

LEGAL GUIDE: BUSINESS IN BRAZIL

COORDINATED BY DURVAL DE NORONHA GOYOS, JR.

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LEGAL GUIDE: BUSINESS IN BRAZIL

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Although every effort has been made to assure the accuracy of the information contained in this guide as of the date of publication, nothing herein should be construed as giving legal advice. Obviously, the law is subject to change, and it changes very often in Brazil. In addition, the application of the law to specific circumstances can present complex issues that are beyond the scope of this guide.

This publication is intended to provide general legal information pertaining to investing or doing business in Brazil. NORONHA ADVOGADOS will be pleased to provide more detailed information on request.

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Services: International Business
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Foreign Capital; Intellectual Property;
Real Estate; Environment; Energy and
Mining; Privatisation; Maritime
and Aviation Law; Competition
and Antitrust Law; Consumer Law;
Electronic Commerce Law; Arbitration.

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I. INTRODUCTION TO THE FIRST EDITION

As we approach the year 2000, we can be encouraged, even excited, about the promise of new opportunities. The world is changing politically and economically. Markets are expanding, and trade barriers are falling. As a result, business is becoming more competitive every day. For decision-makers, access to accurate and timely information is no longer a luxury, it is indispensable in today's business climate.

Brazil has the eighth-largest economy in the world. In the past decade, Brazil has had a continuously-sustained and significant surplus in its balance of trade in volumes only exceeded by a few other countries and, despite numerous difficulties, offers unique opportunities for success.

The Country's redemocratisation has provided the necessary institutional climate for economic activity; the democratic institutions have worked admirably well even under stress. The modernisation of the legal structure and the reduction of the presence of the State in the economy have enormous popular support and have been implemented gradually but firmly. Even more exciting for anyone doing business in or with Brazil is the Country's enormous potential for growth as it progressively reduces trade restrictions and moves toward free trade.

It is our belief that Noronha's "Legal Guide: Business in Brazil" provides relevant information to business leaders who need to plan investments in this fascinating part of the world. The Guide is designed as an introduction to doing business in or with Brazil, covering such basic areas as taxation, corporations, investments, intellectual property, informatics, finance, environment, public bids, Mercosul and others. We believe it contains valuable basic information for businessmen, lawyers, economists and anyone interested in learning more about Brazilian legislation affecting business. The Guide will also serve law students well as an introduction to Brazilian Business Law.

The Guide was written by some of the partners of NORONHA - ADVOGADOS, an international law firm based in São Paulo and with offices in Rio de Janeiro and Brasilia, Brazil; Miami, U.S.A.; London, U.K.; Zurich, Switzerland; and Lisbon, Portugal. We have tried to strike a balance by making the Guide concise enough to enable the reader to absorb the information quickly, but broad enough in scope to cover all the basic questions most frequently asked by businessmen and lawyers. We hope the reader will find this guide informative and helpful in making business decisions.

September, 1992

Durval de Noronha Goyos, Jr.

II. INTRODUCTION TO THE SECOND EDITION

The first edition of “Business in Brazil -Legal Guide”, published in 1992, was an instant success and was completely sold out by 1994. Thus, it was only with the greatest reluctance that we did not have a second printing of the first edition, in view of the fact that a good portion of the book had become outdated as a result of the enormous transformations in the Country’ s legal structure since 1992.

In addition, there were a number of different bills underway in Congress that could have decisively affected a second edition, rendering it instantly outdated.

Therefore, we decided to wait until the major constitutional reforms passed in Congress and, as a consequence, the 2nd Edition of “Business in Brazil -Legal Guide” is not only completely updated as to the general constitutional framework but also the different legal areas it covers: taxation, company law, technology, etc. The book has a new chapter on competition law, inserted as a result of legal developments in 1994 and 1995. It also has a new more comprehensive chapter on the Brazilian financial system, following the liberalisation of the sector which took place in 1995. The chapter on international treaties addresses the latest developments of the World Trade Organisation (WTO) and MERCOSUL.

We are confident the second edition of “Business in Brazil- Legal Guide” will be of enormous assistance to all those interested in doing business in or with Brazil, as well as to law students and those who desire to become better familiarised with Brazil’s legal structures.

