

# SUMMARY

1. - **FOREIGN CAPITAL IN BRAZIL**
  - 1.1 Restrictions on Foreign Investment
  - 1.2 Registration of Foreign Capital
  - 1.3 Currency Investments
  - 1.4 Investment by Conversion of Foreign Credits
  - 1.5 Investment by Import of Goods without Exchange Cover
  - 1.6 Remittance of Profits and Treaties to Avoid Double Taxation
  - 1.7 Reinvestment of Profits
  - 1.8 Repatriation
  - 1.9 Remittances Abroad
  - 1.10 Transfer Abroad of Investments in Brazil
  - 1.11 Offshore Loans
2. - **TYPES OF BUSINESS ORGANIZATIONS**
  - 2.1 *Limitadas*
  - 2.2 Brazilian Joint-stock Companies
  - 2.3 Participation Certificates
  - 2.4 Subscription Warrants
  - 2.5 Debentures
  - 2.6 Shareholders' Rights
  - 2.7 Shareholders' Agreements
  - 2.8 Corporate and Monitoring Bodies
  - 2.9 General Meetings
  - 2.10 Management Bodies
  - 2.11 The Board of Directors
  - 2.12 The Executive Committee
  - 2.13 The Audit Committee
  - 2.14 Liability of the Senior Management
  - 2.15 Transformation
  - 2.16 Mergers, Consolidations and Spin-offs
  - 2.17 Wholly-owned Subsidiaries
  - 2.18 Joint Ventures
3. - **FINANCIAL INSTITUTIONS**
  - 3.1 Commercial Banks
  - 3.2 Investment Banks
  - 3.3 Credit, Financing and Investment Companies (*Financieras*)
  - 3.4 Securities Dealerships
  - 3.5 Brokerage Companies
  - 3.6 Multiservice Banks
  - 3.7 Leasing Companies
  - 3.8 Licensing of Financial Institutions
  - 3.9 Agencies/Branches
4. - **BRAZILIAN CAPITAL MARKET**
  - 4.1 Acquisition of Control
  - 4.2 Disclosure Requirements
5. - **EUROBONDS**
6. - **AMERICAN DEPOSITARY RECEIPTS - ADR**
7. - **PORTFOLIO INVESTMENTS**
8. - **INSURANCE COMPANIES**
9. - **INTELLECTUAL PROPERTY**
  - 9.1 Industrial Property
    - 9.1.1 Patents
    - 9.1.2 Trademarks
    - 9.1.3 Technology Transfer Agreements and Trademark or Patent License Agreements
  - 9.1.4 Informatics
  - 9.2 Copyrights
  - 9.2.1 Software
  - 9.3 Cultivated Plant Variety Protection
10. - **CORPORATE TAXES**
  - 10.1 Income Tax
  - 10.2 Social Contributions
  - 10.3 Sales Taxes
  - 10.4 Tax on Services
  - 10.5 Tax on Financial Transactions
  - 10.6 Investment Incentives
  - 10.7 Manaus Free-trade Zone
    - 10.7.1 Company Establishment
    - 10.7.2 Tax Incentives
    - 10.7.3 Current Panorama
  - 10.8 Foreign Trade System
11. - **BANKRUPTCY**
  - 11.1 Reorganization
12. - **ENVIRONMENT**
13. - **LABOR LAWS – GENERAL ASPECTS**
  - 13.1 Employment Contract
    - 13.1.1 New Types of Employment Contract
  - 13.2 Basic Rights of Employees
  - 13.3 Suspension of an Employment Contract
  - 13.4 Termination of an Employment Contract
  - 13.5 Temporary Work
  - 13.6 Foreign Workers - Job Opportunities
  - 13.7 In-house Job Accident Prevention Commission – CIPA
  - 13.8 Unions
  - 13.9 Employees' Participation in Corporate Profits
  - 13.10 Social Security Charges
14. - **IMMIGRATION CONTROL**
  - 14.1 Temporary Visas
  - 14.2 Permanent Visas
15. - **ANTITRUST LAWS**
16. - **CONTRACTUAL CHOICE OF LAW AND JURISDICTION**
17. - **ARBITRATION**
18. - **MERCOSUL**
- CONCLUSION**

## 1. - FOREIGN CAPITAL IN BRAZIL

Foreign capital in Brazil is governed by Laws Nos. 4131 (the Foreign Capital Law) and 4390 of September 3, 1962 and August 29, 1964, respectively. Both laws are regulated by Decree No. 55762 of February 17, 1965, and have been amended.

According to Law 4131/62, "foreign capital is considered to be any goods, machinery and equipment that enter Brazil with no initial disbursement of foreign exchange, and are intended for the production of goods and services, as well as any funds brought into the country to be used in economic activities, provided that they belong to individuals or legal entities resident or headquartered abroad."

There are two official exchange markets in Brazil, both of which are subject to Central Bank regulation, and operate at floating exchange rates:

- (a) the free commercial/financial exchange rate market, which is reserved basically for (i) trade-related transactions (import and export); (ii) foreign currency investments in Brazil; (iii) foreign currency loans to residents in Brazil; and (iv) other transactions involving remittances abroad that are subject to preliminary approval from the Brazilian monetary authorities; and
- (b) the tourism exchange rate market, which was initially developed for the tourism industry, and was later expanded to cover certain other transactions. Applicable regulations indicate the types of transactions that qualify for this market.

While both markets operate at floating rates negotiated between the parties, the key distinction between them is that (i) the commercial/financial exchange market is restricted to transactions that in certain cases require preliminary approval from the Central Bank of Brazil; and (ii) the tourism exchange market is open to transactions that do not require such approval.

Exchange operations are effected by means of exchange contracts, and may be divided into transactions entailing the entry of foreign capital, and transactions entailing an outflow of foreign exchange.

Effective from February 1, 1999, the exchange positions on the free and floating exchange rate markets were unified for financial institutions, according to Central Bank Resolution No. 2588 of January 25, 1999. Resolution 2588/99 may be viewed as the first step taken by the Central Bank of Brazil towards unification of the free and floating exchange rate markets.

### 1.1 Restrictions on Foreign Investment

Participation of foreign capital in the following activities is prohibited:

- nuclear energy;
- health services;

- the ownership and management of newspapers, magazines and other publications, and of television and radio networks;<sup>1</sup>
- the ownership of property in rural areas and of businesses abutting on international borders;
- post office and telegraph services;
- domestic airline concessions; and
- the aerospace industry.

There are still certain restrictions on participation of foreign capital in financial institutions, which can however be circumvented if in the national interest. Supplementary legislation must still be enacted to regulate this matter, including for insurance companies.

As a result of the constitutional reform mentioned below, Brazilian companies, even when controlled by aliens, can acquire, commercially exploit and lease rural land.

Effective from March 31, 2000, foreign investments in the domestic securities market are channeled through one single fixed or floating income investment vehicle, by which foreign funds brought into Brazil by a non-resident investor may be invested in securities and equities that were only available to resident investors until then.

The 1995 constitutional reform had the following main effects in relation to the economic sector: (a) it eliminated the concept of a *Brazilian company with domestic capital*, and reestablished the traditional concept of a Brazilian company as a company that is organized pursuant to Brazilian law, and headquartered and managed in Brazil; (b) it allowed private telecommunications companies to commercially offer sound or sound/image broadcasting services either directly or through concession, authorization or licensing; (c) it eased the government monopoly, allowing private capital to be contracted to prospect for, research, refine, trade or transport petroleum and explore gas pipelines; (d) the various Brazilian states were allowed to directly or via concession offer commercial piped gas services; and (e) constitutional restrictions on offshore companies' engaging in cabotage (coastal navigation) services were lifted. Ordinary law must now be enacted to regulate these various areas.

Brazilian companies may request and obtain a permit to operate in the mining sector, even when controlled by a foreign company.

Law 9074/95 provided that the Concessions Law (Law 8987/95) applies to the participation of private companies in the generation and transmission of electric power and commercial running of customs posts and terminals, highways and barriers.

## 1.2 Registration of Foreign Capital

Foreign capital should be registered with the Central Bank of Brazil, through the Electronic Registration System – Foreign Direct Investments (*Registro Declaratório Eletrônico – Investimento Externo Direto – RDE-IED*).

---

<sup>1</sup> A Constitutional Amendment bill is under way at the Federal Senate to approve foreign ownership interests of up to 30% in the capital of newspapers and radio broadcasting companies (Constitutional Amendment Bill 455/97).

The registration of foreign capital is required when the commercial/financial exchange rate is to be used for the remittance of profits abroad, the repatriation of capital, and the registration of the reinvestments.

Investments will always be registered in the foreign currency in which they are actually made, or in Brazilian currency, when they originate from a non-resident account duly maintained in Brazil.

### **1.3 Currency Investments**

No preliminary official authorization is required for investment in currency. The investment to subscribe for capital or to buy a stake in an existing Brazilian company will be remitted to Brazil through any banking establishment authorized to deal in foreign exchange. However, the closing of currency exchange is conditional on registration of the foreign investor-Brazilian investee code at RDE-IED.

Registration of the investments is carried out by way of statements made by the representative of the Brazilian investee and/or by the representative of the foreign investor, through RDE-IED, within thirty days after the respective event.

For foreign investments originated from a non-resident account duly maintained in Brazil, the respective registration will be made in Brazilian currency. Any changes in the investment status must be effected via the respective non-resident account, and registration of said investment must be updated at the RDE-IED.

### **1.4 Investment by Conversion of Foreign Credits**

If the foreign credits to be converted into investments are duly registered at RDE, no preliminary authorization from the Central Bank of Brazil is required. After receipt by the investee of the credit characteristics, and of a statement from the creditor consenting to the conversion, then a token exchange transaction must be performed, representing the purchase and sale of the foreign currency.

As for the credits not entered at RDE, a preliminary authorization from the Central Bank of Brazil is required for their conversion into investment.

### **1.5 Investment by Import of Goods without Exchange Cover**

Investment by import of goods without exchange cover (to pay up corporate capital) does not require a preliminary approval from the Central Bank of Brazil.

The goods, machinery and equipment must be intended for production of goods or rendering of services. In the cases of both imports of used goods and imports backed by tax incentives, such goods must have no Brazilian counterpart. Second-hand goods must be used in projects fostering the economic development of Brazil.

Once the imported tangible goods have been cleared by customs, the Brazilian company has 90 days to make the respective investment registration at RDE-IED.

As for intangible goods, the respective foreign direct investment will be conditioned to the Central Bank preliminary approval.

## **1.6 Remittance of Profits and Treaties to Avoid Double Taxation**

There are usually no restrictions on the distribution and remittance of profits abroad. Profits and dividends posted and distributed as from 1996 are exempt from income tax.

Brazil has signed double-taxation avoidance treaties with the following countries: Germany, Argentina, Austria, Belgium, Canada, China, South Korea, Denmark, Ecuador, Spain, the Philippines, Finland, France, the Netherlands, Hungary, India, Italy, Japan, Luxembourg, Norway, Portugal, the Czech Republic, Slovakia and Sweden.

## **1.7 Reinvestment of Profits**

According to the Foreign Capital Law, reinvestments are profits "made by companies established in Brazil and assigned to persons or companies resident or domiciled abroad, which have been reinvested in the company that produced them or in another sector of the domestic economy."

Should the foreign investor decide to reinvest rather than remit profits, such profits are eligible for registration as foreign capital along with the original investment, through the RDE-IED system.

## **1.8 Repatriation**

Foreign capital registered with the Central Bank may be repatriated to its country of origin at any time without authorization. Remittances in excess of the registered amount will be considered capital gains for the foreign investor, and are thus subject to 15% withholding income tax.

## **1.9 Remittances Abroad**

Remittance of funds abroad in foreign currency using the commercial/financial exchange rate is restricted when such funds are not registered with the Central Bank, since the remittance of profits,

repatriation of capital, and registration of reinvestment are all based on the amount of foreign investment registered.

The international transfer of funds in Brazilian currency between residents (including subsidiaries of foreign companies) and nonresidents, provided that the transactions are carried out through banks authorized to deal in foreign exchange in Brazil, is expressly free and does not require prior approval.

Local currency transferred abroad is converted into foreign currency through a number of mechanisms, one of them being interbank transactions on the tourism exchange market.

The remittance of foreign currency abroad for investment purposes (up to US\$ 5 million per year) is entirely free. Transactions in excess of such value require preliminary approval from the Central Bank of Brazil. In any event, it is required that the remittances be made on the tourism exchange market, and carried out through banks authorized to deal in foreign exchange in Brazil. Certain formalities have to be complied with.

### **1.10 Transfer Abroad of Investments in Brazil**

The equity interest owned in a Brazilian company by a foreign investor may be sold abroad, with no tax implications in Brazil, irrespective of the price paid. The foreign purchaser will be entitled to register foreign capital in the same amount as the registration previously held by the selling company, regardless of the price paid for the investment abroad. In this case, the foreign purchaser—through its representative resident in Brazil—must enroll at RDE-IED and then enter its purchase. At the same time, the foreign seller must update its registration at the Central Bank of Brazil, also through RDE-IED, so as to account for cancellation of the values referring to the portion then disposed of. This registration is necessary for the new investor to remit/reinvest profits and to repatriate capital based on the commercial/financial exchange rate.

### **1.11 Offshore Loans**

Pursuant to Central Bank Resolution No. 2770 of August 30, 2000, the financial conditions underling an offshore loan transaction between Brazilian-based and foreign-based persons must be submitted to and registered with the Central Bank within 10 business days after settlement of the respective currency exchange transaction. The Central Bank will review the respective application through FIRCE, and will then issue a certificate of registration for the corresponding transaction. Such registration will enable the borrower to make remittances of loan principal and charges.

A certificate of registration issued by FIRCE is valid for up to 120 calendar days counted from each maturity date stated on the respective certificate. After such deadline, no payment may be made under such certificate, whether for closing of currency exchange transactions or for payment in Brazilian currency. The parties interested in making any payment after such period (or in changing the terms and conditions originally agreed on) must apply to FIRCE for revalidation of such certificate.

---

---

## 2. - TYPES OF BUSINESS ORGANIZATIONS

The setting up of a foreign branch to operate in Brazil is subject to the provisions of Decree-law No. 2627 of September 26, 1940 (articles 64 to 73) and Normative Ruling DNRC No. 81 of January 5, 1999.

The foreign company must submit an application to the Brazilian Government, which must be approved by presidential decree. A certificate of the decree and other pertinent acts will then be published in the Official Gazette, and a copy registered at the appropriate commercial registry. Only after all formalities have been completed will the branch be in a position to start up its activities. The foreign company must also empower a representative--who need not be Brazilian but must be resident in Brazil--to act on its behalf.

As the procedure is lengthy, and the red-tape and expenses involved are greater than for setting up a Brazilian company, the establishment of a branch in Brazil is not recommended, except in very special circumstances.

Brazilian law provides for several forms of corporate organization, with the most widely adopted being the *sociedade por quotas de responsabilidade limitada (limitada)* and the *sociedade anônima* (joint-stock company).

### 2.1 Limitadas

*Limitadas* are governed by Decree No. 3708 of January 10, 1919, and are similar to limited-liability companies, limited partnerships and closely-held companies under English and United States laws.

A *limitada* is required by law to have at least two partners, who, with few exceptions, need not be Brazilian nationals, and can be either corporate or natural persons. In fact, the partner need not even be resident in Brazil.

When the capital is not yet fully paid up, the liability of the partners is limited to the total capital of the company. Once the capital is paid up, liability is limited to the amount of each partner's participation.

