticed (or with the assistance of the crew) and were caught while attempting to gain access to another vessel to leave Brazil. As stowaways' preferred destinations are still countries in Europe and North America, African stowaways likely end up in Brazilian shores by chance.



Picture 1: A Nigerian stowaway turns himself to the crew after running out of water and food (Source: Proinde)

There are no reliable official statistics on the number of stowaways arriving onboard vessels at Brazilian ports. Nevertheless, our database of stowaway cases that we handled in the past twenty years indicates that the majority of stowaways who arrived in Brazil embarked in West African countries, notably Nigeria, Senegal, Guinea, Ghana and Sierra Leone – the Nigerian port of Lagos was by far the leading stowaway boarding point over the last two decades. Most of the stowaways were (or claimed to be) from Nigeria, Ghana, Guinea, Liberia, and Sierra Leone.

About two-thirds of the vessels that brought stowaways to Brazil over the last two decades were bulk carriers. After unloading goods in West African ports, the ships crossed the Atlantic Ocean in ballast for new fixtures for sugar or grain cargoes at ports along the East Coast of South America, mainly ports in southern Brazil and Argentina.

Consistently with the IGP&I findings, the data show a marked reduction in the number of seaborne stowaways in Brazil in recent years, possibly not so much as a result of improvements in port security measures at the customary embarkation ports, but due to a change in maritime trade patterns.

The few cases investigated by the maritime authority revealed that the stowaway managed to access the vessel due to a lack of effective adherence to the minimum port and ship security standards and guidelines set out in the ISPS Code.

2. Legal duties and obligations

2.1. Legal framework

Brazil has adopted the 1951 UN Refugee Convention, the 1967 UN Protocol and the IMO FAL Convention⁴ dealing with refugees and stowaways, though the guidelines issued under the latter, such as those conceived to prevent unlawful access and to allocate responsibilities, have never been implemented in practice, perhaps because Brazil is a country of landings of shipboard stowaways and not the other way around, so there is little it can do to reduce the illegal embarkations abroad.

Federal Law 13,445 of 2017, the so-called *Lei de Migração* (Migration Law)⁵, governs immigration matters and has been implemented in the form of ordinances, service orders and standard procedures. As the Migration Law is a relatively recent piece of legislation, so far, no specific guidelines have been issued to address how shipboard stowaways should be handled in Brazilian ports. Likely, incidents that arise in the absence of specific rules for this purpose will be dealt at the discretion of the immigration authority, following the practice adopted under the previous regulation, whenever feasible and in harmony with the less restrictive provisions of the new immigration statute.

2.2. Stowaway's status and rights

In contrast with the FAL Convention⁶, Brazilian immigration legislation does not define or qualify what a stowaway is; it conditions entry of what it refers to as "illegal immigrant or stowaway" to an undertaking of the carrier or agent to bear the costs incurred with the stay and repatriation of the intruder, without prejudice to the levying of a fine on the shipowner for each stowaway carried⁷.



Picture 2: Stowaways discovered while hiding in the access to the ship's rudder trunking (Source: Proinde)

⁴ UN Convention Relating to the Status of Refugees 1951, as regulated by Law 9,474/1997 (Refugee Law); UN Protocol Relating to the Status of Refugees 1967; IMO Convention on Facilitation of International Marine Traffic 1965, enacted through Legislative Decree 73/1977 and Federal Decree 80,672/1977

⁵ Law 13,445 of 24/05/2017, Migration Law (*Lei de Migração*), regulated by Decree 9,199/2017, as amended. The Migration Law regulates the rights and duties of migrants and visitors, admission and stay and establishes principles and guidelines for the public policies for emigrants

⁶ Resolution FAL.13(42), Jun/2018 (Revised Guidelines on the Prevention of Access by Stowaways and Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases) defines a stowaway as "a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities."

⁷ Art. 172 of Decree 9,199/2017

The stowaway has the right to express his willingness to seek asylum or refugee status in Brazil at any time and the immigration authority, through the Federal Police ascertain whether the request merits to be entertained for consideration; if so, the case is referred to the National Committee for Refugees (CONARE)⁸. [Section 2.5.4]

While, strictly speaking, the carrier's responsibility for maintaining and returning the stowaway ceases when custody over him is transferred to the Brazilian Government, in some instances, CONARE considered that such liability remains suspended until the claim is finally heard; if accepted, then the carrier would be released; otherwise, the carrier would have to arrange and bear the costs and expenses associated with the removal of the stowaway from the country.

The majority of shipboard stowaways arrive in Brazil unintentionally, many simply do not wish to stay and would rather go back to their country of origin to try to stow away again on another vessel – and eventually obtaining some gratuities in the repatriation process. In recent years, only a small proportion of stowaways arriving by ship sought refuge in Brazil, and among those who did, only a few were ultimately accepted.

2.3. Shipowner's liability

The shipowner or operator of the vessel (carrier) on which the stowaway is found, through the master, has a duty to report the presence of stowaways to the authorities, the next port of call and the flag state, according to the FAL guidelines⁹. It must also bear the costs related to the lodging, wellbeing, and repatriation of the stowaway. The Brazilian immigration authority will only allow the landing of stowaways after the carrier or the agent posts a bond with the Federal Police to undertake these obligations.