Cortina, 18 February 1996

Durval de Noronha Goyos, Jr.

III. INTRODUCTION TO THE THIRD EDITION

The third edition of “Business in Brazil: Legal Guide” follows the success of the previous editions of 1992 and 1996, which met with remarkable success in Brazil and abroad, in both the private and public sectors, and were used not only by investors from abroad wishing to learn more about the Country’s legal structures, but by government agencies involved in international negotiations, professionals, journalists and by university students.

The third edition became necessary not only because the second had been fully sold out, but also as an update was needed in order to consider the numerous legislative innovations introduced in Brazil during Mr. Fernando Henrique Cardoso’s administration. Such new legislative initiatives have been brought about with a view to modernising the Country’s legal structure and thus to facilitate the business climate, to enhance the competitiveness of the companies established locally, and to make Brazil more attractive for investments from abroad.

Among several of the alterations brought to the Brazilian legal system, we can cite the approval of Law 9.307 in September of 1996, which deals with arbitration procedures; the enactment of Law 9.457 in May of 1997, modifying Law 6.404/76, with relation to the question of company law and the rights of minority shareholders; as well as the approval of the new Brazilian Industrial Property Code of May, 1996, which replaces the previous Code of 1971. Apart from these domestic legal innovations, this guide also describes general events which have taken place affecting Brazil’s foreign affairs. Mercosul has been enlarged, with the accession of Chile and Bolivia as associated States. International commitments, particularly those concerning the financial statements of banks, have advanced with the approval of Central Bank Resolution n. 2.302 of July, 1996, thereby complying with the Basel Convention. The area of corporate competition policy, regulated in the Country since 1962, has become very active and the Brazilian antitrust agency, CADE, has further regulated the matter by means of Resolution

05 of August, 1996. New anti-dumping rules have been adopted in Brazil, in accordance with the Country's WTO commitments. Not only does this third edition discuss these and other legal modifications, but it also describes the recent federal level privatisation programme, which expanded throughout 1997 and is considered to be one of the largest undertakings in the world's developing economies. The programme covers the areas of telecommunications, oil and electric energy, producing policies to be implemented in each of these sectors, as defined in Laws 9.472/97, 9.478/97 and 9.427/96, respectively. This programme will also continue throughout 1998.

It gives us at Noronha Advogados great pleasure to launch the third edition of our "Business in Brazil: Legal Guide" at a moment when Brazil has become one of the world's favourite recipients of international investments and in the year we celebrate the 20th anniversary of our firm's foundation. We are confident the reader of "Business in Brazil: Legal Guide" will find the publication very practical and eminently useful.

São Paulo, January, 1998

Durval de Noronha Goyos, Jr.

IV. INTRODUCTION TO THE FOURTH EDITION 2000

Our book, “Legal Guide: Business in Brazil”, has become the reference work for those interested in the Brazilian legal infra-structure. Its 1998 edition entirely sold-out within 18 months of its launch, in view of the growing international interest in Brazil. In fact, in 1998 and 1999 Brazil received foreign direct investments of approximately US\$ 59 billion, which is not only a flagrant recognition by the international community of the enormous business opportunities the Country has to offer at present but also a firm perception that the legal reforms in progress under the present Administration are a clear indication that the prospects for the medium and long terms are even better.

During 1998 and 1999, the Brazilian legal environment was further liberalised. There were changes in areas of insurance; taxation; company law; foreign exchange; competition law; energy law; labour law; social security and banking, among others.

This Fourth Edition - 2000 of the “Business in Brazil: Legal Guide” has been entirely reviewed, up-dated and expanded with the inclusion of new chapters on insurance, on account of the liberalisation of the sector, labour law and consumer protection.

We at NORONHA ADVOGADOS are delighted to launch this Fourth Edition - 2000 of our Legal Guide in the year of the celebration of the 500th anniversary of the discovery of Brazil by the Portuguese navigator, Pedro Alvarez Cabral, on 23 April 1500. To mark this event, we have changed our traditional cover in order to insert photographs of two Portulans (navigation maps) dated 1561 and 1597, which belong to the art collection of NORONHAADVOGADOS.