The articles of association of a *limitada* must state its name; the period for which the *limitada* is established; the company's principal activities; the principal place of business; the name and personal details of each partner; and the amount of the quota capital and its apportionment.

Holdings in a *limitada* are reflected in the company's articles of association, since the quotas representing the division of capital are not represented by certificates as in the case of shares. The articles must therefore be amended whenever quotas are assigned, transferred, or increased, so as

to accurately reflect the ownership of the company's capital.

There is no requirement as to the minimum capital that must be paid up on initial subscription or subsequent capital increases, except for certain types of companies for which the law provides for a minimum capital requirement.

The *limitada* may be managed by all the partners, by some partners, or by only one partner. The articles of association must state who is to be the managing partner. Should the managing partner be a legal entity or an alien resident abroad, the delegation of administration and management powers to one or more individuals resident in Brazil is required. The partners can, however, retain control over certain decisions by reserving certain rights in the articles of association.

The *limitada* need not publish its accounts, amendments to its articles of association, or other corporate documents. This entails less expense and the right to maintain a certain degree of confidentiality as to company affairs. The articles of association are, however, still public, meaning that third parties may obtain copies by application to the commercial or civil registry of legal entities with which the articles of association and their amendments must be filed.

## 2.2 Brazilian Joint-stock Companies

The *sociedade anônima* is the corporate form which most closely resembles a joint-stock company or corporation. It is governed by Law No. 6404 of December 15, 1976, as amended (the Corporation Law). A Bill is currently underway in Congress to discuss and introduce changes in the Corporation Law.

A joint-stock company must in principle have at least two shareholders, who are liable only to the extent that the share capital for which they have subscribed remains unpaid.

A joint-stock company may be formed by public or private subscription. In either case, all the shares must be subscribed for by at least two persons, and a minimum of 10% of the capital must be paid up. The paid-up capital must be deposited with a commercial bank until all formalities for formation of the company have been completed.

The formation of a company by public subscription entails: preliminary registration of the share issue with the Brazilian Securities Commission (CVM); the intermediation of a financial institution; approval of the incorporation of the company by a general meeting called by the incorporators at the close of the subscription period; and appraisal of any assets contributed to the company in lieu of cash payments for the shares.

Formation by private subscription may take place at a general meeting of the incorporators, or by a public deed of incorporation published simultaneously with subscription for the shares. If any of the shares are paid up other than in cash, a general meeting must be called to value the assets contributed.

All documents relating to the formation of the company must be filed at the commercial registry, and subsequently published in the Official Gazette and in another widely circulated newspaper published where the company has its principal place of business.

This type of company may be either publicly- or closely-held. A publicly-held company must be registered at CVM, along with the securities it issues, which may be traded on the stock exchange or on the over-the-counter market. The securities of a closely-held company are not available to the general public.

The capital may be either subscribed or authorized. In the case of a company with subscribed capital, the company's bylaws state the amount of capital actually subscribed for by the shareholders, although this capital need not necessarily be paid up. The bylaws of an authorized capital company establish the limit up to which the capital actually subscribed for by the shareholders may be increased without the obligation of executing an amendment to its bylaws. The authorized capital limit may also consist of a number of shares, rather than an amount expressed in currency.

Company capital is divided into several kinds of shares, all of which have different advantages, rights or restrictions attributed to them.

Common shares in a closely-held company may belong to different classes, depending on:

- their nonconvertibility into preferred shares;
- the requirement that the shareholder be Brazilian; or
- the right to vote separately for election of certain officers of the company.

Preferred shares in a publicly- or closely-held company may belong to one or more classes, and carry rights and/or privileges that may include the right to elect certain members to the company's administrative bodies, even should the preferred shares be granted no other voting rights. Holders of nonvoting preferred shares will be entitled to receive dividends at least 10% higher than those paid to common shares, except for the shares that are entitled to cumulative or noncumulative fixed or minimum dividends. Other privileges that may be granted to the holders of preferred shares are priority in the distribution of dividends by way of a fixed or minimum dividend, and/or priority in reimbursement of capital.

The amount of preferred shares issued by the company may not exceed two-thirds of the company's total outstanding shares.

Shares need not have a par value, and may be represented by certificates.

Shares may be paid up in cash or in assets capable of being valued in cash. Appraisal of the assets is obligatory, and the evaluation report must be approved by the shareholders in a general meeting.

Shares in a publicly-held joint-stock company may only be transferred after 30% of their issue price has been paid. The company may not purchase its own shares except in the circumstances provided for by law.

The bylaws of a closely-held company may restrict the circulation of shares, provided they do not prevent their transfer. Should such restrictions be imposed by means of an amendment to the bylaws, they will only apply to the shares of those holders who expressly agreed with them.

Other securities which may be issued by a joint-stock company are participation certificates,

subscription warrants, and debentures. The rules relating to the ownership and circulation of shares are also applicable to these securities, although they do not form part of the capital.

### 2.3 Participation Certificates

*Participation certificates* are nonpar securities which confer on their holders the right to participate in up to 10% of annual profits. These securities carry none of the rights attributable to the shareholders, except the right to review the actions of the corporate officers. The bylaws may provide for the redemption of participation certificates by capitalization of a reserve especially created for this purpose.

### 2.4 Subscription Warrants

A company with authorized capital may issue negotiable securities called *subscription warrants*. These securities entitle their holders to subscribe for shares when the capital is increased, subject to the conditions stated on the certificates.

### 2.5 Debentures

Debentures are securities that give their holders a credit with the issuing company. The par value, relevant conditions, rights, and guarantees of the holders, and the date of maturity must be set forth in the certificates. Inclusion of a monetary adjustment clause is possible. Debentures may be converted into shares, and are guaranteed by the issuing company. The total value of debentures issued, except where otherwise permitted by law, may not exceed the capital of the company.

### 2.6 Shareholders' Rights

Shareholders have the following basic rights:

- participation in the company's profits;
- participation in the distribution of the company's assets if the company is wound up;
- overseeing the management of the company's affairs;
- priority in the subscription for shares, participation certificates, convertible debentures and subscription warrants; and
- withdrawal from the company in the circumstances stipulated by law.

Shares in each class confer equal rights on their holders.

Each common share carries one vote at general meetings of the company. No shareholder is entitled to plurality vote. Holders of preferred shares may enjoy any of the rights attributed to the common shares--including the right to vote--but their rights may be restricted provided that they are not deprived of their basic rights. Preferred shares without voting rights, or with restricted

voting rights, acquire full voting rights if the company fails to distribute the fixed or minimum dividends within the period stipulated in the bylaws (not exceeding three consecutive years), and keep this right until the company pays dividends.

## 2.7 Shareholders' Agreements

Filing with the company of any shareholders' agreement regarding the purchase and sale of shares, the right of first refusal for acquisition of shares, or the exercise of voting rights enables the shareholders to enforce the terms of such agreement.

## 2.8 Corporate and Monitoring Bodies

The administration and management of a company are carried out by the following corporate and monitoring bodies: the Shareholders' General Meeting, the Board of Directors (*Conselho de Administração*), the Executive Committee (*Diretoria*) and the Audit Committee.

## 2.9 General Meetings

General Meetings are attended by stockholders; they are called and instated pursuant to applicable laws and the corporate bylaws, with authority to resolve on all transactions related to the company's object, as well as to pass any resolutions deemed advisable for its protection and development. Such powers, however, are limited to the company's business purpose, applicable laws and the bylaws.

Annual Meetings have the purpose of verifying the management accounts; examining, discussing and voting on financial statements; electing officers and members of the Audit Committee; and resolving on the allocation of the net profits for each fiscal year, as well as on the distribution of dividends. All other cases require an Extraordinary General Meeting.

Separate General Meetings may be called to discuss specific subjects related to holders of preferred shares, debentures, participation certificates or subscription warrants.

## 2.10 Management Bodies

Pursuant to law, the shareholders have the choice of dividing the corporate management body into two parts: the Board of Directors and the Executive Committee. Should the company choose not to have a Board of Directors, the Executive Committee will perform all administrative functions, outline the overall policy of the company business, and execute it in compliance with the company's bylaws. Members of these corporate bodies must reside in Brazil, except for the

members of the Board of Directors, who may reside abroad, provided they appoint an attorney-in-fact residing in Brazil with powers to receive service of process in lawsuits filed on the basis of corporate legislation.

In the event a Board of Directors is convened, the Executive Committee will have to comply with its decisions. The officers (*diretores*) will have the freedom necessary to carry out their duties.

The establishment of the Board of Directors is mandatory for publicly-held and authorized capital companies and for banks.

### 2.11 The Board of Directors

The Board of Directors acts as an intermediary between the General Meeting and the Executive Committee. It has as well full authority to establish the economic, corporate and financial policy to be followed by the company, and to supervise on a permanent basis the Executive Committee members.

General Meetings are charged with electing the Board members, or dismissing them either totally or in part.

The bylaws establish the number of Board members (at least three), how to replace them, their term of office (which will not exceed three years, with re-election being permitted), the rules concerning their call, instatement and operation.

### 2.12 The Executive Committee

The Executive Committee will consist of two or more officers, who can be elected and dismissed at any time by the Board of Directors. The officers are immediately subordinate to the Board of Directors, and subject to the General Meeting only if there is no Board of Directors. The officers will represent the company in its dealings with third parties.

The bylaws will establish the number of officers permitted, the manner of their replacement, their term of office (which will not exceed three years, with re-election being permitted), and the assignments and powers of each officer.

Officers will perform their duties separately, according to their assignments and powers, but in keeping with the other officers, and will not be held liable for any obligations assumed on behalf of the company as routine acts necessary for the company's management.

### 2.13 The Audit Committee

The Audit Committee may be either permanent or appointed for a specific financial year. Should

the Audit Committee not be permanent, it may be instated, at the stockholders' discretion, at a general meeting.

This committee will be responsible for supervising the senior managers and providing information in this respect to the General Meeting. The Audit Committee may request that the senior management appoints experts to verify facts that need to be clarified for them to discharge their duties. Should the company have independent auditors, the Audit Committee members may request that they provide clarifications or information, or verify specific facts. It occasionally may play an important role in defending the company and its stockholders, when charged with examining the management acts in such a way as to ensure that they perform their legal and corporate duties.

The Audit Committee's duties can be neither delegated nor attributed to any other body of the company.

#### **2.14 Liability of the Senior Management**

The members of the Audit Committee, Board of Directors and Executive Committee will be liable for any damages resulting from omission in performing their duties and from acts performed negligently or maliciously, or that violate the law or the company's bylaws. They will not be held liable for unlawful acts carried out by other members, except if they act in collusion with them or in fact participate in such act.

#### **2.15 Transformation**

A company may be transformed from one type to another, without dissolution and liquidation. For example, a joint-stock company can be transformed into a *limitada*, or vice versa. Stockholder approval must be unanimous, unless otherwise provided for in the bylaws. Dissident shareholders have the right to withdraw.

It is often advantageous to incorporate a company as a *limitada*, as this is simpler and less expensive than the incorporation of a joint-stock company. The company could then be easily transformed into a joint-stock company at a later stage.

#### **2.16 Mergers, Consolidations and Spin-offs**

Mergers, consolidations or spin-offs may be effected between companies of the same or different types.

A merger entails the absorption of one or more companies into another, which then succeeds to all rights and obligations of the merged companies, which are consequently extinguished.

The consolidation of two or more companies entails the extinguishment of the consolidated

companies and the formation of a new company, which will succeed to all the rights and obligations of the former companies.

Corporate spin-off entails the transfer of part or all of a company's assets and liabilities to one or more companies already in existence or formed for this purpose, dividing the company's capital in the event of partial spin-off. Should all the company's assets and liabilities be transferred, the company is thereby extinguished. Rights and obligations of the spun-off company are absorbed proportionately by the companies receiving the net value transferred.

The proposal for merger, consolidation or spin-off of one or more companies must be explained and justified in a protocol of justification signed by the senior managers of the companies involved. The protocol must then be approved by a general meeting of the partners of these companies. Shareholders dissenting from the decision of the general meeting approving the merger, consolidation or spin-off of the company should have the right to withdraw.

Appraisal of the net worth of the company or companies to be merged, consolidated or spun off is mandatory, and must be approved by the partners in a general meeting.

### 2.17 Wholly-owned Subsidiaries

A wholly-owned subsidiary is a company whose total share capital is owned by another company. This is the only way that a single shareholder can own the total share capital of a company. The owner of the subsidiary must be a Brazilian company. Incorporation by public deed is required.

### 2.18 Joint Ventures

Joint ventures are not specifically defined by Brazilian legislation. In Brazilian business practice, a joint venture is a company stemming from the agreement of two or more parties to carry out a business enterprise jointly. This can be accomplished by forming a new company or by subscribing for or acquiring shares or quotas in an already-existing company. A joint-venture company may take the form of any of the business organizations recognized under Brazilian law.

---

---

### **3. - FINANCIAL INSTITUTIONS**

Financial institutions in Brazil are governed by Laws Nos. 4595 of December 31, 1964 (the Banking Law) and 4728 of July 14, 1965 (the Capital Market Law).

Private financial institutions include commercial banks, investment banks, multiservice banks, credit, financing and investment companies, securities dealerships, and brokerage companies.

The incorporation of private financial institutions is subject to certain restrictions, such as mandatory preliminary authorization to operate from the Central Bank of Brazil, incorporation as a joint-stock company, and issuance of shares in registered form. In addition, all corporate documents, amendments to their bylaws, capital increases and other nonroutine corporate acts must be approved by the Central Bank of Brazil.

The Federal Constitution prohibits the setting up of new offices of foreign financial institutions in Brazil, as well as any increases in foreign participation in the capital of financial institutions with their principal places of business in Brazil, until the corresponding legislation can be enacted, or in the event that the investment is recognized as being of national interest.

Generally speaking, foreign capital participation in financial institutions is limited to one-third of the voting capital and to one-half of the total share capital.

The share capital and net worth of financial institutions must always meet the minimum capital and debt-to-equity ratio requirements imposed by the Central Bank of Brazil for each type of financial institution.

#### **3.1 Commercial Banks**

Commercial banks are financial institutions that are allowed to offer checking services. Their main business is the receipt of cash deposits from the public, and the making of short-term loans. Provided applicable requirements are satisfied, commercial banks may also be authorized to deal in foreign exchange.

#### **3.2 Investment Banks**

Investment banks specialize in medium- and long-term financing for the supply of capital and investment of third-party funds. Investment banks may also deal in foreign exchange, provided the necessary requirements are fulfilled and Central Bank authorization is granted.

### **3.3 Credit, Financing and Investment Companies (*Financeiras*)**

*Financeiras*, as these companies are commonly known, specialize in financing retail sales of goods.

### **3.4 Securities Dealerships**

Securities dealerships underwrite securities for resale or distribution on the market. The Central Bank establishes the minimum capital for this type of company from time to time.

### **3.5 Brokerage Companies**

Brokerage companies have the exclusive right to deal on the stock exchange in authorized securities and other commercial instruments. They may also act as intermediaries in auctions held in connection with debt/equity conversions.

### **3.6 Multiservice Banks**

Multiservice banks are entities that may upon authorization exercise all the functions of commercial banks, investment banks, credit, financing and investment companies, real estate credit companies, and leasing companies. The activities related to each type of company are carried out by separate departments of the bank.

### **3.7 Leasing Companies**

Leasing companies are subject to the same basic conditions governing financial institutions in general.