The stowaway should not be allowed to work while under the carrier's custody. If he applies for a refuge claim, he will be issued with a provisional identity card and a worker's book enabling him paid-work and social benefits, in which case carrier's liability will cease (or be halted). Even though a carrier may be liable for civil damages caused by a stowaway admitted in Brazil under its responsibility, the stowaway remains personally liable to prosecution if he commits a crime.

2.4. Master's duty to care and report

The master is expected to strictly adhere to the relevant Ship Security Plan and international safety conventions, such as SOLAS Convention and its appended ISPS Code¹⁰. Although not competent to determine whether a stowaway aboard is a refugee, asylum seeker, illegal immigrant or a criminal, the master must treat the illegal immigrant fairly and humanely pursuant to the UN Refugee Convention and always consider the safety of the crew and the safe operation of the vessel.

2.5. Role of the intervening authority

The presence of a stowaway on board a vessel arriving in Brazil triggers the intervention of at least the immigration authority (Federal Police). Depending on the circumstances, other officials may step in to deal with different aspects of the event, especially the maritime authority (Port Captaincy), to verify security issues and adherence to ISPS Code, and the health authority, whose interest is on the sanitation of the ship and the health of those on board.

⁸ *Comitê Nacional para Refugiados* – CONARE (National Committee for Refugees) is the collegiate body linked to the Ministry of Justice and Public Security comprising various state ministries, the Federal Police, NGOs and the UNHCR, with the purpose of analysing and processing applications for recognition of refugee status and asylum in the country

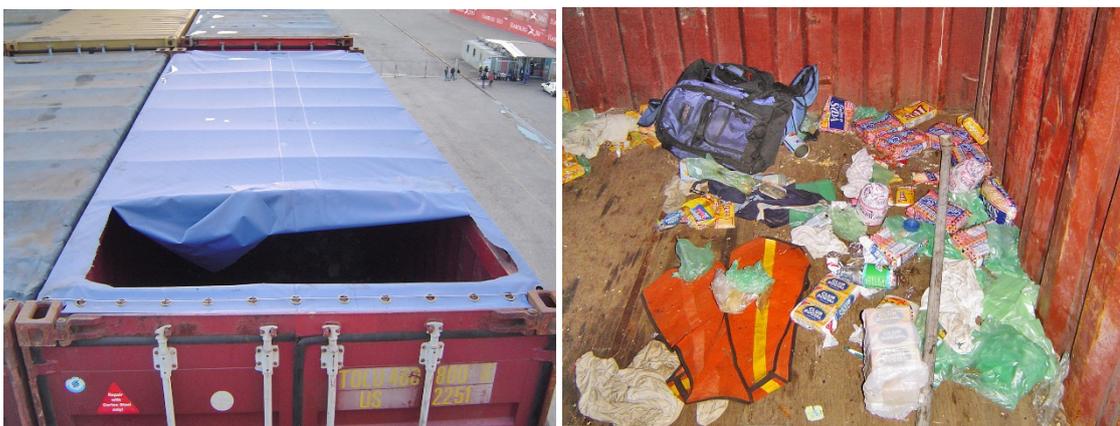
⁹ FAL Resolution 13(42), June/2018: "*Revised Guidelines on the Prevention of Access by Stowaways and the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases*"

¹⁰ International Convention for the Safety of Life at Sea (SOLAS) Chapter XI-2, 1974. International Ship and Port facility Security Code (ISPS Code)

2.5.1. Immigration authority

The *Ministério da Justiça e Segurança Pública* – MJSP (Ministry of Justice and Public Security), has jurisdiction over matters relating to nationality, immigration, and foreigners. Different departments within its structure deal with specific aspects of immigration and foreign labour. The *Departamento de Polícia Federal* – DPF (Federal Police Department) is responsible for the maritime policing (including enforcement of the ISPS Code), immigration controls, security at points of entry ports, airports and ground crossings, issuance and renewal of passports, extensions of periods of stay, drug smuggling and human trafficking, amongst other duties.

The Federal Police are also responsible for the management of the *Registro Migratório Nacional* - RMN (National Migration Registry) and for investigating and deciding on administrative appeals and levying of fines for breach of the immigration laws and regulations.



Picture 3 & 4: Open top container where four stowaways secreted themselves before the unit was loaded (Source: Proinde)

2.5.2. Maritime authority

As an agent of the Navy Commander (maritime authority), represented by the *Diretoria de Portos e Costas* – DPC (Directorate of Ports and Coasts), the port captaincy or agency at the first port of arrival following the discovery of the stowaway has jurisdiction. It will verify whether the relevant maritime regulations were violated and may launch an administrative enquiry to establish the circumstances and factors involved, identify the party responsible for the fact of navigation and make recommendations for improvement of safety practices. [Section 3.5.2]

2.5.3. Health authority

The *Agência Nacional de Vigilância Sanitária* – ANVISA (National Health Surveillance Agency) is the regulatory body of the Brazilian Ministry of Health with the duty of assuring the sanitary surveillance and health control of Brazilian points of entry, ships, and aircraft. ANVISA is responsible for granting the necessary Free Pratique for vessels calling at Brazilian ports and plays a significant role in stowaway cases. [Section 3.4]

2.5.4. Refuge agencies

The *Conselho Nacional de Imigração* – CNIg (National Immigration Council) is the inter-ministerial body that collectively deliberates on immigration policies and granting of work and residence permits to immigrants, refugees and asylum seekers. CNIg will only intervene, through the National Committee for Refugees (CONARE), if the stowaway seeks refuge or asylum.