São Paulo, 11 January 2000

Durval de Noronha Goyos, Jr.
Senior Partner

V. INTRODUCTION TO THE FIFTH EDITION 2001

Fifth Edition - 2001 of “Business in Brazil: Legal Guide” is a complete revision of all the chapters of the fourth edition to the book, covering the areas of, inter alia, company law, banking, taxation, labour law, consumer protection, bids, competition law, insurance, intellectual property, litigation, arbitration, Mercosul, privatisation, energy, electronic commerce, anti-dumping and immigration. This effort was made to incorporate new information and to update the legislation references of the fourth edition.

We remain confident that this new edition will be of enormous assistance to all those interested in doing business in and/or with Brazil.

São Paulo, June, 2001.

Durval de Noronha Goyos, Jr.
Senior Partner

VI. INTRODUCTION TO THE SIXTH EDITION 2003

The sixth edition of our “Legal Guide: Business in Brazil” has undergone important up-dating as a result of the entry into force, in January 2003, of the new Brazilian Civil Code, which brought important alterations “inter alia” in the matter of company formation. In addition, since the fifth edition was published, a new company law was enacted in Brazil in 2001.

Similarly, the alterations in taxation occurred since the fifth edition was published have been duly incorporated into this sixth edition. In the area of intellectual property, we have expanded our coverage to include the matters of technology supply and technical and scientific assistance services. A new item on franchising has been also included.

The chapter on the Brazilian financial system has been up-dated taking into consideration the recent legal developments including Constitutional Amendment number 40, of 2003 and National Monetary Council Resolution 3,040, of 2002. Totally new chapters on entertainment, internet and e-commerce and sports law have been inserted.

It has now been 11 years since the first edition of our “Legal Guide: Business in Brazil” was originally published in September of 1992. During this period, our book became the reference work in the area. We are confident that the new sixth edition will remain indispensable for those who wish to do business in or with Brazil and delighted to release it when our firm, NORONHA ADVOGADOS, completes its 25th Anniversary.

São Paulo, 6 October, 2003.

Durval de Noronha Goyos, Jr.
Senior Partner

BASIC INFORMATION

Brazil is fortunate to be located in the east-central part of South America, where it borders almost all other South American countries except Chile and Ecuador. Brazil is a large country that, with an area of approximately 3,286,488 square miles, covers almost 48% of South America.

Brazil's eastern seaboard extends some 7,408 kilometres along the Atlantic Ocean. The Country's major ports are Santos, Rio de Janeiro, Tubarão and Paranaguá.

Brazil is comprised of 26 states plus its capital, the Federal District of Brasília. The Country is divided geographically into 5 different regions: North, Northeast, Southeast, South and West-Central.

The Southeast region is the most prosperous and most highly industrialised and is where Brazil's major cities are located:

São Paulo	-	17,878,703 inhabitants
Rio de Janeiro	-	10,894,156 inhabitants
Belo Horizonte	-	4,819,288 inhabitants

The Northeast is the least developed region, due in part to its harsh physical characteristics. In addition, there is a lack of investment in the Northeast because the South and the Southeast have better infrastructures for industry and manufacturing and thus are more attractive for doing business. This situation is likely to change as the South and Southeast become more and more saturated.

Brazil's soil consists mostly of settled earth, with mountainous areas higher than 900 meters representing only about 7% of the total surface area. Most of Brazil's terrain is composed of plateaus and prairies.

Both the Equator and the Tropic of Capricorn cross Brazil, making the climate primarily warm and tropical with an annual average temperature of 20°C (68°F).

The population of Brazil is currently estimated at 182,032,604 inhabitants, and this number is likely to double within the next 35 years. The population is young; 58% of Brazilians are under 30 years old. The country has a population density of 55 inhabitants per square mile with 81.2% of the population living in urban areas.

Brazil is a Federal Republic and has had 8 Constitutions. The first Constitution was signed in 1824, and the current one was enacted in 1988. The 1988 Federal Constitution is regarded as the most democratic in Brazilian history.

The Federal Government has 3 branches: the Executive, the Legislative and the Judiciary.

As a former Portuguese colony, the official language is Portuguese, which is spoken by 97% of the population. Amerindian languages are spoken by 2% of the population and 1% speaks other languages.

