

JOSÉ MAURÍCIO MACHADO  
CARLOS AUGUSTO DA CRUZ  
MAURI BÓRNIA  
RENATA ALMEIDA PISANESCHI  
LUCIANA FELISBINO  
ROCHELLE RICCI  
JULIANA MARI TANAKA  
EDUARDO AMIRABILE DE MELO  
FERNANDO FARINELLI  
ANDRÉ BLOTTA LAZA  
FERNANDO V. A. TELES DA SILVA  
GUILHERME LANZELLOTTI MEDEIROS  
ROGÉRIO GASPARI COELHO  
DANIELLE RAMOS DA SILVA  
MARTHINA GASQUES TEIXEIRA  
FELIPE MUTTI DE ALMEIDA MONTEIRO  
STELLA LAMARDO GROTHGE  
BEATRIZ DE CARVALHO EDINALDO  
KAROLINA DE MELLO PEREIRA  
VICTOR ANTONIO BRUNO MOREIRA  
RAFAELLA TCHAKERIAN HAKIM  
PRISCILA DORMEIA GUILHOME  
ISABELLA G. PEREIRA BARRETO

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EDMILSO GOMES DA SILVA  
LISIANE B. H. MENOSSE PACE  
ERIKA YUMI TUKIAMA  
GUSTAVO DE FREITAS LEITE  
THIAGO RAMOS BARBOSA  
LANA PATRÍCIA PEREIRA BAPTISTA  
GABRIEL CALDIRON REZENDE  
PEDRO CAVALCANTI BOTELHO  
AMANDA ALVES BRANDÃO  
PALOMA YUMI DE OLIVEIRA  
RAPHAEL GOUVEIA BELLO  
CAIO FINK FERNANDES  
RENATA ABBUD DE OLIVEIRA  
IVA MARIA SOUZA BUENO  
CAETANO THOMAZ F. ANTUNES  
FELIPE CASSAROTTI DE SOUZA  
RODRIGO GONZAGA DE OLIVEIRA  
INGRID CRISTINA SILVA DE SOUZA  
JOSÉ MARIA QUEIROZ JUNIOR  
GABRIELE M. HOLLAND RONDON  
MARIANA MARIOT PRADO  
ANA CAROLINA GEORGES, E CASTRO

LUÍS ROGÉRIO G. FARINELLI  
CRISTIANE M. S. MAGALHÃES  
RICARDO M. DEBATAIN DA SILVEIRA  
PAULO ROGÉRIO GARCIA RIBEIRO  
MAURO TAKAHASHI MORI  
SORAIA MONTEIRO DA MATTA  
MARCEL AUGUSTO SATOMI  
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ANDRÉ T. JUNQUEIRA AMARANTE  
RAPHAEL OKANO P. DE OLIVEIRA  
NATHÁLIA DE A. MARQUES FRAGA  
LÚCIO BRENO PRAVATTA ARGENTINO  
AMANDA DE OLIVEIRA GOMIDE  
MABEL DE ÁVILA SANTOS  
AMANDA REGIANI ZELI  
MANUELA CURTO DUARTE SILVA  
GUSTAVO BONI DOS SANTOS  
RENATO CARVALHO DE CASTRO  
EMANOEL CONSTANTINO SAMIOTIS  
MARIA ALMEIDA SANCHES  
GABRIEL BARONI DE ANDRADE  
JULIA RODRIGUES ANDRADE  
RODRIGO COLOZIO TRUJILLO

JÚLIO M. DE OLIVEIRA  
ROSIENE SOARES NUNES  
DANIEL LACASA MAYA  
ROBERTO FLEURY A. CAMARGO  
RENATO SILVEIRA  
CAROLINA ROMANINI MIGUEL  
SUZANA CAMARÃO CENCIN  
LORENA MORAIS XIMENES CAMPOS  
STEPHANIE JANE MAKIN  
DANIELA CATTUCCI CARONE  
RAFAELA SCORZA DE A. CASTRO  
NATÁLIA MAZIERO DE OLIVEIRA  
RENATA DALLA TORRE AMATUCCI  
ROBERTO MAGNO RIBEIRO NETO  
DANIELLA CAMARGO DE BARROS  
KRISTINE MONTEIRO JENSEN  
VICTOR BULÇÃO MARTINELLI PINTO  
CASSIO M. GUALBERTO NEVES  
GABRIELLA OLINTO DOS ANGELOS  
DEBORA FREIRE GONÇALVES  
CONSULTOR  
NELIO B. WEISS