2.5.5. Port authority

Given that Brazil is a place of landing of stowaways rather than embarkation, the port authority is rarely involved in stowaway cases. It would normally be bound by directives and guidelines issued by the relevant authorities.

2.6. Penalties and criminal sanctions

Bringing a stowaway to Brazil is a mere administrative violation that results in the levying small fine, besides the obligation to upkeep and remove the stowaway from the country. Nevertheless, if there was an omission, collusion or assistance from the master or the crew in the illegal entry of a stowaway, or if his presence on board the vessel has not been informed in a timely or adequate manner, those involved in his concealment may be liable to administrative proceedings and criminal prosecution.

If the stowaway is not treated humanely, or anyone aboard has profited financially from illegal immigration, the penalties of imprisonment are increased.

2.6.1. Removal measures

Subject to the terms of the Refugee Convention and the legal provisions and treaties signed by Brazil, the immigration authority may order the removal of foreign citizens to their country of nationality or origin, or to any other country that accepts them in conformity with international conventions¹¹.

The removal order may be in the form of repatriation¹², deportation¹³ or expulsion¹⁴. Stowaways are subject to repatriation at the expense of the carrier when it has been identified¹⁵.

2.6.2. Illegal immigration

There are no criminal sanctions for migratory reasons in the Migration Law; however, a prison sentence of three to five years, or longer, if aggravated, can be imposed on those responsible for admitting irregular migrants, an offence the Law termed "promotion of illegal immigration", which consists of arranging or facilitating the entry of a foreigner to obtain a financial gain¹⁶.

¹¹ Arts. 46 to 48 of the Migration Law; arts. 178 to 180 of Decree 9,199/2017

¹² Repatriation: administrative act for the return of the traveller without a valid travel document or a visa adequate to the length and purpose of the stay. (art. 49 of the Migration Law and arts. 185 and 189 of Decree 9,199/2017)

¹³ Deportation: administrative act preceded by personal notification to the deportee expressly stating the irregularities verified and a term for regularisation of the status. When the deportee voluntarily leaves the country, the order is deemed as complied with; otherwise, the Federal Police will proceed with the deportation. (arts. 50 & 51 of the Migration Law and arts. 187 to 191 of Decree 9,199/2017)

¹⁴ Expulsion: administrative act whereby the impeded person is removed without the right to re-entry for a specific period. It applies to those condemned by a final judgment for genocide, crimes against humanity, war crime or crime of aggression, as well as to common intentional offences punishable with a penalty of imprisonment. (art. 54 of the Migration Law coupled with arts. 192 to 206 of Decree 9,199/2017)

¹⁵ The costs and expenses incurred with the removal measures may exceptionally be borne by the Federal Union, but only if efforts to recover them from the illegal immigrant, the carrier, or a third-party responsible fail (art. 212 of Decree 9,199/2017)

¹⁶ Art. 115 of the Migration Law introduced an article of law (Art. 232-A of the Brazilian Criminal Code, Law-Decree 2,848/1940) to regulate the crime of promotion of illegal migration

3. Arriving with stowaways

3.1. First actions

IMO and the P&I clubs regularly publish high-quality manuals and guidelines providing a wealth of information on the prevention of access of stowaways to vessels engaged in international trade; thus, this guide will only cover the procedures to be adopted by the ship operators and masters after detection of a stowaway on a vessel heading to a Brazilian port.



Picture 5: Liberian stowaways disembarked at Santos with the assistance of the Federal Police (Source: Proinde)

3.1.1. Procedures after discovery

- a) Deal with the stowaway firmly, but fairly and humanly; always give due consideration to crew safety, the wellbeing of the stowaway and the safe operation of the vessel
- b) Wear disposable mask and gloves when handling a symptomatically ill stowaway, or a stowaway boarded in endemic zones until his health status can be assessed
- c) Search through the stowaway clothing for any items that may pose a danger to him or others and look for documents and papers that can help in his identification
- d) Provide the stowaway with water and food and offer him toilet, shower, and clean clothes
- e) Perform a head-to-toe examination on the stowaway to check his general appearance, mental and physical condition and vital signs. If possible, take photographs or video of any pre-existing personal injuries before starting treatment. If the stowaway displays abnormal clinical condition or behaviour, seek shore medical advice and record details in the medical log
- f) Search the area where the stowaway was found to look for other stowaways, concealed papers, objects, and drugs. If possible, take photographs or video of the scene precisely as found
- g) Clean and disinfect the place of concealment, if necessary
- h) Take an inventory and keep relevant items removed from the stowaway and/or hiding place to be handed over to the authorities at the next port
- i) Notify the presence of the stowaway to the CSO, ship operator, shipping agent (for reporting to the local authorities) and P&I correspondent to seek advice on procedures to be followed