Leasing operations are restricted to leasing companies; multiservice banks; investment, development and savings banks (provided they have a specialized leasing department); and, in the case of real property, real estate credit companies, and savings and loan associations.

### **3.8 Licensing of Financial Institutions**

The Central Bank sets forth the procedures for obtaining a license to operate a financial institution. It may also provide for special requirements for each type of institution.

Should the interested party not comply with the requirements within the time frame fixed by the Central Bank, the application will lapse.

As a prerequisite for obtaining a license to operate as a financial institution, a company must comply with the provisions of both the Corporation and Banking Laws.

The Brazilian Monetary Council will establish the minimum start-up capital for each type of company. At least 50% of the amount subscribed for must be paid up in cash, and deposited with the Central Bank within five days of receipt by the financial institution.

### 3.9 Agencies/Branches

The setting up of a permanent agency/branch of a Brazilian financial institution requires preliminary authorization from the Central Bank. An authorized agency/branch must initiate its business activities within 360 days of official publication of the authorization, notifying the Central Bank that it has done so on the date it opens, under penalty of automatic cancellation of the respective authorization.

The setting up of a permanent branch, agency or representative office abroad is subject to the preliminary approval of the Central Bank. Acquisition of a stake in the capital of foreign entities by financial institutions with principal places of business in Brazil is also subject to such approval.

There are no regulations as to the kind of business in which such agencies, branches or offices may engage. However, should the foreign country not establish limitations on the third-party funds that may be raised by sight and term deposits, or on the guarantees that may be granted, the agency, branch, representative office or subsidiary must comply with the rules to which the bank is subject in Brazil.

The procedure for setting up of a branch or agency in Brazil of a financial institution with its principal place of business abroad is basically the same as for a branch of a Brazilian institution. The original documents resolving on the setting up of the branch must be notarized and legalized at a Brazilian consulate, translated by a certified translator, registered at a registry of deeds and documents, and then submitted to the Central Bank for approval.

Representative offices of a financial institution which has no branch or agency in Brazil must request preliminary authorization from the Central Bank to operate in Brazil.

Only individuals or companies based in Brazil may act as representatives of a foreign-based financial or similar institution.

The representative will act solely as a liaison between the principal place of business and its clients, and will not undertake any business inherent exclusively to financial institutions. Should the representative exceed these limits, accreditation may be cancelled by the Central Bank, without prejudice to the applicable criminal sanctions.

---

---

## 4. - BRAZILIAN CAPITAL MARKET<sup>2</sup>

The Brazilian capital market is regulated and monitored by the Brazilian Securities Commission (*Comissão de Valores Mobiliários* - CVM), an agency similar to the United States Securities and Exchange Commission - SEC.

Securities comprise (a) stocks, participation certificates and debentures, as well as the corresponding coupons and warrants; (b) depositary receipts; and (c) other securities created or issued by joint-stock companies, as defined by the Brazilian Monetary Council (*Conselho Monetário Nacional* - CMN).

A company is considered to be publicly held when its securities are listed for trading on stock exchanges or on the organized or non-organized over-the-counter markets.

Trading on the organized over-the-counter market is characterized by electronic trades of securities. This is the so-called “electronic trading system”, which operates as an access market in which trades are supervised by a self-regulatory entity, whose operations are conditioned to the CVM preliminary approval.

Trading of securities on the non-organized over-the-counter market is conducted directly by investors, with an institution duly accredited by CVM serving as intermediary. Such institution is required to inform CVM of all such trades.

A company interested in offering its stock to the public must apply to CVM for registration as a publicly-held company. There are three types of registration: (a) for trading on the non-organized over-the-counter market; (b) for trading on the organized over-the-counter market; or (c) for trading on stock exchanges. A company registered in an over-the-counter market is not authorized to trade on stock exchanges.

CVM Ruling 202/93 regulates the CVM registration procedures to be observed by publicly-held companies. Law 6385/76, in turn, provides for the securities market and created CVM, also defining (cf. article 19, paragraph 1) *placement* as the sale, sale commitment, offer, or underwriting, as well as the acceptance of a sales order or underwriting involving securities placed by the company itself, its incorporators or like individuals and entities, the controlling shareholder or entities controlled by the company, and joint obligors for the securities for further placement on the market.

Publicly-issued securities require the disclosure of lists, sale or underwriting reports, brochures, prospectuses or notices to the public; the search for underwriters or prospective

---

<sup>2</sup> See MERCOSUL Directives CMC/DEC 8/93 and 13/94.

investors through employees, agents or brokers; and/or trading of such securities in stores, offices or establishments open to the public, or use of public communications services.

Finally, publicly-held companies must pay a monitoring fee charged by CVM.

#### 4.1 Acquisition of Control

In spite of being quite unusual in Brazil, an investor may also acquire the control of a publicly-held company pursuant to a public offering to all shareholders. This is a voluntary proceeding, initiated by the interested investor. There are specific rules to be complied with: (i) the offer will be effected with a financial institution acting as underwriter; (ii) the offer will be irrevocable for an established period; and (iii) the investor will state a minimum and maximum number of shares it will purchase.

#### 4.2 Disclosure Requirements

The senior management of publicly-held companies is obligated to provide the public with any information regarding material acts and facts occurring during the course of business that could considerably influence (a) the quotation of securities issued by the company; (b) the investors' decision to trade them; or (c) the investors' decision to exercise rights inherent to the holders of such securities.

Under Brazilian legislation, the senior management may exceptionally refrain from disclosing any act or fact which, if revealed, could put the company's lawful interests at risk. Such information must be immediately disclosed, however, if it goes beyond the control of the senior management or in the event the company's shares show unusual oscillations; in the event of a leak, the procedure to be followed is full disclosure.

The transaction that results in the disposal of a controlling interest in a publicly-held company must be reported to CVM and the stock exchanges or organized over-the-counter markets where the corresponding securities are traded, coupled with a press release in this respect.

---

---

## 5. - EUROBONDS

*Bonds* are debt instruments payable to the bearer issued on the international market by joint-stock or limited liability (*limitada*) companies. Issue of these bonds--which are usually unsecured and similar to promissory notes from a legal viewpoint--is conditioned to the Central Bank of Brazil preliminary approval. These bonds are called Eurobonds when they are issued on the European market.

Corporate authorization for the issue of bonds will be granted in accordance with the provisions of the bylaws or articles of association of the issuing company.

Pursuant to Central Bank Resolution No. 2770 of August 30, 2000, the financial conditions of the issue must be submitted to and registered with the Central Bank within 10 business days of the settlement of the corresponding currency exchange contract intended for the flow of funds into Brazil. The Central Bank will review such application and, through FIRCE, will issue a certificate of registration as regards the borrowing of foreign funds via the Eurobonds issue.

Remittance of interest will be subject to 15% withholding income tax, in the case of issue of Eurobonds. The withholding income tax paid in Brazil on remittance of interest may be used as tax credit, which will be subject to offsetting in the event of existence of a double taxation treaty signed between the Brazilian government and the government of the country in which the interest beneficiary is domiciled.

The withholding income tax applying to offshore remittances of interest on Eurobonds is increased to 25% if the holder of such Eurobonds is domiciled in a country where income is not taxed or otherwise subject to income taxation at a rate lower than 20% ("Tax Havens").

---

---

## **6. - AMERICAN DEPOSITARY RECEIPTS - ADR**

American Depositary Receipts (ADR) are negotiable certificates issued on the United States markets, representing a certain number of securities (usually shares); these ADR, issued by a Depository Institution abroad, are backed by securities deposited with a specific custodian in Brazil.

ADR are afforded the same treatment as securities issued on the United States markets, and as such are freely traded on stock exchanges and the over-the-counter markets in the United States.

Similar receipts are issued and traded in Europe as well, under the name of International Depository Receipts (IDR) or Global Depository Receipts (GDR).

According to an ADR/IDR facility, the underlying securities are held in custody by the ADR/IDR issuer (usually a commercial bank, the Issuing Bank) with an institution headquartered in Brazil and authorized by the Brazilian Securities Commission (CVM) to render custodian services for a specific DR facility (the Custodian Institution).

In general terms, there are two types of ADR: sponsored and unsponsored receipts.

Issuers need not disclose any information on the securities underlying an unsponsored ADR. The resulting ADR are issued by one or more depository banks in keeping with market demand, but without any formal agreement with the company in this respect. All expenses incurred with ADR trading and management are borne by the investor. In view of this, and as there is no actual control over ADR and the ensuing costs, unsponsored ADR are rarely placed on the market.

Sponsored ADR are broken down into levels I, II and III. Sponsored ADR facilities are subject to a number of United States Securities and Exchange Commission - SEC requirements and local stock exchange rules, as well as to the United States Generally Accepted Accounting Principles (US GAAP). In practice, these formalities vary in accordance with the target ADR level. Sponsored ADR are issued by an Issuing Bank appointed by the securities issuer, as per a deposit or service agreement signed between these parties. Sponsored ADR have the following advantages, among others: (a) full control over the ADR facility; (b) listing of the receipts on a United States stock exchange; and (c) potential leverage of fresh funds.

ADR facilities offer a number of benefits to issuing companies and investors. Basically, the advantages to the issuing company are both financially- and business-oriented by nature. The company's business often expands with the promotion of its products, as a result of the issuing company's disclosure to the United States financial market. The issuing company's financial benefits, in turn, comprise: (a) a market expansion for its securities; (b) an increase in its shareholding structure; (c) resulting increase and stabilization of stock prices with the growing market demand for its securities; (d) creation of a mechanism for access to the foreign capital market; and (e) an improved image for the issuing company on the United States financial market and, as a consequence, on the international market at large, thus facilitating future fund-raising abroad.

For investors, ADR offer a good number of advantages. Major investors are constantly trying to diversify their investment portfolios worldwide, mainly if such investments might offer a higher yield than the domestic market. A number of cumbersome barriers usually make these foreign investments unattractive to investors, such as: (a) expenses for currency exchange; (b) scant data on the reliability and reputation of foreign companies involved in the transaction; and (c) divergent market practices.

ADR overcome most of these obstacles. These receipts--traded on the United States market--offer prospective investors good liquidity and the following advantages: (a) United States dollar quotations, and payment of United States dollar dividends; (b) compliance with United States market requirements; (c) no restrictions on foreign investments; and (d) investors' access to arbitrage with the domestic and foreign market quotations for the securities underlying the ADR.

ADR facilities offer two important advantages to investors as regards arbitrage, as set forth by Brazilian regulations: the *flowback* and *inflow* mechanisms.

*Flowback* describes the investor's right to convert its ADR into the corresponding stocks or securities represented by such receipt, for further trading on the Brazilian market. This is a mechanism required under the SEC regulations and vital to foreign investors, as it allows for arbitrage with the foreign and domestic quotations of the same stock or security. Foreign investors will be entitled to redeem or cancel ADR for the following purposes:

- (a) to transfer on the Brazilian market the corresponding shares or securities, with the subsequent remittance of funds to overseas; and
- (b) to withdraw the shares or securities from the Custodian Institution, with the owner becoming an investor pursuant to the terms and conditions of other types of foreign investment on the stock exchange.

*Inflow* entails the capacity of the investor to purchase on the Brazilian market shares or securities of a company that has an ADR facility and, by delivery of the shares to the Custodian Institution, to obtain new ADR that are issued overseas by the Issuing Bank. In addition to permitting, just like flowback, arbitrage with share quotations on the domestic and foreign markets, inflow avoids a self-defeating facility. This is because, should there be no inflow, the arbitrage dealings made during the life of the facility by the flowback mechanism would gradually reduce the quantity of ADR on the offshore market until they are completely phased out.

---

---

## 7. - PORTFOLIO INVESTMENTS

Any foreign institutional investors that are interested in trading shares directly on the Brazilian stock exchanges may now avail themselves of a new mechanism that revamped the rules on foreign investments in the Brazilian financial and securities markets (foreign portfolio investments), effective from March 31, 2000.

The new foreign portfolio investment regulations is an offshoot of the currency deregulation phased in by the current BACEN management in the sway of the foreign currency policy changes introduced in January 1999. Such regulations are a response to government awareness that stronger competition among the capital markets worldwide has urged for the adoption of investment mechanisms that focus on the elimination of barriers to currency flows, as well as on the reduction in transaction costs and in operational and bureaucratic restrictions.

This new set of rules comprises CMN Resolution No. 2689 and Central Bank Circular No. 2963, both issued on January 26, 2000, in conjunction with CVM Instruction No. 325 of January 27, 2000.

The major innovation introduced by these new regulations is the development of one single mechanism for fixed or floating income investments, by which the foreign funds brought by a non-resident investor into Brazil may be invested in equities and securities mechanisms available to resident investors. As a result, non-resident investors were accorded the same registration codes and treatment available to resident investors for investments in the fixed and floating income markets, and may now freely migrate from one investment mechanism to another.

As yet another innovation, portfolio investments are now open to non-institutional legal entities and individuals based abroad. Under these new regulations, *non-resident investor*, whether acting as an individual or on a collective basis, means the individual or legal entity, fund or other investment pool with residency, headquarters or domicile abroad. As a result, foreign-based individuals and non-institutional entities are allowed to make direct investments in Brazil, without being subject to the eligibility requirements (e.g., minimum asset requirements) set out in CVM Instruction No. 169.

Under the erstwhile regulation, futures trades (in the options, forward and futures markets) were limited to those intended to hedge cash positions up to their respective limits (i.e., exclusively for hedging purposes), whereas the adoption of position strategies intended to generate preset earnings was prohibited. Heeding an age-long call from foreign investors, the new regulations put an end to restrictions on the trades in derivatives, and investors may now hold uncovered positions.

Non-resident investors are only required to trade in derivatives or other futures positions on stock exchanges, futures and commodities markets, or organized over-the-counter markets, or else through registration, clearing and custodial systems recognized by the Brazilian authorities, such as the Securities Registration and Clearing System managed by the Securities Custodial and Clearing Center (*Central de Custódia e de Liquidação Financeira de Títulos – CETIP*), or the Special Custodial and Clearing System (*Sistema Especial de Liquidação e de Custódia – SELIC*) managed by BACEN.

Furthermore, CMN Resolution No. 2687 was issued on January 26, 2000, authorizing non-residents to trade in forward, futures and options contracts on agribusiness commodities. This Resolution sets out specific rules for this type of investment, namely, the commodities and futures exchanges themselves are responsible and liable for the closing of currency exchange contracts on behalf of the counterparties; moreover, non-resident investors are subject to the same record requirements and position limits as those valid for Brazilian residents. As for the trades in derivatives on agribusiness commodities as their underlying assets, the prohibition related to position strategies intended for a preset income remains in effect.

Non-resident investors must meet the following basic requirements:

- (i) one or more nominees must be appointed under a mandate;
- (ii) one person must be appointed to be held accountable for the investor's tax obligations;
- (iii) a form must be filled out as per the attachment to CMN Resolution No. 2689 ("Form");
- (iv) a custodial agreement must be entered into with a CVM-accredited institution; and
- (v) the CVM registration must be obtained.

By the same token, the new regulations innovated in dispensing with the contracting of a local managing institution to manage the non-resident investor portfolio, as this duty was assigned to the investor's representative. Such representative will have to make necessary disclosures to CVM and BACEN upon request, as well as to keep updated records and certify the signature of a non-resident investor, among other duties. For its part, the investor only has to retain one or more custodian institutions, considering the obligation to have assets and securities, as well as other financial transactions carried out by a non-resident investor, registered, held in custody or maintained in a depository account at an institution or entity authorized by BACEN or CVM to render such services, as the case may be. Accordingly, the regulations on foreign portfolio investments replaced the managed portfolio model by the trading portfolio, also in response to the market suggestions.