SÃO PAULO  
AV. BRIGADEIRO FARIA LIMA, 1656  
11º ANDAR (01451-918)  
SÃO PAULO - SP - BRASIL  
T. + 55 11 3819 4855

BRASÍLIA  
COMPLEXO BRASIL XXI - BLOCO A  
SHS QUADRA 06 CONJ.6 - SALA 808  
ASA SUL (70316-100)  
BRASÍLIA - DF - BRASIL  
T. + 55 61 3039 8081

RIO DE JANEIRO  
PRAÇA FLORIANO, 19 - 4º ANDAR  
CENTRO (20031-050)  
RIO DE JANEIRO - RJ - BRASIL  
T. + 55 21 3550-3000

www.machadoassociados.com.br

## LEGAL LETTER / NOVEMBER 2017

### THE NEW MIGRATION LAW AND THE VISAS FOR FOREIGNERS

*Renata A. Pisaneschi and Amanda de O. Gomide<sup>1</sup>*

1. Law 13,445, of May 24, 2017 (“Migration Law”) revoked Law 6,815, of August 19, 1980 (“Statute of the Foreigner”), as well as Law No. 818, of September 18, 1949 (which governs nationality and political rights), and established new rules on migratory policy in Brazil, including the rights and duties of migrants and visitors in Brazil, the entry and stay of foreigners, and the rules for the protection of Brazilians abroad. The Migration Law will come into force on **November 22, 2017**.
2. Among the main changes brought by the Migration Law, we highlight the rules about the modalities, characteristics, requirements and procedures for the obtaining of visas by foreigners that intend to live in Brazil.
3. The Migration Law extinguished the permanent visa<sup>2</sup>, increased the cases for granting temporary visa (for example, work visas and investors’ visa), and created the residence permit, which can be requested by the foreigner who, for example, requires residing in Brazil for work or investment purposes.
4. It should be noted that, as set forth in the Brazilian Corporate Law and the Brazilian Civil Code, officers, members of the Fiscal Board and attorneys-in-fact of partners must be resident in Brazil to exercise their positions, and these laws do not establish whether such residence should be permanent or not.

<sup>1</sup> Renata A. Pisaneschi and Amanda de O. Gomide are members of Corporate and Contractual area of Machado Associados

<sup>2</sup> The permanent visa applies, among others, in the following situations: (i) foreign investors wishing to reside in Brazil; and (ii) foreigners who wish to hold office as officers of Brazilian companies.



**5.** In turn, the Department of Business Registration and Integration (“DREI”), which regulates the Commercial Registries in Brazil, sets forth by means of Normative Instruction 34, of March 3, 2017, that officers and members of Fiscal Boards must have permanent visas.

**6.** Considering the extinguishment of the permanent visa and the creation of the residence permit, as per the Migration Law, the requirement of Normative Instruction 34 of the DREI should be better evaluated and eventually adapted, as the case may be.

**7.** Although the Migration Law does not provide further details about the procedures applying to the obtaining of the residence permit, it is clear that it must be applied for and obtained in Brazil (rather than in the Brazilian Consulate abroad), and it will be a way to regularize the situation of foreigners in Brazil. As per the Migration Law, in general, the cases for granting residence permits are the same for granting temporary visas, and the foreigner can request successive residence permits.

**8.** There is still no information about the requirements for granting, procedure for obtaining, and period of validity of the visas and residence permits, nor about whether the residence permit will be granted on a temporary or permanent basis. These issues will have to be regulated soon.

**9.** We emphasize that the visas issued before the Migration Law comes into force can be used until their expiration date. The regulation should provide for the possibility to transform the visa obtained during the Statute of the Foreigner and the extension of its expiration date.

**10.** It is expected that the early days of effectiveness of the Migration Law will be complex because of the changes to the procedures, the short time to its implementation, and the adjustments that will be necessary.

São Paulo, November 2017

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