1. FORMS OF FOREIGN INVESTMENT

1.1. General Features

Foreign capital in Brazil is governed by Laws 4.131 (the Foreign Capital Law) and 4.390, of 03 September 1962 and 29 August 1964, respectively. Both laws are regulated by Decree 55.762 of 17 February 1965, as amended.

The law defines foreign capital as “any good, machinery and equipment that enters Brazil with no initial disbursement of foreign exchange, and is intended for the production of goods and services, as well as any funds brought into the Country to be used in economic activities, belonging to individuals or companies resident or headquartered abroad.” (Law 4.131).

The exchange markets in Brazil are subject to the rules of the Central Bank of Brazil, and operate with floating exchange rates. The most common markets are:

- (a) the commercial floating exchange rate market, which is applicable to transactions related to: (i) import and export; (ii) foreign currency investments in Brazil as well as repatriation of profits or capital from those investments; (iii) foreign currency loans to Brazilian residents; (iv) certain other transactions involving remittances abroad; (v) transactions among the Federal Government, the States and Municipalities; and
- (b) the “tourism” floating exchange rate market. Applicable regulations indicate the types of transactions that qualify for this market.

The distinction between these 2 exchange markets is that (i) the commercial floating exchange rate market is restricted to transactions that in certain cases require previous approval from and/or registration with the Central Bank; and (ii) the “tourism” floating exchange rate market is open to transactions that do not require any approval and/or registration with the Central Bank.

There is, in addition, the “Euroreal market.” The Euroreal is the general designation applied to amounts in Brazilian national currency existing abroad either in cash or in the form of deposits with foreign banks.

1.2. Direct Investment

1.2.1. Currency Investments

No preliminary official authorisation is required for remittances of funds relative to investments in Brazilian territory. Such funds can be used to subscribe or purchase shares in Brazilian companies. The funds must be remitted to Brazil through a banking establishment authorised to deal in foreign exchange in Brazil.

In August 2000, the Central Bank issued new rules on the registration of foreign investments in Brazil. According to Central Bank Circular n. 2.997/00, the Brazilian company which is the recipient of the foreign investment must obtain a number from the Electronic Declaratory Registry of Direct Foreign Investment (RDE-IED), corresponding to the Foreign Investor/ Brazilian Company pairing, through the Information System of the Central Bank (SISBACEN). Such RDE-IED number must be indicated in the exchange agreement related to the foreign investment. The Brazilian company must then register the foreign investment before the Central Bank through the SISBACEN RDE-IED system within 30 days from the closing of the exchange agreement.

1.2.2. Conversion of Foreign Credits Into Direct Investment in the Corporate Capital of a Brazilian Company

The conversion of foreign credits into direct investment in the corporate capital of a Brazilian company is regulated by Central Bank Circular n. 2.997/00. In order to achieve such conversion the Central Bank of Brazil requires the following documents:

- (a) Declaration by Creditor whereby the foreign creditor confirms and acknowledges the credits which will be converted into direct investment

in the corporate capital of the Brazilian company; and

- (b) Declaration by Creditor whereby the foreign creditor expressly and irrevocably agrees with the conversion of the credits into direct investment in the corporate capital of the Brazilian Company.

Furthermore, the Brazilian exchange regulations require that any conversion of foreign credits into direct investment in the corporate capital of a Brazilian company must be carried out through a symbolic exchange. This symbolic exchange entails two separate operations, the first simulates the remittance abroad of funds to repay the foreign credits, while, simultaneously, the second simulates the immediate return of the funds in the form of foreign direct investment. These operations can only be carried out by financial institutions duly authorised by the Central Bank of Brazil and the respective exchange agreements are signed by the chosen financial institution and the Brazilian company.

1.2.3. Capital Contribution Through the Import of Goods Without Exchange Cover

Capital investments made by importing goods without exchange cover require registration with the SISBACEN and the Electronic System of Foreign Trade (SISCOMEX).

1.3. Stock and Securities Market

The markets are regulated by the stock exchanges and a government agency, the Securities Commission (CVM), under the Ministry of Finance and the National Monetary Council (CMN), said government agency having the powers to: oversee the markets; suspend participants; suspend trading of shares; authorise issues; audit public companies and exchanges; apply sanctions and promote liquidation. The stock exchanges are considered to be auxiliary agencies to the CVM.