An important characteristic that was maintained is that there are no portfolio diversification requirements, meaning that the foreign investor, if it wishes, can invest 100% of its portfolio in just one publicly-held company. However, all trades involving publicly-held companies authorized to trade on the securities market should be carried out on the stock exchange, thus proscribing the private trade of securities.

In addition, trades cannot result in the direct or indirect acquisition of a controlling interest or in an increased stake in a controlled or associate company, nor in the acquisition of securities from closely-held companies.

The capital gains earned by non-resident investors from trades in stocks issued by publicly-held companies are not subject to income tax. Any positive results obtained in stock, commodities, futures, or like markets are considered *capital gains*.

However, the same does not apply to income, which is taxed:

- (i) at 10%, when arising from investments in floating-income funds (which are now admitted under the new regulations), swaps and other futures transactions off the stock exchanges; and
- (ii) at 15% in the other cases, including fixed-income investments and interest on net worth.

This favorable treatment is not available for investments sourced in countries where income is either not taxed or subject to taxation at less than 20% (the so-called “Tax Havens”), which are subject to the same rules as those applying to persons resident and domiciled in Brazil.

In addition to income tax, non-resident investments are still subject to the Provisional Contribution on Financial Investments (*Contribuição Provisória sobre Movimentações Financeiras – CPMF*) at 0.38%, as well as to the Tax on Financial Transactions (*Imposto sobre Operações Financeiras – IOF*) on the Brazilian currency value of the exchange contract entered into upon the currency inflow, at a rate currently set at 0% (which may be changed by the Minister of Finance at any time up to 25%).

## 8. - INSURANCE COMPANIES

Article 192 of the Federal Constitution states that insurance companies require preliminary governmental authorization to operate, and establishes that the granting of such authorization and participation of foreign capital in insurance companies will be regulated by supplementary legislation. The incorporation and operation of insurance companies in Brazil are governed by Decree-law 73/66, as regulated by Decree 60459/67, specific provisions of the Civil and Commercial Codes, and regulations issued by the specific bodies indicated below.

The Brazilian Private Insurance System consists of the Brazilian Private Insurance Council (CNSP), the Private Insurance Authority (SUSEP), IRB - Brasil Re S.A. ("IRB"), insurance companies and insurance brokerage companies.

The incorporation of an insurance company is subject not only to the requirements usual for the incorporation of joint-stock companies in general, but also to specific proceedings.

Authorization for a company to act as an insurance company is granted under an ordinance issued by the Ministry of Finance. To obtain such authorization, the incorporators must submit a written application to CNSP, through SUSEP, together with proof of the regular incorporation of the company, proof of the deposit at Banco do Brasil S.A. of a portion of paid-up capital, and a copy of the company's bylaws.

The Minister of Finance, acting as the president of CNSP, will grant authorization by means of an ordinance, stating the different types of insurance that can be offered by the company, and any requirements for the company to engage in this activity.

As from publication of the ordinance, the company has 90 days to offer proof to SUSEP that it has subscribed for the required amount of IRB's shares; that it has made all due registrations and published all acts required by law to start operation; and, if applicable, that it has complied with any SUSEP requirements.

At the end of the 90-day period mentioned above, the Minister of Finance will issue the letter patent, which must subsequently be registered at SUSEP and the proper Commercial Registry.

Any proposal for alterations in the bylaws, consolidation, merger or any other similar operation carried out by an insurance company must be submitted to CNSP and SUSEP, and then to the Minister of Finance for approval. Should a company have insufficient capital resources or technical reserves, or poor financial standing, SUSEP may appoint a fiscal director to act within the company.

CNSP Resolution 23/92 establishes a minimum capital requirement for insurance companies according to the field of activity, at least 50% of which must be paid up upon incorporation in cash or federal government bonds.

Since the issuance of Federal Attorney's Office Opinion No. GQ 104 dated June 5, 1996, there are no legal restrictions imposed by SUSEP on 100% foreign participation in an insurance company and respective authorization.

All applications for the transfer of share control of insurance companies must be examined by SUSEP in advance.

Insurance companies are not subject to the ordinary rules of bankruptcy, and may not apply for *concordata* (a court-approved arrangement with creditors). There is a special dissolution procedure that may be voluntary or compulsory (when the company is guilty of certain acts prohibited by law). The respective proceedings are always carried out by SUSEP, which will indicate the liquidator, the latter being entitled to 5% of the assets by way of commission on completion of the proceedings. Once the company has been dissolved, any remaining assets will be sold with the authorization of SUSEP.

Another special requirement to keep in mind is that foreign insurance brokers may only be represented in Brazil by brokers registered with SUSEP.

Brazilian companies can only take out reinsurance through IRB, which currently holds the reinsurance monopoly in Brazil. Privatization of the reinsurance segment is underway, which will put an end to reinsurance monopoly in Brazil.

---

---

## 9. - INTELLECTUAL PROPERTY

### 9.1 Industrial Property

Until May 14, 1997, industrial property was ruled by Law No. 5772 of December 21, 1971 (Industrial Property Code - CPI), which covered patents of invention, utility models, industrial designs and models, trade and service marks, and advertising slogans.

As from May 15, 1997, Law No. 9279 (Industrial Property Law) took effect. The main features of this new law include the granting of patents to medicines, chemical, pharmaceutical and food products. An additional feature is the recognition given to well-known ("notorious") brands.

The Brazilian Institute of Industrial Property (INPI) is the government entity in charge of industrial property rights, and formal examination of applications for trademark registrations, advertising slogan registrations, and issuance of letters patent.

In relation to international protection of industrial property, Brazil is signatory to the Paris Convention (Stockholm Revision), the Patent Cooperation Treaty (PCT), and the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS").

#### 9.1.1 Patents

As provided for in article 8 of the Industrial Property Law, the requirements essential for the granting of a patent in Brazil are: absolute novelty, industrial nature, and inventive nature. A patent is considered to be new when its subject is not included in the prior art concept. *Prior art* constitutes everything that has become accessible to the public through a written or oral description or by use or any other means, including the contents of patents in Brazil and abroad before filing a patent application, with the exception of cases where priority was previously applied for or a priority claim was made pursuant to the Paris Convention.

A patent application that has been normally filed in countries that are members of the Paris Convention may be filed in Brazil within the terms set out in the Industrial Property Law. These terms are one year for invention and utility model patents, and six months for industrial model and design patents.

Letters patent may be issued for the protection of inventions, utility models, and registration of industrial designs. The protection granted by a patent extends for 20 years, in the case of inventions; for 15 years for patents on utility models; and for 10 years for industrial design patents, always as from the date the request for protection is filed at INPI.

Proceedings for the issuance of a letter patent are lengthy and time-consuming. An application must be submitted to INPI, containing the inventor's claims, a full description of the invention and its drawing (when applicable), and proof of compliance with all legal requirements. Once the application has been presented, a preliminary formal examination takes place, and a certificate of filing is issued. The application will be kept secret for 18 months, and will then be officially published. The inventor has 36 months to request a formal examination of the application. Failure to request this formal examination will cause the application to be considered withdrawn. Granting of any patent application can be cancelled at any time by the courts.

Commercial use of the patent must be initiated within three years of the date of issue of the letter patent, under penalty of obligatory licensing or lapse. Extinguishment of a patent may also occur if its use is interrupted for a period of two or more consecutive years; if the inventor fails to pay the required annuities to INPI; if the inventor expressly waives the privilege; or if it is administratively cancelled or judicially annulled.

The Industrial Property Law provides for conducts that constitute patent infringement, which is subject to penalties varying from three (3) months to one (1) year of imprisonment or a fine.

This law determines that the manufacture of a product or use of any means or processes covered by a patent, without authorization of the respective patent owner, will constitute a patent infringement.

### 9.1.2 Trademarks

The system for protection of trademarks in Brazil is based on ownership, and all rights stem from the registration of the trademark in Brazil. No protection whatsoever is accorded an unregistered owner even though it may have been using a trademark for years.

However, if the foreign owner of an unregistered trademark is able to prove its trademark is well-known worldwide, it is possible to claim the international protection granted by article 6 *bis* of the Paris Convention, which establishes that the signatory countries must deny applications for registration or cancel registrations of a trademark that reproduces a well-known trademark registered in another signatory country. However, in order to qualify for the benefit of article 6 *bis* of the Paris Convention, the owner must apply for registration of its trademark in Brazil.

Application may be made to register a trademark either as a foreign or a Brazilian trademark. A foreign trademark is registered under the Paris Convention, which establishes an exclusive priority period of six months from the date of application in the country of origin for its owner to apply for registration of this same trademark in other countries which are signatories to this Convention.

In order to file such application in Brazil, it is necessary to submit to INPI a certified copy of the application for trademark registration in the country of origin, or the certificate of registration.

Registration of a trademark in Brazil may be applied for either by a Brazilian or foreign company.

If a trademark registration is applied for in Brazil by a foreign company without the priority claim

established in the Paris Convention, it will be considered a Brazilian trademark, and therefore the benefit of such Convention will not be granted.

Brazilian law requires that the field of business of the trademark owner in Brazil be related to the goods or services covered by such trademark. In order to apply for registration of a trademark in Brazil, certification that the applicant is a company duly organized in accordance with the laws of its country to operate within its field of business is required.

Registration of the trademark protects it for ten years. This period may be extended for successive ten-year periods.

The use of a trademark is essential to its protection in Brazil. A trademark will lapse if it is not used for five years from the date of registration, or if its use is interrupted for more than five consecutive years. Use can be proved by the owner of the trademark in Brazil or by the licensee that actually uses it.

### 9.1.3 Technology Transfer Agreements and Trademark or Patent License Agreements

Technology transfer agreements in Brazil are subject to filing at INPI. After approval of the Industrial Property Law, several requirements for approval of agreements of this kind were eliminated, simplifying the procedures for approval. Among other changes, the list of mandatory clauses that the agreements should contain was eliminated.

Currently, INPI review of agreements that involve licensing of industrial property rights (trademarks and/or patents), transfer of technology, technical assistance services and similar agreements will be limited to examination of the aspects intrinsic to the documents submitted thereto, the tax and exchange legislation, and any characterization of antitrust or unfair competition practices.

INPI approval of such agreements is not only essential for the registration at the Central Bank of Brazil that will allow remittance of the remuneration abroad, but also for the deduction of fees paid by the licensee or recipient of the technology as operating expenses. Furthermore, INPI approval of patent license agreements is necessary, together with actual use by the licensee, to evidence commercial use of the licensed patent and to avoid forfeiture, as well as to enforce them upon third parties.

Other valid documents evidencing the transfer of technology and conditions governing such transfers (invoices, for instance) may also be submitted to INPI for approval, thus permitting remittance of funds abroad and tax deduction of payments resulting from the transfer.

Generally, technology transfer agreements must clearly state their object and the industrial property rights involved, and describe in detail how the transfer will actually take place.

The license agreements must state the conditions for actual use of patents regularly applied for or granted in Brazil; the registered trademark in Brazil or application for registration; the acquisition of know-how and technology not protected by industrial property rights; and the obtainment of techniques, planning and programming methods, research, studies and projects intended for execution or rendering of specialized services.

Trademark and patent license agreements must also state whether the license is exclusive and remunerated, and whether sublicensing is permitted. The term of the agreement must not exceed the validity of the trademark registration or patent. Trademark and patent license agreements will only entitle the owners to collect fees if the requirements mentioned above are met.

Contracts for rendering of technical and scientific assistance services must state the time required to perform the specialized services, the number of technicians required, their specialization and training programs, and respective remuneration.

Remuneration of the technology to be transferred may be established at a fixed price, a fixed price per item sold, a percentage of the profits, or a percentage of the net sales price, less taxes, fees and other charges agreed to by the parties.

#### 9.1.4 Informatics

In October 1984, Congress approved Law 7232 (the Informatics Law), establishing the principles, objectives and guidelines for the Brazilian Informatics Policy, and empowering the federal government to establish restrictions on the manufacture, operation, marketing, and import of computer goods and services; this was the start of the practice known as *market reserve*.

Although the Informatics Law did not expressly establish the market reserve, the federal government used to monitor imports of computer goods and services, as well as examine and decide on plans for development and production of such goods.

Companies not considered *domestic* (or *national*) pursuant to article 12 of the Informatics Law could only manufacture computer goods and qualify for the benefits granted by the law if their plans were approved by the Brazilian Informatics and Automation Council (CONIN).

Under article 12 of the Informatics Law, a *domestic company* was defined as one incorporated according to the laws of Brazil, and headquartered in this country. Additionally, to qualify as a domestic company, its decision-making as well as technological and capital control had to be exclusively in the hands of individuals resident and domiciled in Brazil. At least 70% of the total corporate capital should be held by Brazilians, and no voting rights should be granted to any alien.

On October 24, 1991, Law No. 8248 was enacted, introducing several modifications in the regulation of the computer science field in Brazil, and amending the Informatics Law.

The first important modification introduced concerns the definition of a *domestic company* for the purposes of manufacturing and marketing of computer goods in Brazil. The new law defines a Brazilian company with domestic capital as a legal entity incorporated and headquartered in Brazil, in fact controlled--directly or indirectly--by individuals domiciled and resident in Brazil, or by a state-owned company.

Law 8248/91 clearly states that as from October 29, 1992 no special monitoring of imports or approvals of manufacturing plans would be in force. This should mean the end of market reserve, although some incentives were left in effect until 1997 as a sop to *domestic companies*.

On the other hand, Law 8248/91 also provides for certain benefits applicable to any company producing computer products, such as:

- exemption from the Tax on Manufactured Products (IPI) until October 29, 1999 with regard to products manufactured following certain criteria;
- deduction of all research and development expenditures up to the limit of 50% of the income tax owed by the company; and
- deduction of up to 1% of the income tax owed by legal entities investing in domestic informatics companies.

Bill No. 49/1999 dated October 26, 1999 is currently underway in the Brazilian Senate (formerly, Bill No. 2514/96 while in the House of Representatives) to amend Law 8248/91, thus extending the IPI exemption until December 31, 2000. As from such date, the IPI exemption will be converted into a gradual reduction by December 31, 2009, and will then be extinguished.

While Bill 49/1999 is underway in Congress, the President of the Republic has reissued Provisional Measures to approve successive extensions of the IPI exemption set out in Law 8248/91, which is likely to occur until the Bill is voted into law.

## 9.2 Copyrights

Copyrights in Brazil are regulated by Law No. 9610 of February 19, 1999, pursuant to which all creative works of inspiration howsoever expressed are protected as intellectual property.

The author of the work or, in the absence of proof to the contrary, the person claiming to be the author or whose name is included in the registered work, is treated by Brazilian law as owner of the copyright.

In addition, any person who adapts, translates, arranges or edits a work that is no longer under copyright may claim the copyright to the work, but he/she cannot prevent the publication of another adaptation, translation, arrangement or edition of the same work unless the new version is derived from his/her own.

Not only individuals, but also corporations are allowed to own the copyright to a work. However, a corporation must hold such rights always at the author's approval.

Registration of a work in Brazil is optional, and not essential for its protection. Nevertheless, in order to secure the copyright the author may register his/her work with the following bodies, depending on its nature:

- at the Brazilian National Library;
- at the School of Music of the Federal University of Rio de Janeiro;
- at the School of Fine Arts of the Federal University of Rio de Janeiro;
- at the Brazilian Film Institute; or
- at the Federal Council of Engineering, Architecture and Agronomy.