3.1.2. Stowaway's welfare, lodging and victualing

- a) If more than one, accommodate the stowaways separately, as far as possible
- b) Keep the stowaway locked in a tidy and well-secured cabin, ideally away from the main deck level and out of sight of shore workers
- c) Feed the stowaway with the same food and frequency as the other crewmembers
- d) Allow the stowaway to sunbathe and exercise regularly, always accompanied by a crewmember; if more than one stowaway, do one at a time under strict crew surveillance

3.1.3. Safety and security measures

- a) Give the stowaway basic instructions on fire control and abandon ship, his muster station, and his duties on the emergency muster list. Do not sign the stowaway to the ship's articles
- b) Make sure that the cabin where the stowaway will be accommodated is free from any objects that could potentially be used as an instrument of self-harm or physical injury to others (mirrors, lamps, lighting fixtures, pieces and parts of furniture, cutlery, etc.)
- c) Do not use handcuffs, chains, straps, or any means of physical restraint on the stowaway, unless his behaviour jeopardises the safety of the crew and the safe operation of the vessel
- d) Weld steel bars to the cabin's porthole, if necessary, to prevent the stowaway from escaping
- e) If the cabin's door is not of sufficient strength, consider reinforcing it, always ensuring prompt and safe evacuation in case of emergency
- f) Keep a crewmember guarding the cabin door at critical moments of the voyage, especially when the vessel is anchored with land in sight or moored alongside a berth
- g) Consider hiring shore security guards if there are not enough hands on board to ensure that the stowaway is kept secure until his disembarkation or departure from the port on the same vessel
- h) Record any safety or behavioural issues relating to the stowaway
- i) Issue a Stowaway List and include the stowaway details; record his health condition in the WHO Maritime Declaration of Health, if necessary

3.1.4. Questioning the stowaway

- a) If more than one stowaway, examine each stowaway individually and separately
- b) Do not try to befriend the stowaway and limit the conversation to extract as much information as possible to help determine his identity, nationality, and reasons for stowing away
- c) Avoid intimidating attitudes and bear in mind that regardless of whether the stowaway is a genuine refuge seeker or an opportunist, the primary goal is to establish his identity
- d) Collect a complete questionnaire from the stowaway, ideally handwritten by him
- e) If it is not possible to communicate with the stowaway due to language barrier, an interpreter must be arranged to conduct a telephone interview to assist in the identification process

3.2. Incident reporting

The master must issue a detailed statement to the local authorities substantiating the security measures that have been taken, explaining the circumstances of the discovery of the stowaway and providing stowaway's data, including his health status, behaviour and conditions of accommodation, food and security standards prevailing on board.

There is no set timeframe for reporting, so long as it is before the tendering of the notice of arrival. When the presence of a stowaway is discovered after arrival, the report must be sent immediately. The earlier the information is shared, the sooner the local P&I correspondent will be able to start dealing with the relevant authorities to arrange for the landing, documentation, and repatriation of the stowaway.

The process of identifying an undocumented stowaway can begin as soon as he is questioned, well before the vessel arrives at the port of destination. It can be initiated through telephone interviews with the stowaway by experts and consular representatives and exchanging digital copies of documents, questionnaires, and photographs.

If the internet is available on board, short audio or video messages should be captured from smartphones or other similar devices featuring the stowaway telling his story and background can also be useful to speed up the identification process and minimise possible delays.

3.3.1. Minimum required information

The master may use the form annexed to the FAL Convention, the form described in the ship security manual or the more complete forms prepared by some of the P&I clubs. The maritime authority (DPC) has a specific stowaway information form¹⁷. It is important to include as many details as are relevant to discover the identity of the stowaway, including the following:

- Details of the operation carried out at last port of call and cargo handled, if applicable
- Time UTC of drug and stowaway searches before and after departure from last port
- Time UTC and port where the stowaway embarked
- Time UTC, vessel's position and the location where the stowaway was discovered (if the stowaway has gained access hidden with the cargo, the exact place of concealment must be documented together with a copy of the relevant manifest as the charterer may be contractually liable for the ensuing costs and expenses) [Section 6.2]
- Name and rank of the crewmember(s) who first encountered the stowaway
- Procedures adopted after discovery (searches, findings, security measures, etc.)
- Hospitality afforded to the stowaway (accommodation, food, medical check-up, etc.)
- Assessment of physical and mental health and behaviour of the stowaway
- ETA/ETB/ETC of the vessel and identity of the shipping agent at the next port of call

3.3.2. Minimum required documentation

The following documents should accompany the master's statement of facts:

- Questionnaire signed by the stowaway and copies of documents/papers retrieved
- Full body, profile, and passport-size face photographs of the stowaway
- Vessel's particulars and Crew list
- List of the ports of call in the past 30 days
- Latest drug and stowaway search checklists duly completed
- Visitor's logbook covering the period of vessel's stay in the port of boarding
- Deck logbook covering the day of departure, 24 hours before and 24 hours after discovery
- WHO Maritime Declaration of Health (include a copy of the medical logbook, if medical care was provided or medication given to the stowaway during passage)



Picture 4: Medical examination of a stowaway before port health clearance (Source: Proinde)

¹⁷ Item 0316 of the *Normas da Autoridade Marítima para Tráfego e Permanência de Embarcações em Águas Jurisdicionais Brasileiras* (Brazilian Maritime Authority Standards for the Traffic and Permanence of Ships in Brazilian Jurisdictional Waters) - NORMAM 08/DPC, issued by the Navy's Directorate of Ports and Coasts (DPC)

3.4. Port health clearance

ANVISA is the federal agency exercising the port health authority over port installations, cargo vessels and cruise ships. Its technical framework on shipboard health and sanitary controls is broadly in line with the standards set by the International Health Regulations (IHR 2005).