There are three different categories of operations on the major Brazilian stock exchanges:

- (a) the spot market;
- (b) the options market; and
- (c) the forward market.

With respect to the spot market, as elsewhere, securities are bought for immediate delivery against apposite payment.

With respect to the options market, puts and calls are negotiated for a given price, on a certain date. The buyer pays a premium to the writer as soon as the transaction is made. The buyer then has the right to either buy or sell the shares at the exercise price of the option. In the event the option is a put, the exercise is only possible on the exercise date. In the event the option is a call, the exercise will be possible at any time until the exercise date. The payment of the exercise price takes place only if the option is exercised. Sellers of options are required to either deposit the shares with the stock exchange or an initial margin equal to twice the amount of the premium options or such greater amounts as the stock exchanges may establish and are required to make daily settlements of the respective positions. Buyers are not required to make deposits.

Forward market operations are transactions by which seller and buyer agree on the value of a purchase and sale of shares to be effected in the future. The seller must deposit 100% of coverage of the transaction. The buyer is obliged to deposit a marginal amount that may vary from 20% for the shares of greater liquidity to 100% for those of more restricted liquidity. A variation of the stock forward operations are the so-called financial futures.

1.4. Loans

Loans in any currency are made by remittance from the foreign source to Brazil for conversion into reais.

Pursuant to Central Bank Resolution n. 2.770/00, no previous authorisation

is required for a Brazilian private sector borrower to obtain a foreign loan. However, pursuant to Circular n. 3.027/01 the borrower must register the parties, the financial conditions and terms, and other information related to the transaction with the Registry of Financial Operations (ROF) of the Electronic Declaratory Registry (RDE) of the SISBACEN.

Such registration with the RDE-ROF must be completed by the borrower or its legal representative before the remittance of resources to Brazil. A registration number is provided by ROF (RDE-ROF number) for the registration of any further information relating to the respective transaction.

The obtaining of the RDE-ROF number is vital for either the closing of the exchange agreement or to the international remittance of national currency related to the inflow of resources into Brazil or remittance abroad. The validity of each RDE-ROF number is 60 days. After this term, with no flow of resources into Brazil, the RDE-ROF number is automatically cancelled.

After the inflow of resources into Brazil, the borrower must carry out the register of the payment scheme in the ROF.

There is a withholding tax of 15% at source on the remittance of interest which may be paid either by the creditor or by the debtor and there is a rate of 5% of IOF (Financial Transactions Tax) over cash loans with medium minimum terms of less than 90 days. The interest charged must be considered “reasonable” in the judgement of the Central Bank of Brazil.

There are 2 types of loans: cash loans and credit loans for importing goods. The former is characterised by the entry of cash into Brazil and the latter by credit abroad to pay for the import of machinery or equipment.

Cash loans may be contracted directly by the borrower with the foreign financing agency or through private development banks, investment banks, the “Banco Nacional de Desenvolvimento Econômico e Social” (National Economic and Social Development Bank) and banks authorised to operate with foreign

exchange in Brazil. Transactions of this nature must be effected at the current interest rates in the international market.

Imports of goods financed for a period of more than 360 days are subject to prior registration with the Central Bank of Brazil.

Remittances of principal and interest may be effected by the simple presentation of the number of ROF issued by the Central Bank of Brazil to any Brazilian commercial bank authorised to operate in foreign exchange.

1.5. Transfer of Technology

The “Instituto Nacional de Propriedade Industrial” (National Institute of Industrial Property), known by its acronym INPI, is the government agency responsible for registering all acts or contracts involving technology transfer.

The INPI was created for the following purposes: (i) to supervise the filing of patent and trademark registrations; (ii) to improve conditions for transfer and licensing of patents; (iii) to facilitate the transfer of technology; (iv) to advise the government regarding opportunities to participate in international treaties concerning industrial property. (Law 5.648 of 11 December 1970).

Consequently, the INPI is not only an agency in charge of handling formal procedures and technical examinations, but it is also in charge of outlining and executing government policy regarding the transfer of technology.