Any other work that cannot be classified within any of the above categories may be registered at the Brazilian Copyright Information Center of the National Copyright Council.

Proceedings in the civil and criminal courts may be brought against anyone who infringes another's copyright. The civil courts prohibit publication of a work which infringes copyright, and can also award damages to the owner of the copyright. Infringement of copyright can also be punished as an offense by the criminal courts.

### 9.2.1 Software

Protection of software in Brazil is regulated by Law No. 9609 of February 19, 1999, which provides mainly for: (a) protection of the software itself as intellectual property; (b) the rules for marketing software, creating mechanisms for government agencies to monitor this marketing with a view to protecting Brazilian software; and (c) penalties of a criminal nature, for cases of infringement of software copyrights and certain rules for marketing.

Software is protected for 50 years as from January 1<sup>st</sup> of the year following its publication, or if not published, following its creation in each country. As with copyrights, software owners that reside outside Brazil are ensured protection, provided that their country of origin offers reciprocal treatment, granting both Brazilian and aliens resident in Brazil protection equivalent in extent and time.

The protection of software does not depend on registration, and the author need not register it. Registration can be made at the Brazilian Institute of Industrial Property (INPI).

Infringement of software copyright is a criminal offense, which subjects the offender to detention from six months to two years, plus a fine.

Unless the parties agree otherwise, the rights to any software developed during the life of any agreement or statutory relationship, research or development, in which such activity is carried out by the employee, civil servant or individual hired to render services as expressly provided for in the respective agreements, or which results from the nature of the work for which he/she was hired, will belong to the employer or service principal.

However, if the software is developed independently of any agreement or statutory relationship, and without the use of any resources, know-how, materials, facilities or equipment belonging to the employer or service principal, the rights to such software will belong to the employee, civil servant or individual rendering the services.

Rights to technological modifications or derivations that belong to the author--provided this has been contractually stipulated--must be established pursuant to contract.

According to the Software Law, the following situations will not violate software copyright:

- reproduction of a copy that has been legally acquired, provided it is essential to the proper use of the program;
- partial quotation for educational purposes, provided the author and the software quoted are mentioned;
- similarity of two copies, provided this similarity stems from functional features in their application, from compliance with legal, regulatory precepts or technical standards, or a limitation of alternative forms for their expression; and
- integration of software and its basic features into an application or operating system that is technically indispensable to the user's needs, provided it is used exclusively by whoever undertook this integration.

### **9.3 Cultivated Plant Variety Protection**

Law No. 9456 of April 25, 1997 included cultivated plant varieties in the protection for intellectual property rights. Any new such varieties as well as other varieties subject to the conditions set out by law are eligible for protection. The term of protection is 15 years, except for grapevines, fruit trees, forest trees and ornamental trees (18 years). The variety must be registered at the Brazilian Cultivated Plant Variety Protection Service - SNPC, reporting to the Ministry of Agriculture and Supply. Both natural persons and legal entities that file for protection of such plant varieties in countries with which Brazil has an agreement or in an international organization to which Brazil is a party and that therefore produces the same effect as filing in Brazil will be assured priority rights for up to 12 months.

---

---

## 10. - CORPORATE TAXES

### 10.1 Income Tax

Generally speaking, corporate income tax is levied at 15% on book taxable income assessed at the end of each tax period. The surtax will be assessed as follows: 10% on any portion of the annual book taxable income above R\$ 240.000,00 (US\$ 1.00 is approximately equal to R\$ 1,83). The book taxable income is determined by deducting such expenses and costs as were needed to produce the year's income from the gross earnings derived from the company's regular business and any incidental business. Some of these expenses and costs are not deductible by virtue of either their nature or the amount involved. There are also certain items that are considered tax-exempt when determining a company's book taxable income.

Effective from January 1996, the Brazilian tax legislation was amended, and legal entities are now subject to taxation on their worldwide income.

There are certain ceilings on setoff of accrued tax losses. The net profits adjusted by additions and exclusions can only be reduced by 30% against the accrued tax losses. Losses posted in a certain period may be fully offset against the profits earned in that same period. In principle, operating losses can only be offset against similar profits. There is no time limit for the offsetting of accrued tax losses.

Profits and dividends from Brazilian sources generated as of January 1, 1996, and distributed or paid, are tax-exempt.

Branches of foreign companies in Brazil pay income tax at the standard rate of 15% and the abovementioned additional rate. In addition, their profits are automatically considered at the disposal of the parent company, irrespective of whether or when remittances are made.

A holding company is subject to the taxation system applicable to corporations mentioned above. The income tax is payable only on direct income earned by the holding company, i.e. income from its business activities, since indirect income, i.e. profits posted by subsidiaries, has already been subject to corporate income tax.

Companies under Brazilian or foreign control are subject to the same taxation.

### 10.2 Social Contributions

Brazilian companies (including financial institutions) must pay the Social Contribution on Net Profits (CSL). The CSL calculation base is the net profit adjusted by the additions, exclusions and offsettings provided for in the tax legislation. This calculation base may be reduced by offsetting

the negative calculation base ascertained in past periods, up to 30%. There is no time limit for use of the CSL negative base.

The CSL calculation base is subject to the worldwide taxation principle (*princípio da universalidade*), i.e. profits, revenues and capital gains earned abroad by Brazilian companies are subject to CSL assessment.

Effective from February 1, 2000 through December 31, 2002, the CSL rate is 9%. After such period, the CSL rate will return to 8%. CSL assessments do not qualify as deductible expenses when determining the book taxable income (the calculation base for corporate income tax).

Law No. 9718 of November 17, 1998 established that, as from February 1, 1999 and based on Constitutional Amendment No. 20 of December 16, 1998, all companies (including financial institutions) are subject to the Profit Participation Program and Civil Servants' Investment Program contributions (PIS/PASEP) and to the Social Security Financing Contribution (COFINS). Effective from February 1, 1999, these two social security contributions (PIS/PASEP and COFINS) will be treated as deductible expenses from the IRPJ and CSL calculation bases. Effective from February 1, 1999, these two social security contributions (PIS/PASEP and COFINS) will be levied at the company's sales, which is defined as the gross income (i.e., the overall income earned by the legal entity, irrespective of its activity or the accounting classification adopted).

COFINS is levied at 3%, whereas PIS/PASEP is assessed at 0.65%, for all legal entities.

As for the PIS/PASEP and COFINS calculation base valid for financial institutions, the tax rules list a series of financial inflows that are excluded from the calculation base of such taxes.

PIS/PASEP and COFINS payments are treated as deductible expenses when calculating IPRJ and CSL.

There is as well a social security contribution that is levied on the payroll at the average rate of 30%. This contribution is paid by the company.

The Provisional Contribution on Financial Transactions (CPMF) is assessed on financial transactions between individuals and legal entities, at the rate of 0.30%.

TAXES	CALCULATION BASE	RATE
Corporate Income Tax - IRPJ	book taxable income	15%
IRPJ Surcharge	book taxable income	10% on any amount in excess of R\$ 20.000,00 per month
Social Contribution (nondeductible)	adjusted net profit	8% (all companies - including financial institutions) 9% (all companies, from Feb. 1, 2000 through Dec. 31, 2002)
COFINS (deductible)	billings	3% (all companies as from Feb. 1, 1999)
PIS/PASEP (deductible)	billings	0.65%
Withholding Income Tax	income and capital gains sourced by nonresidents in Brazil	15% or 25% (according to the nature of the revenue)
Tax on Manufactured Products (IPI) (Federal)	sales price at the time of exit from the industrial establishment or import	variable as per the product classification
Tax on Distribution of Goods and Services (ICMS) (State)	sales price at the time of exit from the establishment, import, and performance of transportation, power supply and telephone services	7% to 33%
Tax on Services	the invoiced price	0.25% to 10%
	settlement of exchange contracts for import of services(1)	0%
	cash loans	0% to 15%
	investments in privatization funds	0%
Tax on Financial Transactions	investments in bonds and securities	0%
	exchange transactions for inflow of foreign currency designed for investments in fixed-income funds, interbank transactions carried out between financial institutions abroad and banks authorized to deal in exchange in Brazil, and formation of short-term cash in Brazil from residents abroad	0%
CPMF	financial transactions	0.30%

### 10.3 Sales Taxes

Sales taxes are payable on goods and services. There are two different types of sales taxes, depending on the nature of the transactions: the Tax on Manufactured Products (IPI) and the Tax on the Distribution of Goods and Services (ICMS).

IPI is a federal tax payable on the domestic manufacture of products and the import of foreign products. It is levied on the manufacturers and/or the importers of foreign products.

IPI payments for raw materials, semi-finished products and packaging materials may be used as tax credits.

IPI rates vary according to the nature of the products. Higher rates apply to nonessential products such as cigarettes, beverages and cosmetics.

<sup>(1)</sup> The IOF rate was reduced to zero as well for: (i) payments under technology transfer agreements registered at INPI; (ii) remuneration paid on software; and (iii) leasing remittances, provided that they have Central Bank registration.

ICMS is a state tax similar to IPI. ICMS is payable at all stages of sale, from the manufacturer to the end consumer. ICMS is collected/paid by the manufacturer and/or the trader. ICMS rates are the same for all goods, but vary from one state to another.

Exemptions, reductions and tax incentives in respect of ICMS are granted or cancelled by means of conventions between the states.

Both ICMS and IPI are assessed on added value. There are, however, some exceptions, such as the case of in-state transactions involving transfers between premises belonging to the same taxpayer.

#### 10.4 Tax on Services

The Tax on Services (ISS) is a municipal tax payable on any kind of service performed by companies or by self-employed persons of professional status. ISS varies from 0.25 to 10% (with a few exceptions), and is assessed on the cost of the services.

#### 10.5 Tax on Financial Transactions

The Tax on Financial Transactions (IOF) is a federal tax levied on:

- credit transactions made by financial institutions;
- exchange transactions made by institutions authorized to deal in exchange;
- insurance transactions made by insurance companies;
- transactions relating to securities, when carried out by institutions authorized to operate on the securities market; and
- transactions relating to intercompany loans, and loans between companies and individuals.

IOF rates vary according to the type of transaction involved, and are reduced or increased with some frequency, depending on the legal circumstances.

#### 10.6 Investment Incentives

There are several situations in which a company or its stockholders can obtain incentives from government agencies. These incentives consist of a continually-changing package of subsidized financing, tax credits and tariff exemptions. Most of these incentives are available to both domestic and foreign-controlled companies, but certain others are restricted to Brazilian-controlled companies. These tax incentives were created to promote the economic development of certain areas of the country or to channel private capital to specific sectors of activity.

Investment projects are approved on a case-by-case basis by the relevant agency. Normally, approval is conditioned to a considerable degree of governmental control over the investment project. Project approval also includes an exemption from the income tax and other indirect taxes

for a specific period of time, subsidized credit from governmental development banks, and the privilege of importing capital equipment duty-free, or at sharply reduced tariff rates.

Currently, investment incentives in general are subject to reevaluation and further studies by the government authorities so that future incentives will be directed to areas and activities fostering the Brazilian economy and development.

## 10.7 Manaus Free-trade Zone

The Manaus Free-trade Zone (ZFM) was created and regulated by Law No. 3173 of June 6, 1957 and Decree-law No. 288 of February 28, 1967, respectively. ZFM is administered by the Manaus Free-trade Zone Authority - SUFRAMA.

ZFM is an import/export free-trade area, and offers special tax incentives. The idea is to maintain an industrial, trade and agricultural center in the Amazon region, with economic conditions that will foster Amazon development, thereby overcoming certain local difficulties as well as the great distance between the production site and consumers.

Special ZFM incentives are guaranteed under the Constitution until 2013.

### 10.7.1 Company Establishment

In order to set up in ZFM, a company must submit an industrial schedule to SUFRAMA. If approved by the SUFRAMA Administrative Council, the company will send SUFRAMA the definitive industrial and architectural plans.

In order to augment the domestic content in goods produced by companies in ZFM, the Administration has adopted a basic production process (PPB), featuring a detailed description of the various phases of assembly, preparation and transformation of inputs from byproducts to end product; the entire manufacturing process for the product should be fully illustrated. This is to avoid having ZFM become a simple warehouse for assembly of imported products, which products would then be eligible for tax exemptions.

With approval of three projects, the company is able to start up its ZFM activities and then qualify for special tax incentives.

### 10.7.2 Tax Incentives

The companies set up in ZFM are eligible for exemption from or reduction in the following:

- (i) import duty (II), on products intended for ZFM consumption. Reduction in the duty rates for inputs used for products manufactured in ZFM when they are shipped to other points

in Brazil;

- (ii) Tax on Manufactured Products (IPI) on foreign products intended for consumption or manufacture in ZFM, and on goods produced in ZFM intended for consumption in ZFM or anywhere else in Brazil;
- (iii) income tax (IR) for ten years for undertakings approved by the Amazon Development Authority;<sup>3</sup>
- (iv) Tax on Distribution of Goods and Services (ICMS) for products from other states that are slated for consumption or manufacture in ZFM. Additionally, the companies will have an ICMS credit with regard to products from other Brazilian states, and refund of a variable ICMS payment for industrial undertakings approved by the Amazon State Economic and Finance Office; and
- (v) Tax on Services (ISS) for companies providing services under projects approved by the Manaus City Hall.

The companies qualified by SUDAM will have funding from the Amazon Investment Fund for capital formation, as well as concession of industrial lots with full infrastructure.

### 10.7.3 Current Panorama

ZFM currently encompasses some 600 projects approved by SUFRAMA (480 of which have already been implemented), and an agribusiness district of some 589,334 *hectares*, all of which account for approximately 130,000 jobs in the Amazon region.<sup>4</sup>

ZFM has been notable in the last few years for creating special advantages to attract foreign investment or encourage formation of joint ventures, thereby promoting the development of the Western Amazon region.

In keeping with the new federal industrial and foreign trade policy, ZFM has become an effective export and international purchasing center.

## 10.8 Foreign Trade System

Foreign trade comes under federal government control. In the case of imports, controls are intended, in general, to stabilize the balance of payments at times of economic crisis, as well as to protect and stimulate the growth of Brazilian industry and to encourage foreign investments, with due regard for the WTO rules.

<sup>3</sup> The Amazon Development Authority - SUDAM was created by the Administration in 1966, for the purpose of fostering self-sustaining economic development and well-being throughout the Amazon.

<sup>4</sup> Source: SUFRAMA, official site, "Companies' Profile", December 1998.

However, the Brazilian market is being increasingly opened to foreign products, with the intent of modernizing the economy. In order to reach this target, the federal government is working to reduce import controls and duties.

Entry of foreign goods into Brazil for internal consumption is subject prevailing MERCOSUL and Common Foreign Tariff (TEC) guidelines, based on the Common MERCOSUL Nomenclature (NCM).

Most import duties range from 0% to 35%, but the federal government has implemented an import policy that is intended to reduce such rates to an average 14%. Import duty is calculated on the price at which the goods are offered for sale on the wholesale market in the exporting country, plus the cost of insurance and freight (c.i.f.).

It should be stressed, however, that increases in import duty are specifically excluded from application of the rule that no tax may be levied unless the law came into force before the beginning of the relevant tax year (the ex-post-facto rule). In other words, the federal government may change import duty rates at any time. Consequently, this is one of the basic mechanisms of the federal government for controlling imports.