3.4.1. Granting of free pratique

Vessels arriving in Brazil need to obtain a Free Pratique Certificate issued by the local ANVISA station as a condition for entering the port, performing cargo operations, and embarking or disembarking passengers and stores¹⁸.

3.4.2. Vessels arriving from affected areas

ANVISA may demand travellers that have been in affected areas¹⁹ for yellow fever in the past thirty days to carry a valid vaccination card in the WHO format²⁰.

Most of the vessels arriving with stowaways in Brazil departed from African ports that are in or around endemic areas of yellow fever and other infectious diseases. A typical African stowaway seldom carries any form of personal identification, let alone a valid vaccination card. As his health status and the potential risks to public health are undetermined, ANVISA may – and often does – condition the concession of the free pratique to the vessel passing a sanitary inspection.

3.4.3. Sanitary inspection

The sanitary inspection may include a medical examination of the stowaway with blood sampling for malaria tests by a hospital or laboratory accredited by ANVISA. If the stowaway is free of any symptoms – and the result of the malaria test, when necessary, is negative – the free pratique will be granted and the vessel able to commence cargo operations and move crew and passengers. Otherwise, ANVISA will apply health measures that may involve testing everyone onboard for malaria or other infectious diseases, evacuating those fallen ill for medical treatment ashore and disinfecting the vessel.

ANVISA inspectors do generally not visit vessels at anchorage areas; thus, the sanitary inspection is carried out after the vessel berths. The difficulty is that port operators of private terminals may deny berthing of a vessel alongside a working berth until a valid Free Pratique Certificate is provided. In this case, the ship may have to come in a layby berth to pass a sanitary inspection and obtain free pratique before proceeding to the berth where the cargo operation will be performed, thereby generating extra costs with wharfage, compulsory watchmen, pilots, tugboats and other expenses²¹.

3.5. Official investigations

The presence of a stowaway onboard triggers the involvement of various public authorities. The immigration (Federal Police) and maritime (Port Captaincy) authorities are entitled to – and frequently do – conduct official enquiries for different purposes. Foreign nationals may be assisted by an interpreter and the attendance of a lawyer to accompany the deponents is, of course, permitted.

¹⁸ Articles 16 to 21 of RDC 72, 2009, as amended. The Free Pratique Certificate FPC may be granted 'by radio' (issued without a prior sanitary inspection and based on a satisfactory assessment of the information provided) or 'onboard' (issued after vessel has passed a sanitary inspection), which would normally be the mode for vessels arriving from so-called "affected areas" with a stowaway on board, or when there is evidence of a potential or actual public health risk, including sources of infection or contamination

¹⁹ According to IHR 2005 definition, an affected area "means a geographical location specifically for which health measures have been recommended by WHO under these Regulations"

²⁰ WHO International Certificate of Vaccination or Prophylaxis, as appended to the IHR 2005

²¹ Further information on sanitary inspection in Brazil at: <https://proinde.com.br/manuals/shipboard-sanitary-inspections-in-brazil-practical-guidance/>

3.5.1. Immigration enquiry

Jurisdiction over stowaway matters lies with the Federal Police, which may initiate an immigration enquiry to ascertain the circumstances surrounding the stowaway boarding, identify an eventual contribution of the crew to the illegal migration and ensure that the stowaway is treated humanely while under carrier's custody.

The immigration enquiry is usually straightforward and tends not to cause substantial delays to the vessel's schedule. It may involve personal deposition of the stowaway, master and witnesses, and a shipboard investigation, when the police deem appropriate or when there is evidence of a criminal offence committed on board. In the absence of irregularities, the Federal Police will levy a fine²² upon the carrier (one per each stowaway) and decide whether i) the stowaway will remain on board to sail with the vessel, ii) will be allowed to land for repatriation, or iii) will be disembarked to seek refuge.

3.5.2. Maritime enquiry and proceedings

The harbour master at the first port of call is entitled to launch an administrative enquiry to investigate stowaway incidents, expressly defined as a 'fact of navigation' under the relevant norm²³. Port Captaincy hears the stowaway and the crew and conducts investigations to determine the circumstances of the incident from the safety of navigation viewpoint.

Although the maritime enquiry may take several months to be completed, the vessel may depart after the taking of depositions and collection of evidence by the authority. Upon its conclusion, the head of the enquiry issues his report on the parties liable for the fact and forwards the pieces of evidence to the *Tribunal Marítimo* (Maritime Tribunal)²⁴. The entire procedure may take two years or longer to come to a final and binding decision.

