
Brazil: 'New Migration Law' to affect visa types and individual tax residence rules for foreigners

November 9, 2017

In brief

The 'New Migration Law' (Law 13.445 issued in May of 2017) has formally revoked the 'Foreigner Statute Law' (Law 6.815/1980), defining the rights and duties of Brazilian migrants and the legal situation of foreign individuals in Brazil. The main purpose of the new legislation is to ensure equal rights and opportunities to foreigners as if they are Brazilians citizens, as well as simplify the procedures for entrance and residence in Brazil. With respect to the latter, the Law has created new types and characteristics for allowable visas, extended the coverage conditions for the temporary visa, and introduced a new authorization for residence.

Even though the New Migration Law will enter into force as of November 21, 2017, implementation of the proposed changes will still depend on additional regulations to be issued by the immigration authorities. The new system will affect mobility planning and processes, as well as the individual tax residence rules for foreigners in Brazil.

In detail

Law 13.445/2017 has established a new legal system for foreigners in Brazil. The main aspects of the new legislation specifically impacting mobility processes are summarized below:

Types of visas

The New Migration Law states that the following types of visas can be granted to an individual who intends to enter or remain in Brazil:

Visit visas - will be applicable for those who do not intend to

establish residence in Brazil, such as for tourism, business, transit, etc. This category of visa prohibits the applicant to perform a remunerated activity; however, the foreigner can receive specific payments such as daily allowances, travel expenses, and other types of earnings.

Temporary visas - will be applicable for work (with or without an employment contract), research, health treatment, study, vacation or summer job, family reunion, investment etc.

Furthermore, one of the important changes introduced by the Law comprehends the possibility of applying for the temporary visa for work by waiving the requirement of a formal job offer and instead providing evidence of a higher degree diploma or equivalent.

Official, diplomatic, and courtesy visas - are generally applicable for foreign government representatives or private employees who travel to Brazil for an official visit, under a temporary or permanent nature.

In addition to the aforementioned visas and based on the humanitarian treatment aimed, the Law also defines important instruments of protection for foreigners in specific scenarios involving, for example, stateless persons, political asylum, and bordering countries.

Residence authorization

A new category related to the authorization of residence is outlined by the Law for foreigners who enter Brazil holding temporary visas, as stated above, as well for the visit or courtesy visa holders, among others conditions. Requirements to be defined in specific regulations must also be met.

Registration

Temporary visa holders have a 90-day deadline for registration with the local authorities, e.g., the Brazilian Federal Police. For the residence requestor, registration must be done within 30 days.

Once the local registration is made, a proper document entitled 'National Migratory Register' (RNM) will be issued on behalf of the foreigner. This latter document replaces the

'Foreigner's National Registry' (RNE) previously issued for all expats.

Pecuniary penalties and deportation

The penalties for infractions have also changed. For infractions committed by an individual, a penalty ranging from BRL 100.00 (one hundred Reais) to BRL 10,000.00 (ten thousand Reais) may be charged.

On the other hand, for infractions committed by companies, the penalties range from BRL 1,000.00 (one thousand Reais) to BRL 1,000,000.00 (one million Reais).

A foreign individual under an irregular immigration status may be subject to a deportation procedure, if the situation is not regularized after a notification is issued within a deadline of 60 days (extendable by equal period.) This assumes the legal guarantees of defense are respected.

The takeaway

How will these new rules affect mobility processes in Brazil?

The implementation of the new changes introduced by the New Migration Law will depend on the

issuance of further regulations by the local authorities, specifically with respect to the procedures for visa issuances. The new rules are expected to modify significantly the immigration processes used by companies when transferring foreign individuals to Brazil.

The aforementioned legislation will also impact the current individual tax residence rules with respect to foreign individuals in Brazil, which will need to be duly updated to take into account the new types of visas and new rules for residence authorization. In addition, the potential labor and social security obligations for each scenario should be analyzed given the new immigration system.

How can PwC help?

PwC can assist in identifying the impacts generated by the New Migration Law as it relates to mobility planning and processes. PwC can also assist with analyzing the individual tax and employment level consequences of the new law, with the aim of reaching proper legal compliance as well as potential cost savings.

Let's talk

For a more detailed discussion of these issues, please contact your Global Mobility Services engagement team or one of the following professionals:

Global Mobility Services – Brazil

Reinaldo Medina
+ 55 19 3794 5458
reinaldo.medina@pwc.com

Flavia Fernandes
+ 55 11 3674 3912
flavia.fernandes@pwc.com

Global Mobility Services – United States

Peter Clarke, *Global Leader*
+1 (646) 471-4743
peter.clarke@pwc.com

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