Furthermore, subject to certain exceptions, the import of products comparable to locally manufactured products may not be eligible for certain tax or exchange advantages (i.e. exemptions or reductions). The responsibility for ascertaining whether a comparable domestic product exists lies with the Brazilian Foreign Trade Department (SECEX), which normally consults the domestic manufacturers. Domestically manufactured products are considered to be comparable to foreign goods if they are capable of replacing the imported products in terms of quality, price and delivery terms.

Imports are also subject to IPI and ICMS. Under specific conditions, some imported goods are eligible for tax exemptions, reductions and incentives in respect of IPI and/or ICMS.

On the other hand, since increasing exports is high on the list of government priorities, there are fewer controls on exports, and they are intended to guarantee minimum prices for locally manufactured products and to protect the domestic consumer by preventing the export of scarce products which might cause problems of supply and demand. The exporters of manufactured goods are entitled to export incentives, represented by financial and tax incentives, such as IPI and ICMS immunity for all manufactured products. They also qualify for maintenance of ICMS and IPI credits ensuing from the purchase of raw materials and inputs used in the manufacturing process, which can be deducted from the taxes due on business transactions on the domestic market.

These are the main tax incentives available, but there are many others offered in accordance with the government interest in the development of certain economic and social areas.

As to imports and exports, 1991 witnessed the emergence of MERCOSUL, the common market joining Argentina, Paraguay, Uruguay and Brazil for trade purposes.

MERCOSUL has considerably raised Brazilian foreign trades, with Argentina now being the

second largest market for Brazilian goods, and Brazil the largest market for Argentinean goods. MERCOSUL internal trade was on the order of US\$ 20 billion in 1998.

MERCOSUL, however, will not alone suffice to stimulate the integrated development of the member nations, and will have to be supplemented by increased foreign investment. Economic, political and legislative stability, and, especially, a less heavy tax burden, are all prerequisites for attracting more investment.

As mentioned earlier, Brazilian imports are subject to import duty, IPI and ICMS. MERCOSUL participants, however, all adopted common tariff rates for import duty (see Chapter 18 for further MERCOSUL information).

Finally, in order to trade in imports, companies must be registered with the SECEX General Register of Exporters and Importers. Any applicant complying with the necessary requirements will be registered. In exceptional cases where a company is shown to be involved in certain acts, SECEX may cancel or suspend (for up to two years) registration or may refuse an application for registration.

---

---

## 11. - BANKRUPTCY

According to Decree-law No. 7661 of June 21, 1945, bankruptcy is the failure of a debtor engaged in trade or business to honor its obligations when due, on account of insolvency. A bankrupt person is defined as a person engaged in trade or business which, without legal right, fails to pay a sum certain on the due date as evidenced by a document which entitles the holder to institute summary proceedings to enforce payment. There are other specific instances of bankruptcy referred to in the law, all of which involve the failure of the debtor to honor debts at maturity as a result of insolvency.

A debtor must petition for bankruptcy when, without legal justification, it fails to pay a sum certain at maturity; an obligation is treated as a sum certain when its amount has been established beyond any question, and there are no doubts as to its existence. If the debtor does not make payment, its successors or creditors or any of its partners or shareholders may petition for bankruptcy.

As in the case of insolvency of a nontrading debtor, a commercial debtor may, within the time frame for presenting a defense, avoid bankruptcy by depositing the amount claimed before discussing the merits of the claim. Also as in insolvency, the court order of bankruptcy will, *inter alia*, appoint an administrator or trustee in bankruptcy--who has basically the same duties as the administrator in insolvency--and will set a time limit of not more than 20 days for the creditors to prove their claims.

Foreign creditors participate in the distribution of the assets of the bankrupt debtor on an equal footing with Brazilian creditors. It must be stressed, however, that foreign currency claims covered by a bankruptcy or *concordata* are converted into Brazilian currency at the rate of exchange in effect on the date the bankruptcy was decreed or processing of the *concordata* was determined by court decision, and it is only at the value so established that the claim will be considered.

Once bankruptcy has been decreed, any actions and executions instituted against the debtor by each of the creditors will be stayed, except if the creditor is demanding a credit not claimed in the bankruptcy proceedings. In this case, the action will continue against the estate until the credit has been clearly established.

After the bankruptcy proceedings (to which all of the debtor's assets are subject) have been instituted, the debtor forfeits the right to dispose of its assets. Bilateral contracts previously entered into by the bankrupt party may only continue to be performed at the discretion of the bankruptcy trustee, if this is of interest to the estate. The bankrupt party may be required to undergo a judicial examination to establish facts and circumstances that may form the basis for criminal proceedings against it for a bankruptcy offense.

The discharge of the bankruptcy consists of realization of the assets and payment of the liabilities, or, in other words, the sale of the debtor's assets and the payment of its creditors from the sale proceeds. Except in the case of *force majeure*, the bankruptcy proceedings should be formally terminated by a court order two years after the date on which the bankruptcy was declared.

Apart from the other methods of discharging debts referred to in the law, the debtor's liabilities are

automatically extinguished five years after termination of the bankruptcy proceedings, provided that the debtor has not been convicted of any bankruptcy offense; if it has been so convicted, its liabilities are not discharged for ten years. The court order discharging the debtor may authorize it to carry on trade or business, unless it is found guilty of a bankruptcy offense, or is awaiting the outcome of proceedings brought as a result of such offense.

### 11.1 Reorganization

Brazilian law allows the avoidance of bankruptcy by *concordata*, provided: (i) the debtor has registered or filed the documents and books necessary for the regular exercise of its business at the commercial registry; (ii) the debtor has not failed to apply for bankruptcy within the prescribed period; (iii) the debtor must not have been convicted for any bankruptcy offense, theft, robbery, fraud, contraband or other similar crime; and (iv) the debtor must not, within the previous five years, have petitioned for *concordata* or have failed to comply with the terms of an earlier *concordata*. Moreover, it must be stressed that neither financial institutions nor airlines or firms that are part of the airline infrastructure may file for *concordata*; this also applies to insurance companies and cooperatives.

There are two different kinds of *concordata*. The more usual is the preventive *concordata*, which seeks to avoid bankruptcy. There are some legal conditions for *concordata*, mainly regarding the debtor's behavior. The debtor must have carried on business regularly for more than two years; it must possess assets the value of which exceeds one-half the amount of its unsecured liabilities; it must not be bankrupt or, if it has been previously declared bankrupt, it must have discharged its liabilities; and it must not have any document protested for failure to pay.

During the preventive *concordata* proceedings, the debtor retains the right to administer its assets, and may continue to run its business under the supervision of a receiver who will be appointed by the court from among the major creditors. The debtor may not, however, dispose of real property or give guarantees *in rem* without prior authorization of the court.

The other kind of *concordata* referred to in Brazilian Bankruptcy Law is the suspensive *concordata*. In this case, a bankrupt debtor may have its bankruptcy suspended by asking the court hearing the bankruptcy proceedings to grant a suspensive *concordata*, provided it offers the ordinary creditors a certain legally defined payment. The rules for preventive *concordata* also apply to suspensive *concordata* insofar as appropriate.

In spite of the many special features that distinguish *concordata* proceedings, they are quite similar to bankruptcy proceedings, especially in regard to the proof of claims. Should the debtor fail to comply with its obligations in the proceedings, the *concordata* may, at any time, be transformed into a bankruptcy.

It is important to clarify that credits subject to *concordata* will be monetarily adjusted, and interest will be calculated at a rate of no more than 12% per annum, at the court's discretion, from the date of distribution of the petition for *concordata*, in regard to the obligations then due. The creditors are listed by the debtor, and will be automatically included on the general creditors' list. Should some creditors be omitted or even not agree with the amount mentioned by the debtor, they have 20 days from the date of publication of the public notice to the creditors to file their claims.

---

---

## 12. - ENVIRONMENT

The Federal Constitution assigns a special chapter to environmental protection, which safeguards Brazilian citizens' right to a balanced environment, and imposes on the public authorities and the community as a whole the duty to defend and preserve the environment. Article 23 confers jointly on the federal government, the states, the Federal District and municipalities the authority and duty to protect the environment, to take action against pollution in any of its forms, and to protect Brazilian fauna and flora.

Law No. 6938 of August 31, 1981, as amended, institutes the Brazilian Environmental Policy, as well as its purposes, regulations and enforcement. Law No. 7347 of July 24, 1985 regulates the adoption of public actions for damages to the environment, consumers, other assets and rights. Both laws entail an obligation for any individual or legal entity directly or indirectly responsible for environmental damages, notwithstanding any verification of actual fault or prior administrative penalties (strict liability).

Within their respective spheres of authority, governmental agencies are entitled to administratively penalize any party that breaches environmental laws, by imposing warnings, fines, shutdown, and losses or limitation of rights, fiscal incentives and benefits.

Besides administrative sanctions, the breaching party is held civilly liable for any damages caused the environment, and is liable as well for indemnifying and/or repairing the damage, as well as criminally liable for payment of fines and/or for the penalties restricting rights or liberty – detention or confinement. The determination of civil liability does not necessarily depend on guilt, since mere proof of the act or omission, the damage which has been caused, and the relationship between such act or omission and the damage will suffice.

Law No. 9605 of February 12, 1998 consolidated not only the administrative penalties, but also the criminal sanctions applying to conducts and activities that cause damage to the environment, which penalties and sanctions had been so far scattered in various legal writings dealing with environmental protection.

The initiative for bringing suit for damages caused the community lies with the public prosecutors and also foundations, independent agencies and associations created for protection of the environment (including nongovernmental organizations).

---

---

## 13. - LABOR LAWS - GENERAL ASPECTS

Brazilian labor law defines an *employee* as the person who renders services on a regular basis to, and under the direction of, an employer in return for compensation. Subordination is the essential requirement to characterize an employee, and, consequently, an employment bond.

A self-employed worker is one who renders services on an independent basis, both as to terms and performance. He/she acts for him/herself, determining his/her own tasks, developing his/her own business, and assuming the risks of his/her activities, as his/her own master, since there is no subordination relationship, and he/she is not subject to the authority of any third party.

According to Brazilian law, an employer is a company, severally or jointly, that takes the risk for its economic activity, hires, pays salaries, and sets out the guidelines for the services provided by the employee.

The rights and duties of employers and employees are set out in the Consolidated Labor Laws - CLT, in collective bargaining agreements and collective conventions, as well as in some special laws on specific matters. Certain classes of employees, such as civil servants, domestic servants and rural workers, however, are excluded from the scope of the Consolidated Labor Laws, as they are subject to special regulations.

### 13.1 Employment Contract

A formal agreement is not necessarily required under Brazilian law for employment of an employee. Oral employment is fully valid. In any event, however, it is essential that the employment contract be recorded in the Work and Social Security Card – CTPS of the employee. The law sets forth various rights that are inherent to an employment relationship without the need for these rights to be repeated or specified in a written contract.

As a general rule, an employee is contracted for an undetermined period of time, and contracts for a determined period of time constitute an exception to this rule. The latter contract will only be valid when (i) the nature of the services justifies establishment of a predetermined period of time; (ii) the nature of the company's activity is temporary; or (iii) it is a probation contract. In general, contracts for a determined period of time cannot exceed 2 years. Probation contracts cannot exceed 90 days.

No indemnity is payable to an employee on termination of his/her employment after expiration of a determined-term contract. However, if during the contract the employee is dismissed without good cause by the employer, he/she will be entitled to an indemnity of half of the salary due him/her during the unexpired portion of the contract. If it is the employee who terminates the contract, he/she must indemnify the employer for any loss resulting from this breach of contract.

### 13.1.1 New Types of Employment Contract

With a view to reducing unemployment, Law 9601/98 created a new type of contract for a determined period of time, which does not depend on the existence of the three features mentioned in the legislation, and reduces the labor charges usually assessed on employment contracts in general. This new type of contract may only be entered into with the mandatory participation of the labor union, and is formalized through a collective bargaining agreement or collective convention, in which all the employment conditions must be set out, including the indemnity payable in the event of early termination. Companies cannot use this type of contract to replace employees hired for an undetermined period of time.

The part-time employment contract, in turn, was created and authorized by Provisional Measure in 1999. The part-time employment contract differs from the other types of employment contracts as it allows that an employee be employed for a maximum workweek of 25 hours. The compensation payable to a part-time employee is proportional to the full workweek of employees who perform the same activities. The Brazilian law provides for the same basic rights to part-time employees, with the exception of overtime work (which, in principle, may not be done) and vacation period (which cannot exceed 18 days).

## 13.2 Basic Rights of Employees

Only general labor rights are described in this item. Specific legislation and collective labor conventions for distinct professional categories may ensure employees other or broader rights.

### (I) Salary and Compensation

Under Brazilian labor law, any individual rendering any kind of service is entitled to compensation, which may be paid monthly, fortnightly, weekly or even per piece or task, depending on the conditions established for the hiring. The compensation paid to an employee may never be less than the minimum wage established by the Government throughout the Brazilian territory or less than the lowest wage level ( *piso salarial*) established in the collective convention for each professional category.

The compensation includes--in addition to cash payment, or wage--food, housing or any other benefits the company provides habitually to the employee by express or tacit agreement.

After having been granted, these benefits are in general considered part of the employee's employment contract, and cannot be reduced or abolished. This is because under Brazilian law any changes in employment contracts that adversely affect the employee, even if with his/her consent, are prohibited and may be deemed to be legally null and void.

### (II) Weekly Remunerated Rest Period (DSR)

All employees have a right to one day's remunerated rest period, which should preferably fall on a Sunday. In the case of employees who receive their compensation monthly, payment of the weekly

remunerated rest period will already be included in the monthly compensation.

### **(III) Vacations**

Every employee, upon completing one year's service with the same company (the "acquisition period"), is entitled to 30 calendar days' vacation if he/she has not been absent from work more than five unjustified times during the period. Salary in relation to the vacation period must be paid at the latest two days before the start of the vacation period. Vacation should be granted in the year following the acquisition period, which is called granting period, under penalty of the employer's being required to pay double vacation.

### **(IV) One-Third Bonus on Vacation**

As from enactment of the 1988 Federal Constitution, workers acquired the right to receive a one-third bonus in addition to the normal monthly compensation, at the time of annual vacations.

### **(V) 13th Salary**

In December of each year, the employer will pay the employee an extra compensation, known as 13<sup>th</sup> salary, corresponding to the salary for said month plus the annual average of other monies habitually paid to the employee during the year. When taking a vacation at any time of the year, the employee may request an advance equal to half of his/her 13<sup>th</sup> salary.

### **(VI) Prior Notice**

An employment contract for an undetermined period may be terminated at any time without good cause, upon prior notice given by one party to the other. If it is the employer that decides to terminate the employment contract without good cause, it must give the employee at least 30 days' prior notice, and during such period the employee is entitled to reduce the workday by two hours or to be released from work for seven consecutive days, without prejudice to payment of the employee's compensation. The employer may release the employee from work during the prior notice period by paying the respective indemnity. Lack of prior notice by the employer entitles the employee to a payment corresponding to such period.

### **(VII) Health Hazard Allowance and Risk Premium**

In the case of employment in activities considered by law to be hazardous, an additional monthly allowance to compensate for such health hazardous work conditions to which the employee is exposed will be paid by the employer. Such allowance will be equivalent to 10%, 20% or 40% of the minimum wage, depending on the hazard degree.

In the case of dangerous activities, such as those involving contact with explosives, flammable materials and electricity, an additional payment in compensation for the risks involved will be paid by the employer at 30% of the employee's salary.

### **(VIII) Workday**

As a rule for all employees, the maximum workday is eight hours and the maximum workweek is forty-four hours, with one-hour break for meal and rest. There must be a minimum rest period of

eleven consecutive hours between workdays. Some distinct professional categories, called *categorias profissionais diferenciadas*, are eligible for a special workday system.