3.6. Prospects of disembarkation

Most Federal Police stations permit – some may even demand – the landing of stowaways, whether documented or not. The immigration authority may refuse entry of those arriving on vessels that divert to a Brazilian solely to disembark, or reoffending stowaways that caused problems the last time they ventured into Brazil.

The shipowner may choose, in light of master's feedback and critical assessment of the crew's safety and wellbeing, and the behaviour and health status of the stowaway, to keep him on board, provided vessel returns to the port of origin or to a nearby port where direct repatriation can be safely organised. If repatriation on the same ship is permitted, evidence of acceptance by the country of destination and subsequent proof that the stowaway was safely returned may be required.

Whatever the shipowner's preferred course of action, it is the Federal Police who give the last word on whether the illegal immigrant will remain onboard or be disembarked for repatriation or application for refuge in Brazil.

²² Art. 109, V, Migration Law; art. 307, V, Decree 9,199/2017. Immigration fines against corporate persons range from BRL 1,000 to BRL 1 million per infraction, at the discretion of the authority (art. 108, VI, Migration Law)

²³ *Normas da Autoridade Marítima para Inquéritos Administrativos sobre Acidentes e Fatos da Navegação (IAFN) e para a Investigação de Segurança dos Acidentes e Incidentes Marítimos (ISAIM)* (Brazilian Maritime Authority Standards for Administrative Enquiries on Facts and Accidents of Navigation, and for Safety Investigation into a Marine Casualty or Incident) - NORMAM 09/DPC, issued by the Navy's Directorate of Ports and Coasts (DPC)

²⁴ The Maritime Tribunal - or Admiralty Court - (*Tribunal Marítimo*) is an autonomous administrative entity in charge of issuing administrative judgements and imposing sanctions in respect of maritime casualties and incidents. In most stowaway incidents adjudged by the maritime court, the master or SSO were found responsible for failure to adhere to the ship security regulation required under the ISPS Code, resulting in relatively small fines against the individuals

4. Upkeeping stowaways

4.1. Bond of responsibility

In case the stowaway is allowed to disembark or remain on board to sail with the vessel, the master may have to sign a bond of responsibility to the Federal Police undertaking the bodily integrity of the stowaway and safe handover to the immigration authorities at the port of transfer.

If the stowaway is disembarked for subsequent repatriation, the carrier or its shipping agent will have to undertake before the immigration authority to ensure the wellbeing of the stowaway and meet the costs and expenses associated with his stay and subsequent return.

4.2. Security

Because of potential fines from the immigration and port health authorities as well as eventual penalties from the Maritime Tribunal, there may be instances where the local agents would seek some financial guarantee from vessel's interests as a condition to put up the bond of responsibility and defray the various costs generated with the incident, particularly when they were appointed by the charterer and have no commercial relationship with the shipowner or ship manager.

Letters of undertaking issued by first-class P&I clubs (or by their local correspondents upon authority) are widely accepted as a form of security. Alternatively, the P&I correspondent may place the bond directly with the Federal Police in the stead of the agent and meet the costs and expenses in the first instance for later reimbursement by the shipowner or the liability insurer, as may be agreed.

4.3. Local detention

Unless the stowaway commits a crime, he will not be taken into police custody. Besides, there are no facilities in Brazilian ports for the temporary detention of illegal immigrants.

After disembarking, the stowaway should be decently lodged and, ideally, watched by private security guards round the clock to prevent escape. In case the stowaway runs away, the fines levied by the Federal Police may be increased, with the remaining liable for compensating damage or injury caused to third parties by the stowaway while on the loose.

The law does not require the employment of private security. Still, such measure has been requested or recommended by Federal Police stations in most Brazilian ports in the absence of adequate transit facilities to keep the stowaway while he is documented for repatriation.

5. Returning stowaways

5.1. Identification and documentation

In principle, a stowaway who carries a valid passport and is otherwise not eligible to seek refuge may be promptly repatriated, though the immigration authority and or the airline involved may require the employment of escorts.

When the stowaway does not hold any identification, which is typically the case for African stowaways, the relevant diplomatic representation has to be contacted to assist and provide the required emergency travel document to enable the return. Some embassies will require a face-to-face interview with the stowaway by a consular representative attending on-site before issuing the travel document, the associated costs falling on the carrier.

It is common that an undocumented stowaway, particularly the more experienced ones – the "professional stowaways" delays the repatriation scheduling. They provide false information about their real identity and walk of life to delay their identification and put off repatriation plans, mostly as a way to extort the shipowner into buying their good behaviour. Indeed, regular stowaways would openly attempt to demand substantial amounts of money as a payoff in exchange for their cooperating and telling the truth. Their rationale is that it is cheaper for the shipowner to give them money for them to go home quietly than to incur in substantial costs and expenses indefinitely.

Most African nations with a high prevalence of embarkation of stowaways, such as Nigeria, Cameroon, Ghana, and Ivory Coast, to name a few, have embassies in Brasilia that are very responsive and cooperative in the facilitation of the identification and repatriation processes.



A Cameroon stowaway is interviewed by the consular authority of his home country for documentation

Documents for nationals of other African countries with a high incidence of stowaways that do not have consular representation in Brazil, such as Liberia and Sierra Leone, have to be procured from overseas embassies and consulates, often through the assistance of the worldwide network of P&I correspondents.