Work performed beyond the time limits provided under the law is treated as overtime. The minimum compensation for overtime is 50% higher than the normal hourly rate. No overtime payments will apply to employees engaging in external activities, which cannot be subject to fixed workhours, or to managers, meaning the employees in management positions, including as well directors and heads of a department or branch.

Night work is that performed between 10:00 p.m. and 5:00 a.m. Work performed between these hours entitles the employee to a compensation at least 20% higher than the normal hourly rate, and this payment may be added to overtime.

In 1999, a Provisional Measure created an offsetting system known as “*Banco de Horas*”, by which an extra pay may be eliminated if a collective labor convention or collective bargaining agreement provides that the overtime worked on one day is to be offset by a reduction in the hours worked in another day, so that the hours worked during a maximum period of one year will never exceed the total number of hours per week permitted under the law nor the maximum limit of ten hours per day.

#### (IX) Unemployment Guarantee Fund - FGTS

According to the Federal Constitution, the FGTS system became automatic and compulsory for all employees hired after October 5, 1988. Under the FGTS system, every month the employer deposits the equivalent of 8% of each employee's compensation for the previous month in a blocked bank account in the name of the employee.

An FGTS-opting employee unfairly dismissed is entitled to withdraw the total FGTS deposits from his/her FGTS account, plus interest, monetary correction and a 40% fine figured on the total. Collective employment contracts may provide for an additional indemnity.

#### (X) Social Security

Every employee must be officially enrolled at the Social Security System. Social security in Brazil is sponsored by monthly contributions from employees, employers and the State. After a certain period of enrollment and contributions, the employee is entitled to receive social security benefits under the pertinent law.

### 13.3 Suspension of an Employment Contract

The suspension of an employment contract occurs when the duties inherent thereto are not enforced, there being no compensation and computation of the length of service. Typical examples are: non-remunerated leave of absence, and the participation in strikes, without wages.

In 1999, a Provisional Measure provided for another event of suspension of employment contract. Under this new rule, an employment contract may be suspended for a period of two to five months, provided that the purpose of such suspension is to allow the employee to participate in a

professional training course or program offered by the employer for a period equal to that in which the contract is to be suspended, as provided for in a collective labor convention or collective bargaining agreement and subject to the employee's formal agreement.

### 13.4 Termination of an Employment Contract

The termination of an employment contract may occur, as a general rule, either by decision of the employer (dismissal) or by decision of the employee (resignation). In the case of dismissal of an employee, it may be either for good cause or by unfair dismissal.

(I) **Dismissal for Good Cause:** The dismissal of an employee for good cause may only occur where the dismissal results from one or some of the following material acts on the part of the employee:

- (a) dishonesty;
- (b) improper conduct or lack of self-restraint;
- (c) regularly doing business on his/her own account or for the account of a third party without the employer's permission, or when the activity is in competition with the employer's business or adversely affects the quality of the employee's work;
- (d) criminal sentencing of the employee, in final judgment, provided that execution of the penalty has not been suspended;
- (e) sloth in the execution of his/her duties;
- (f) intoxication during working hours;
- (g) violation of trade secrets;
- (h) any act of indiscipline or insubordination;
- (i) abandonment of employment;
- (j) any act of violence or any act injurious to the honor or reputation of any person, except in legitimate cases of self-defense, or defense of the interests of a third party;
- (k) any act of violence or any act disparaging to the honor or reputation of the employer or superiors, except in legitimate cases of self-defense, or in defense of the interests of a third party; or
- (l) constant gambling;
- (m) acts contrary to national security where these are duly proved in an administrative hearing.

If the employee is dismissed for good cause, he/she will be entitled only to the compensation corresponding to the days already worked during the month ("outstanding salary"), accrued

vacation and the additional one-third bonus in respect of the accrued vacation.

**(II) Dismissal without Good Cause (Unfair Dismissal):** In the case of termination of the employment contract without good cause by the employer, the employee shall have the following rights:

- (a) outstanding salary for the days worked during the month;
- (b) 30 days' prior notice;
- (c) proportionate 13th salary (calculated based on the salary earned during the last month of employment);
- (d) vacation or double vacation, if any;
- (e) one-third bonus in respect of vacation; and
- (f) release of the FGTS deposits, with a fine of 40% of the total amounts deposited in the employee's FGTS account, during the employment contract.

The individual employment contract and collective convention may provide for other benefits, which must also be considered in the event of termination of the contract.

**(III) Resignation:** A resigning employee is entitled to all the monies listed above, except for prior notice and release of the FGTS deposits plus a 40% fine. When an employee resigns prior to completing one year's employment with one same employer, the employee will have no rights to proportional vacation.

In any of the abovementioned events of termination of employment contract, and providing that the employee has worked with one same employer for more than one year, it will be necessary to provide for homologation of termination of the employment contract at the employee's labor union or at the Regional Labor Office. If the employee is a manager or an officer, there may be other steps to be taken outside the labor area for termination of his/her employment contract, such as cancellation of powers of attorney or formalization of an instrument of replacement of delegate manager, and so on.

All severance pay must be made by the employer within ten days of the resignation or prior notice, where such period is indemnified. If the employee is kept on the job during the prior notice period, the severance pay must be made available on the first business day after the end of the notice period. Failure by the employer to respect these deadlines will give rise to a fine for the employer, equivalent to the employee's one-month compensation.

### 13.5 Temporary Work

Under the Brazilian law, the purpose of temporary work is to meet the company's seasonal service needs, whether to stand in for a company's regular and permanent staff, or to provide additional

services required by the company. Temporary work cannot exceed 90 days.

### **13.6 Foreign Workers - Job Opportunities**

Like many other countries, Brazil has taken steps to preserve job opportunities for its citizens. According to the principle of *proportionality*, all industrial or commercial firms with more than three employees are required to ensure that at least two-thirds of their personnel are Brazilians. This proportion applies to both the number of employees and to the payroll, i.e. two-thirds of the wages must be paid to Brazilian employees by any company in Brazil.

Likewise, under the law, a Brazilian worker may not be paid a wage lower than an alien for performing the same work, and whenever it is necessary to lay off workers, an alien must be laid off before a Brazilian performing the same work.

### **13.7. In-house Job Accident Prevention Commission – CIPA**

CIPA is mandatory for all companies whose staff is composed of more than 50 employees, the purpose of which is the prevention of occupational accidents and diseases, by way of control of the risks existing in the work environment, conditions and organization. CIPA is composed of the employer's representatives appointed by the employer itself, and by the employees' representatives elected by the other employees by secret ballot.

The number of CIPA representatives depends on the number of the company's employees and the degree of occupational risk. The employees' representative in CIPA cannot be dismissed from the date his/her candidature is recorded until one year after the end of his/her term of office.

### **13.8 Unions**

Unions are organized by categories: the professional category, which represents the employees' interests, and the economic category, which represents the interests of employers. The representation of each union is limited to a certain municipal, state or national territory. No union may act within a territory smaller than the area of a municipality. Only one union per category is permitted within the same territory.

Union membership is mandatory and, as a general rule, is defined according to the main economic activity of the company and the place where it is situated. The representation authority of unions does not depend on the voluntary association of companies or employees. Companies and employees must pay annual dues to their associations and unions, respectively.

Collective bargaining agreements are established through voluntary negotiations between the company and the union representing its employees.

Collective conventions are mandatorily negotiated by professional unions and employers' associations for a certain category with a view to establishing the collective work conditions

applying to such category. Collective conventions are binding upon the company and all the union member and non-member employees.

If the unions fail to reach an out-of-court agreement as to the terms of the collective convention, the Labor Court will establish the conditions applicable to the categories involved by way of judicial proceedings known as labor disputes.

### 13.9 Employees' Participation in Corporate Profits

Provisional Measure No. 794 of December 29, 1994 established the participation of employees in corporate profits or results as a means of production incentive, seeking a better integration between capital and work. This provisional measure, which has been successively reissued, obligates companies to establish a Plan for employees' participation in profits or results, by way of negotiations between the employee and the employer, with mandatory participation of the professional union.

Subject to the formalities set forth in the aforesaid Provisional Measure, payments by way of participation in profits may not be made at intervals shorter than six months. These payments are deductible from the company's income tax, and do not have any effects on labor-related payments, such as 13th salary, vacation pay or FGTS.

### 13.10 Social Security Charges

Social security charges are intended to sponsor the Brazilian Social Security Institute (INSS) and entities engaging in the promotion of social services and welfare, or in the formation of professionals and assistance to workers. Under the law, all companies must pay contributions to such entities, according to the respective field of activity (industrial, commercial or services). These contributions are paid to the INSS and correspond to the following percentages on payroll:

(a)	Brazilian Social Security Institute (INSS)	20%
(b)	Industrial Workers' Social Service (SESI) or Commercial Workers' Social Service (SESC) or Transportation Social Service (SEST)	1.5%
(c)	Brazilian Industrial Apprenticeship Service (SENAI) or Brazilian Commercial Apprenticeship Service (SENAC) or Brazilian Transportation Service (SENAT)	1.0%
(d)	Brazilian Institute for Rural Settlement and Agrarian Reform (INCRA)	0.2%
(e)	Support Center for Microcompanies and Small-Size Companies (SEBRAE)	0.6%
(f)	Education Allowance	2.5%
(g)	Workers' Accident Insurance (SAT)	1.0%, 2.0% or 3.0%
	<b>Total</b>	<b>26.8%, 27.8% or 28.8%</b>



---

---

## 14. - IMMIGRATION CONTROL

Law No. 6815 of August 19, 1980 (the "Foreigners' Statute") regulates the entry and stay of aliens in Brazil, their identification, placement, the development of professional and other activities, acquisition of Brazilian nationality, extradition, expulsion and deportation, and further sets out the reciprocal rights and duties of the alien and the Brazilian Government.

Brazil's official immigration policy is coordinated by the Brazilian Immigration Council, an offshoot of the Ministry of Labor and Social Security. The entry of an alien into Brazil hinges on obtainment of a visa. There are seven types of visa envisaged in the law:

- transit;
- tourist;
- temporary;
- permanent;
- courtesy;
- official; and
- diplomatic.

The granting of any kind of visa is conditional upon the national interest, and possession or ownership of assets in Brazil does not entitle the alien to obtain any type of visa or authorization to remain in Brazil. A visa merely affords the alien a provisional right of entry. Entry and stay in Brazil may be refused for any of the reasons specified in the legislation on the issue of visas, or at the discretion of the Ministry of Justice. Refusal of entry could be extended to all members of a family should one of them be considered undesirable.

### 14.1 Temporary Visas

A temporary visa is issued to an alien who intends to come to Brazil on a temporary basis, with no change of domicile. It is issued to persons wishing to come to Brazil in the following circumstances:

- on a cultural trip or study mission;
- on a business trip;
- as an entertainer or sportsman;
- as a student;
- as a scientist, teacher, technician or other professionally qualified person, under contract to a local organization or to render services for the Brazilian Government;
- as a foreign correspondent for newspapers, magazines, radio, television or foreign news agencies; and
- as a missionary.

Aliens on business trips, entertainers and sports figures may remain in Brazil for up to 90 days.

Aliens on a cultural mission, scientists, teachers, technicians, and foreign correspondents may remain for the duration of the mission or work contract, or the time it takes for their respective services to be rendered. Temporary visas may be renewed for another equal period.

An alien who intends to engage in any remunerated activity in the Brazilian territory must fill in the proper form applying for a temporary or permanent visa, and must then submit it to the proper government entity. Temporary visas will only be granted to foreign entertainers, sports figures, scientists, technicians, teachers or professionally qualified persons who meet the requirements of the Brazilian Immigration Council and have a work contract approved by the Ministry of Labor and Social Security, unless they are visiting Brazil to render services to the Brazilian Government. The alien must also produce evidence as to having the means to support him/herself and family while in Brazil. An alien's absence from Brazil for less than 90 days will not affect the processing or approval of any application made for extension of the temporary visa if such application was filed in due time.

Temporary visa holders are entitled to bring their domestic belongings, excluding automotive vehicles, and their professional equipment into Brazil. These goods enter Brazil under a special customs ruling for temporary admission, for which no import license is required, although certain formalities must be complied with.

Holders of temporary visas are subject to certain restrictions, such as not being permitted to establish themselves as sole proprietorships, nor to become managers, officers or directors of companies. Dependents of temporary visa holders and foreign students may not engage in remunerated activities. Also, aliens who have entered Brazil on temporary visas but with work contracts may only engage in remunerated activity with the companies which contracted them.

The Foreigners' Statute forbids the transformation of a transit, tourist or temporary visa into a permanent one. Exception is made only for foreign scientists, teachers, technicians and missionaries holding temporary visas, as well as for official and diplomatic visa holders.

## 14.2 Permanent Visas

A permanent visa will be issued to an alien who comes to Brazil with the intention of remaining permanently.

The granting of a permanent visa is conditional upon certain qualifications; the skills offered must be specialized, thereby facilitating an increase in productivity, technology assimilation and attraction of resources to specific sectors of the Brazilian economy, and, of course, must satisfy the Brazilian Immigration Council's selection criteria.

All aliens entering Brazil as permanent residents, on temporary visas in cultural missions, as students under work contracts, as correspondents or as missionaries must register at the Ministry of Justice within 30 days of arrival. On registration, the alien will receive an identity card. Any subsequent change of address or domicile must be communicated to the police within 30 days. The

Foreigners' Statute also provides for third-party supervision of the activities of aliens in Brazil. Commercial registries must provide the Ministry of Justice with the alien's identification data when they register the firm where the alien works. This will be obligatory in the case of aliens who are officers, managers, directors or controlling shareholders of corporations. Civil registry offices must also send the Ministry of Justice monthly copies of registrations for aliens' marriages and deaths. Real estate companies, hotels, owners of real property, lessors and managers of buildings must also, upon request, send the Ministry of Justice data on the identity of aliens who live in or rent Brazilian property. Public and private entities that employ aliens, and educational establishments where aliens are enrolled must do the same, along with organizations that control and supervise certain professions.

An alien who enters Brazil may leave the country without requiring an exit visa. However, the Ministry of Justice may, at any time, require an exit visa to enable an alien to leave the country. A temporary visa holder who travels outside Brazil may return without an entry visa, provided the original visa is still valid. A foreign permanent resident may leave the country, and return without an entry visa, provided that no more than two years have elapsed since departure from Brazil.

---

---

## 15. - ANTITRUST LAWS

Law No. 8884 was published on June 13, 1994, and sets forth new antitrust regulations in Brazil, intended to restrain and prevent infringement of the economic policy. Law No. 9069 of June 29, 1995 introduced a few amendments in said law.

The new law defines and provides examples of a number of practices which are considered an infringement of the economic order, to wit: tie-in sales, refusal to sell, price arrangements between competitors, market division, combined bids, underselling, dumping, exclusive publicity requirement, imposition of resale prices on distributors, retailers and representatives, retaining of production or consumer goods, overpricing and abusive profits.

The Economic Law Office (SDE)--a department of the Ministry of Justice--has been given the authority to investigate any irregularities in the economic sector and open administrative proceedings accordingly. The authority to decide on the proceedings filed by SDE, in turn, is attributed to the Administrative Council for Economic Defense (CADE), which is an independent agency reporting to the Ministry of Justice. The CADE decision is final and unappealable at the administrative level.

Administrative proceedings can be filed by SDE, via an official letter, or by the Senate, House of Representatives, a congressional committee or any interested party, through a formal complaint. During such proceedings, both SDE and CADE may request information from any persons, agencies, authorities and entities, whether public or private. SDE and CADE may also impose on the offender preventive measures seeking to halt infringement, under the penalty of a daily fine, which can be increased up to 20 times, depending on the seriousness of the infringement.

In the event of infringement, CADE may sentence the company to pay a fine ranging from 1 to 30% of the gross billings ascertained in the last fiscal year. If the company manager is also deemed liable for such infringement, he/she may be subject to a fine varying from 10 to 50% of that imposed on the company. In addition to the fine, other penalties may be applied, *inter alia*: compulsory licensing of patents, cancellation of tax incentives and public subsidies, company spin-off, transfer of control or sale of assets. Moreover, preventive detention of the manager--depending on the nature of the infraction--is also set forth in these regulations.

In order to avoid sentencing, the offender may enter into a cease-and-desist commitment with CADE, which will suspend the administrative proceedings without confession or acknowledgment as to the statement of facts. Should this commitment be breached, the offender will be subject to a daily fine and the proceedings will be reinitiated. If on the other hand this commitment is complied with, the case will be shelved.

The decision handed down in the administrative proceedings will be taken to the courts by CADE or, at its request, by the Government Attorney's Office. Should this decision include affirmative or negative covenants (as for instance company spin-off, sale of assets, and so on), the judge may appoint an intervenor at CADE's request so as to assure compliance with the obligation established in the decision.

In order to avoid economic concentration and hindrance of free competition, the following acts must be approved by CADE: amalgamation, merger, purchase and sale of companies or any other form of corporate grouping, whenever the company or group of companies resulting from these operations holds a 20% stake in the relevant market, or whenever any of the parties has registered annual gross billings of approximately US\$ 250 million (R\$ 400 million) on the latest balance sheet. The law does not define *relevant market*.

The parties involved must inform CADE of these corporate operations, either previously or within 15 days of closing, under penalty of being subject to a fine ranging from US\$ 50 thousand (60,000 UFIR) to US\$ 5 million (6,000,000 UFIR), without prejudice to the filing of administrative proceedings.

The operation may be approved, even if it entails economic concentration, when the purpose is to increase productivity, improve quality or enhance technological development. CADE will be responsible for establishing the performance guidelines according to which the transaction will be approved under these conditions.

---

---

## 16. - CONTRACTUAL CHOICE OF LAW AND JURISDICTION<sup>5</sup>

The basic principles of private international law were incorporated into Brazilian law by Decree-law No. 4657 of September 4, 1942 (usually known as the Law of Introduction to the Civil Code), which, from article 7 onwards, reduces these basic principles to legal rules for internal application.

Most Brazilian jurists believe that the interpretation of article 9 of Decree-law 4657/42 affords leeway for the parties to agree on the applicable law, provided the foreign law respects the following conditions: (i) it must conform to Brazilian public policy and good morals; and (ii) it must not encroach on questions of national sovereignty.

On the other hand, article 9 of the Law of Introduction to the Civil Code provides that, if the parties do not specify the applicable law in the contract, obligations are governed by the law of the country where they are incurred (*lex loci celebrationis*). This legal provision refers to obligations arising from acts of the parties, usually by contract, and not to the ancillary obligations that are strictly linked to the principal relationship. Therefore, the place where the contract is executed is of the utmost importance. The same rule applies in the case of unilateral acts, such as gifts.

Nonprofit organizations (such as charities and foundations) are subject to the law of the country where they are formed. Their bylaws must therefore comply with the law under which they are founded, rather than that of the place where they are based.

Under Brazilian law, the law of the country where a person is domiciled determines the rules relating to his/its legal identity, name, capacity, and family rights. This general rule avoids conflict with laws in other countries, and the few existing exceptions are duly specified.

Questions relating to property are governed by the law of the place where the property is situated (*lex situs*). It is the law of the place which has competence to classify property as movable or immovable, and to determine whether an object may be made subject of a right *in rem*. Hence, when talking about real property, both possession and ownership, *inter alia*, are governed by *lex situs*; the same applies to movable property, except for those assets which the owner always carries with him/it. Ships and aircraft constitute a legal exception, with the jurisdiction over the means of acquisition, mortgages, and so on pertaining to the country where the ship or aircraft is registered.

If a contract is to be enforced in Brazil, it must comply with the formal requirements prescribed by Brazilian law, should it need to be performed in a special manner. The special features of foreign law only apply as regards extrinsic formal requirements.

The rules relating to the choice of forum in Brazilian private international law are to be found in the Law of Introduction to the Civil Code and the Code of Civil Procedure.

---

<sup>5</sup> See the Buenos Aires Protocol signed on August 5, 1994 regarding international jurisdiction over contractual matters involving MERCOSUL countries.

The Code of Civil Procedure provides that Brazilian courts have jurisdiction when: (i) the defendant, whatever his/its nationality, is domiciled in Brazil; (ii) the obligation is to be performed in Brazil; or (iii) the actions result from a fact that occurred or an act performed in Brazil.

Furthermore, Brazilian courts have exclusive jurisdiction: (i) to decide on actions relating to real property located in Brazil; and (ii) to examine and decide on probate proceedings of a deceased person's Brazilian estate, even though the deceased was a foreigner and resided outside the country.

It seems, therefore, that in the former three cases cited above the jurisdiction of Brazilian courts is not exclusive, and the parties are free to choose their forum, subject to certain conditions. In the latter two cases, however, the parties are not free to elect the forum, since the action must be heard and decided on in Brazil.

It should be stressed, however, that only Brazilian courts have exclusive jurisdiction to decide on actions relating to international agreements involving government entities, such as the federal, state and city governments.

Brazilian law does not impose any special requirements on a foreign resident bringing an action in the Brazilian courts. Any plaintiff, however, whether Brazilian or foreign, who resides abroad or leaves the country during the course of a court action, must post bond sufficient to cover the costs and legal fees of the other party, unless he/she has real property in Brazil to guarantee payment. This bond is not necessary in the case of execution proceedings based on an extrajudicial execution instrument.

Finally, the Law of Introduction to the Civil Code provides that having an action brought before a foreign court does not prevent the Brazilian courts from hearing the same action and any others connected with it.

However, foreign judgments may be recognized and enforced in Brazil, irrespective of the existence of reciprocity on the part of the country from which such judgment has originated or a specific international treaty or convention between the country of origin of the judgment and Brazil.

In order to be enforceable in Brazil, however, a judicial award rendered in another country will depend on confirmation by the Brazilian Federal Supreme Court (STF). It should be noted that, when confirming a foreign judgment, STF will only verify whether the formal procedural requisites have been fully complied with in all instances until final judgment, and whether this judgment is subject to any further appeal.

STF will verify that:

- the foreign decision has been rendered by a competent court;
- the parties have been served proper notice of process;
- the judgment is final, and in proper form for its execution at the place where it was rendered;
- the foreign judgment has been authenticated by the nearest Brazilian consulate and has been submitted to STF with an official translation thereof; and
- the foreign decision must not be contrary to Brazilian sovereignty, public policy or good morals.

Once the foreign judgment has been confirmed, it may be enforced before the relevant Brazilian lower court.

It should be borne in mind that the payment of a debt stated in foreign currency may only be made in Brazilian currency, so that the amount will be ascertained by applying the exchange rate prevailing on the date of actual payment. Nevertheless, the remittance of proceeds abroad will depend upon the preliminary authorization of the Central Bank of Brazil.

---

---

## 17. - ARBITRATION

Law No. 9307, which took effect on September 23, 1996, introduced some significant changes into the concept of *arbitration*, repealing articles 1037 through 1048 of the Brazilian Civil Code and articles 1072 through 1102 of the Code of Civil Procedure.

Although arbitration is not yet a common practice in Brazil, enactment of this new law does indicate that it may soon be taking on greater importance in the business context here.

The arbitration concept allows for resolution of disputes outside the courts, and is intended to settle litigation that merely refers to alienable equity rights.

Arbitration offers certain clear advantages in comparison to court proceedings: it is more expeditious and confidential, and allows the parties to elect specialized arbitrators to resolve the case.

Pursuant to the new law, an arbitration arrangement comprises a commitment clause (*cláusula compromissória*) and an arbitration commitment (*compromisso arbitral*).

The commitment clause is a convention whereby the parties to an agreement undertake to submit their differences for arbitration, and this clause is considered autonomous vis-à-vis the rest of the contract, meaning that any defeasance thereof would not necessarily entail defeasance of the commitment clause.

Should there be litigation between parties that have previously stipulated an arbitration clause in the contract, it will be necessary to reach an arbitration commitment. This commitment can be judicial (via an instrument attached to the case record at court) or extrajudicial (by private written agreement signed before two witnesses or by public instrument), and should include the name, profession, marital status, and domicile of the parties and the arbitrators, the issue at stake, and the venue of the arbitration decision.

The main changes brought about by this new law can be summed up as follows:

- (i) Any contract with a commitment clause will obligate the parties to sign an arbitration commitment. This is an affirmative covenant subject to specific performance;
- (ii) Commitment clauses can determine that the arbitration include discovery and be processed according to the rules of an institutional arbitration body or specialized entity;
- (iii) In the event one of the parties were to resist signing this arbitration commitment, the parties will be notified to go before the court, and the decision rendered will prevail as an arbitration commitment;
- (iv) Arbitration is considered under way when the arbitrator accepts the incumbency;
- (v) The arbitration decision produces vis-à-vis the parties the same effects as a decision

handed down by the Judiciary Branch, and any finding against constitutes an execution instrument. Please note that, under the new arbitration law, such decision is not appealable, and there is no longer any need for ratification by the Judiciary Branch;

- (vi) Execution of arbitration decisions handed down offshore are solely subject to Federal Supreme Court recognition. The local courts are no longer required to ratify any decision; and
- (vii) Service on a party resident or domiciled in Brazil pursuant to the arbitration convention or procedural law of the country where the arbitration has actually taken place (for instance, by postal service of process) will not be considered an offense to Brazilian public policy.

In this new context, it is entirely conceivable that arbitration in Brazil will come to be used more frequently as an alternative way of resolving litigation.

## 18. - MERCOSUL<sup>6</sup>

A short while after the creation of the European Coal and Steel Community (1954) and the European Economic Community (1957), Latin America began to take its first steps towards regional integration. The treaty that created the Latin American Free Trade Association (LAFTA), signed in 1960, provided for the creation of a free-trade zone, by means of periodical and selective negotiations between its member states. This choice--negotiation at the discretion of the member states rather than automatic reduction of import duties--caused the LAFTA trade-opening program to develop reasonably well in its early years, to lose impetus as of 1965, and to almost come to a standstill in the 70's. Thus, despite LAFTA's having stimulated trading between member states, there was a substantial shortfall between its original objectives and the results obtained.

The Latin American Integration Association (LAIA), created in 1980 to replace LAFTA, availed itself of other means to attempt member state integration. In place of the free-trade zone established by LAFTA, a preferential trade area was established, creating conditions favorable to the growth of bilateral initiatives, as a prelude to the institution of multilateral relationships in Latin America. LAIA thus made possible agreements for joint actions between countries in the region which until then had no previous ties. The establishment of a common market, however, was still the long-term objective.

Under the LAIA system, Argentina and Brazil signed in 1986 twelve commercial protocols: the first concrete step had been taken towards bringing the two countries closer together (this effort had officially started in 1985 under the Declaration of Iguazu). To supplement and improve on their former agreements, Argentina and Brazil signed the 1988 Treaty for Integration, Cooperation and Development that set the stage for a common market between the two countries within ten years. This treaty further established that the trade agreement would be open to all other Latin American countries.

After the adhesion of Paraguay and Uruguay, a new treaty was signed by all four countries on March 26, 1991 in Asunción, Paraguay, providing for the creation of a common market among the four participants, to be known as the Southern Common Market (MERCOSUL).

The objectives of MERCOSUL are:

- (i) free transit of production goods, services and factors between the member states with, *inter alia*, the elimination of customs duties and lifting of nontariff restrictions on the transit of goods, or any other measures with similar effects;
- (ii) fixing of a common external tariff and adopting of a common trade policy with regard to third-party states or groups of states, and the coordination of positions in regional and international commercial and economic meetings;
- (iii) coordination of macroeconomic and sectorial policies of member states relating to foreign

<sup>6</sup> See MERCOSUL, published by Pinheiro Neto - Advogados.

trade, agriculture, industry, taxes, monetary systems, exchange and capital, services, customs, transport and communications, and any others they may agree on, in order to ensure free competition between member states; and

- (iv) the commitment from the member states to make the necessary adjustments to their laws in pertinent areas to allow for strengthening of the integration process.

Since January 1, 1995, MERCOSUL is:

- (i) a free-trade zone eliminating charges and other nontariff restrictions among the four countries, except for those that are only to be totally eliminated by January 2000; and
- (ii) a customs union under which the common external tariff (TEC) is to range from 0 to 35% for 90% of the products, with a projected common tariff for all MERCOSUL countries by January 2006.

It should be noted that the rules established in the trade-opening program will not apply to Partial Agreements for Economic Supplementation Nos. 1 (signed between Argentina and Brazil), 2 (between Uruguay and Brazil), 13 (Venezuela and Brazil), and 14 (Argentina and Brazil), nor to any agricultural and commercial agreements signed within the scope of LAIA that will be governed by the provisions thereof.

The results achieved with MERCOSUL were surprising. Trades among the MERCOSUL member countries reached US\$ 20 billion in 1998, US\$ 15 billion of which refers to trades between Argentina and Brazil.

Individuals or legal entities that are resident or domiciled in the MERCOSUL countries are already authorized to invest on Brazilian stock exchanges. MERCOSUL investors may freely participate in the securities market, without having to operate through an investment fund or portfolio, as is the case with other foreign investors. Likewise, individuals and legal entities that are resident or domiciled in Brazil are authorized to invest on the stock exchanges of other MERCOSUL member countries.

The only applicable restrictions are that the (i) transactions may only be carried out on the spot market; (ii) traded shares and other securities may only be issued in registered form; (iii) the investors must be domiciled or headquartered in the investment's country of origin; and (iv) the transactions will be settled on the financial markets of the countries involved in the transaction.

---

---

## CONCLUSION

We have striven to provide prospective investors with a practical overview of how companies are formed and how they operate in Brazil.

Brazil offers countless opportunities for prospective foreign investors, in light of its enormous economic potential, its diversified economy, and its huge domestic market, now considerably expanded by joining MERCOSUL. The current governmental policies, targeting modernization of the economy to bring Brazil back into the international economy, have been most successful. Brazil's political and financial stability, together with its progressively open economy, the noteworthy reduction of inflation, privatization, and economic growth have attracted ever-increasing offshore investments.

Pinheiro Neto - Advogados provides companies investing or intending to invest in Brazilian economic activities with specialized services in all legal sectors. Our association with Club de Abogados, especially Club de Abogados – Iberoamerica, and our Cooperation Agreement with Estudio Beccar Varela, Gómez-Acebo & Pombo – Abogados and Vieira de Almeida & Associados in Argentina, Spain and Portugal, respectively, coupled with our network of correspondents throughout Brazil and the world, play a key role in our effort to provide our clients with everything they need for their investments.

September 2000

PINHEIRO NETO - ADVOGADOS

Copyright © 2000 by Pinheiro Neto - Advogados. All rights reserved.

e:\grupos\suporte\livretos\company formation\company 2000\company julho-2000-i.doc  
01/05/2002 (hn:asv)

---

---