The length of time that will be required to arrange and obtain a travel document depends on the level of collaboration afforded by the stowaway and the responsiveness of the diplomatic representation of his claimed nationality.

All costs incurred with documentation and attendance of consular representatives are for shipowner's account.

5.2. Repatriation

Once an undocumented stowaway has been provided with a temporary travel document, vaccinated and issued with transit visas where required, he will be ready for repatriation, there only remaining the repatriation route to be chosen, and the Federal Police approval of the repatriation plan.

The fewer connections, the fewer the chance of the stowaway making a scene during stopovers or plane changes. The quickest – and sometimes cheapest – repatriation route to West and Central African countries is through South Africa and Morocco. At the same time, some hub airports in Europe also offer convenient connections to countries in North and East Africa.

P&I correspondents at both ends generally work closely together to arrange escorts, when required, procure the necessary transit visas and security clearances from the airport authorities and airlines involved in the repatriation exercise.

In some cases, it is also possible to return the stowaway on board the same vessel he stowed away. While the costs involved in repatriating a stowaway on a ship may be lower than by air, it is essential to consider his willingness to remain on board and never underestimate his underlying determination. Another factor to ponder is the number of stowaways involved and whether the vessel's crew can realistically handle the situation, without prejudice to their regular duties and functions and the safe manning of the ship.

When stowaways travel in groups, their drive and motivation grow stronger. If they are kept on board against their will, chances are they will resist angrily and resort to violent means to force an evacuation, which includes vandalising their quarters, self-inflicting injuries, hunger striking, fighting among themselves or jumping overboard when in enclosed waters to call public and media attention.

If the vessel sails away with stowaways, shipboard security measures should be enhanced, and the shipowner should consider hiring shore security personnel to help the crew to guard the stowaways during the voyage until they are safely disembarked.

5.3. Escorting

The Migration Law is silent about the obligation of the carrier to engage escorts in long-haul repatriations, which is the case of stowaways returned from Brazil. But in practice, the Federal Police demand escorts to accompany the stowaway on his return to prevent him from disturbing other passengers and harassing the cabin crew or even jeopardise flight safety.

Regardless of Federal Police decision, the airlines are entitled – and usually require – escorts, unless the stowaway is a national of the same country as the airline and is willing to go homebound on a direct non-stop flight. Ultimately, the decision on the use of escorts is made by the airline concerned following a risk assessment by its aviation security department in line with the airline's security policy and relevant guidelines issued by IATA²⁵.

In some Brazilian ports, stowaways are repatriated with Federal Police officers accompanying them until at least the last airport of departure, where relieve escorts arranged by the shipowner (or the P&I correspondent) take over the duty. Police officers on escorting duty abroad must obtain a permit from the Ministry of Justice before leaving the country on an official mission and delays of several days or weeks are frequent due to the bureaucracy and the unavailability of police workforce in most ports.

²⁵ International Air Transportation Association (IATA) Guidelines for the Removal of Deportees, Ver, 3, 2010

Whether travelling with police or private escorts, each stowaway on long-haul flights must be escorted by at least two guards, and airlines' security department usually allow no more than two stowaways plus the respective escorts in each plane. For safety reasons, the Federal Police or the airline may limit the repatriation to one stowaway per flight.

The Federal Police may accompany the repatriation party until the last point of departure from Brazil to certify that the stowaway has safely left the country.

All costs associated with the repatriation are to be borne by the shipowner, even if the exercise is frustrated (because the stowaway misbehaves and is denied boarding by the pilot-in-command, for instance) and has to be repeated at a later date.

The carrier will only be discharged from liability once the removal has been completed to the satisfaction of the immigration authority.

6. Financial exposure

6.1. Basic expenditures

It is not possible to determine in advance how much the processing of a stowaway incident would cost for sure. It depends on several factors, such as the length of stay, need of medical assistance, identification and documentation, repatriation routes available and the number of escorts required.

We roughly estimate that the basic, unavoidable expenditure directly arising from the presence of the stowaway would in average be anywhere between USD 15,000 and US\$ 30,000 per stowaway, typically including but not limited to the following costs, expenses, and fines:

- Immigration fines
- Clothing and toiletry
- Lodging and victualing
- Private security
- Stowaway's one-way ticket and transit visa, if needed
- Stowaway's pocket money
- Escorts' return tickets, accommodation abroad and professional fees
- Consular fees and expenses

The average cost to return a stowaway from Brazil is slightly higher than that experienced by the P&I clubs elsewhere in the world, possibly because of higher detention costs and airfare.

6.2. Extra expenditures and losses

Disbursements of variable nature may also be incurred in some stowaway incidents, such as:

- Medical examination and blood sampling for port health clearance
- Port health clearance expenses (fees, transportation costs)
- Sanitary fine
- Medical expenses and medicines
- Maritime authority fine

Apart from the above direct disbursements, the shipowners incur in additional losses, some of which are not recoverable under a typical P&I insurance cover, for instance:

- Deviation to land stowaways
- Loss of hire
- Delays
- Additional wharfage with layby berth, including mooring gangs and boats, where required
- Expenses with tugs, pilot, and compulsory watchmen
- Damage to the vessel and/or cargo caused by stowaways

Some charter parties contain a "Stowaway Clause" stipulating that where the stowaway has gained access to the vessel hiding in the cargo or container or by any other means related to the cargo operation, the charterer is liable towards the shipowner for the consequential costs and expenses and the vessel remains on hire during the time lost. [Section 3.3.1]

7. Conclusion

Although stowaways have been around ever since overseas shipping came to exist, their presence aboard modern-day vessels still has serious consequences. Firstly, to the stowaways themselves. When hiding in enclosed or difficult to reach spaces within the ship, the stowaways are exposed to the risk of running out of water and even suffocating. The safety of the crew may also be endangered, as they are exposed first hand to physical abuse and contagious diseases, potentially affecting the safe manning of the vessel.

In addition to the risk to the ship and to lives on board, the presence of stowaways often results in operational delays to the vessel, in addition to substantial costs and expenses for the shipowner and its liability insurers.

The number of stowaways arriving at Brazilian ports has reduced drastically in recent years, possibly due to a combination of enhanced ship security and pre-departure searches with changes in commercial shipping patterns – nowadays, very few vessels are calling at ports in West Africa before heading to Brazilian ports along the East Coast of South America, so that the flow on the 'stowaway bridge' over the South Atlantic has been greatly reduced, with only a few incidents being registered in the past couple of years.

Despite the drop in the number of stowaway cases, the threats they pose remain the same, while the costs associated with their identification and repatriation has increased substantially, as many people are now stowing away for a living. Therefore, shipowners should continue to invest in resources to prevent illegal boarding, especially in ports known to be hotspots for stowaways.

When prevention is no longer possible, whenever a stowaway is discovered, the master must always immediately inform shipowner and the P&I club or correspondent at the next port of call to obtain specific and timely advice on actions to be taken to better manage the situation and report to the local authorities.

Editor: Ricardo Martins
ricardo.martins@proinde.com.br

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SANTOS (MAIN OFFICE)	REPRESENTAÇÕES PROINDE LTDA.
Address	Rua Itororó, 3 – Sala 31 11010-071 – Santos-SP Brazil
Telephone	+ 55 13 4009 9550
General Email	proinde@proinde.com.br
RIO GRANDE	REPRESENTACOES PROINDE LTDA. <i>c/o FARINON, CARVALHO DA SILVA</i>
Address	Rua Barão de Cotegipe, 443 – Sala 610 96200-290 – Rio Grande-RS Brazil
Telephone	+55 53 3233 1500
General Email	proinde.riogrande@proinde.com.br
RIO DE JANEIRO	REPRESENTAÇÕES PROINDE (RIO) LTDA.
Address	Av. Rio Branco, 45 – Sala 2402 20090-003 – Rio de Janeiro-RJ Brazil
Telephone	+ 55 21 2253 6145
General Email	proinde.rio@proinde.com.br
VITORIA	REPRESENTAÇÕES PROINDE LTDA. <i>c/o WS COMÉRCIO E SERVIÇOS MARÍTIMOS LTDA.</i>
Address	Rua Professor Elpidio Pimentel, 320 – Sala 401 29065-060 – Vitória-ES Brazil
Telephone	+55 27 3337 1178
General Email	proinde.vitoria@proinde.com.br
SALVADOR	REPRESENTAÇÕES PROINDE LTDA. <i>c/o PERINÁUTICA LTDA.</i>
Address	Rua Miguel Calmon, 19 – Sala 702 40015-010 – Salvador-BA Brazil
Telephone	+55 71 3242 3384
General Email	proinde.salvador@proinde.com.br
RECIFE	REPRESENTAÇÕES PROINDE (NORDESTE) LTDA.
Address	Av. Visconde de Jequitinhonha, 209 - Sala 402 51021-190 – Recife-PE Brazil
Telephone	+55 81 3328 6414
General Email	proinde.recife@proinde.com.br
FORTALEZA	REPRESENTACOES PROINDE LTDA. <i>c/o ABACUS REPRESENTAÇÕES LTDA.</i>
Address	Rua Osvaldo Cruz, 01 – Sala 1408 60125-150 – Fortaleza-CE Brazil
Telephone	+55 85 3099 4068
General Email	proinde.fortaleza@proinde.com.br
BELÉM	REPRESENTAÇÕES PROINDE (BELÉM) LTDA.
Address	Travessa Joaquim Furtado, Quadra 314, Lote 01 – Sala 206 68447-000 – Barcarena-PA Brazil
Telephone	+55 91 99393 4252
General Email	proinde.belem@proinde.com.br
MANAUS	REPRESENTACOES PROINDE (NORTE) LTDA.
Address	Av. Theomario Pinta da Costa, 811 – Sala 204 69050-055 – Manaus-AM Brazil
Telephone	+55 92 3307 0653
General Email	proinde.manaus@proinde.com.br

Our offices are open Mondays to Fridays from 08:30 to 12:00 and from 14:00 to 18:00. Any matter requiring attention outside office hours should be communicated through our after-hours numbers. Emails are not monitored outside office hours.

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