As per INPI Normative Act 135 of 15 April 1997, the INPI will register contracts involving the transfer of technology and franchising.

Law 9.279/96 determines that the owner of a trademark registered in Brazil may authorise a third party to use such trademark through proper agreements. Article 140 further determines that the license agreement will only be enforceable against third parties after being properly filed with the INPI.

1.6. Forms of Capital Transfer to and from Brazil

1.6.1. The Central Bank of Brazil

The Central Bank of Brazil is responsible for maintaining a special register of all foreign capital, irrespective of the procedure used to bring it into the Country. Records are kept of the following transactions:

- (a) direct investments and loans, whether in cash or goods;
- (b) remittances effected as return of capital or as earnings on such capital, profits, dividends, interest, amortisation, as well as royalties, payment of technical assistance, or remittances under any other title which represent the transfer of earnings to a foreign country;
- (c) reinvestment of foreign earnings;
- (d) capital increases of companies, effected in accordance with the law in force (Law 4.131 of 3 September 1962).

The application for registration of foreign capital must be made within 30 days of the date of entry into the Country or, in the case of reinvestment of profits, within 30 days from the date the capitalisation of the profits is effected by the Brazilian company.

Foreign capital is registered in the currency of its point of entry and, in the case of financial imports and investments in the form of goods, in the currency of the creditor's or investor's domicile or head-office. In special cases, foreign capital may be registered in the currency of the country of origin of the goods or financing, provided previous approval is granted by the Central Bank.

Reinvestment of earnings is allowed by the Central Bank. Reinvestment of this type is registered with the RDE-IED. Reinvestment necessarily implies that the Brazilian company must realise profits on the original investment. Such

profits must be earned by the company located within Brazilian Territory and reinvested in the same company or in another company also located within Brazilian Territory.

Once registration is complete, the foreign investor is permitted to remit profits and dividends abroad, pursuant to Law n. 4.131/62 and other norms in force.

As with remittances from a foreign country into Brazil, remittances to a foreign country must be processed through banks authorised to operate with foreign exchange, under the supervision of the Central Bank.

Repatriation of foreign capital invested in Brazil is also permitted at any time. The foreign investor is entitled to remit up to the limit of the amount registered in the RDE-IED, any excess being subject to the previous authorisation by the Central Bank.

1.7. Foreign Capital Restrictions

1.7.1. Introduction

The concept of foreign capital under Brazilian law is defined by Law 4.131 of 3 September 1962, the legislation governing foreign investment and repatriation of profits abroad. The law permits the duty-free importation of all property, machinery, equipment and monetary capital brought into Brazil to be used in the production of goods and services.

The law also states that foreign capital invested in Brazil will be given identical treatment and equal conditions as domestic capital. Any unequal treatment of foreign capital not specifically permitted under the law is illegal. Article 170, IX of the Brazilian Constitution of 5 October 1988, amended by Constitutional Amendment n. 6 of 15 August 1995, stipulates that a company will receive privileged treatment provided it is established under the Brazilian laws and is small in size. Brazilian law will, according to the national interest, regulate foreign investment, stimulate reinvestment, and regulate repatriation of profits.

1.7.2. Foreign Capital Restrictions Imposed by Brazilian Law

1.7.2.1. Credit Restrictions

By Executive Decree, Articles 37, 38 and 39 of Law 4.131/62, the National Treasury and the official credit entities may only guarantee the loans of, or the financing from abroad by, companies whose controlling interest is in the hands of non-residents of Brazil. Foreign-owned controlling interests, or even subsidiary companies, will not have access to such credits until the beginning of their operations. And Law 4.728 of 14 July 1965, which regulates the capital market, provides that upon the occurrence of a serious disequilibrium in the balance of payments, as determined by the National Monetary Council (CMN), the Central Bank of Brazil may adopt procedures to limit foreign access to the Brazilian financial system. These limitations apply to companies that have access to international financial markets because of their status as foreign company subsidiaries, and companies whose capital belongs to foreign individuals.

1.7.3. Restrictions on Financial Institutions

Foreign banks authorised to operate in Brazil are subject to the same restrictions applicable to Brazilian banks. Foreign banks with headquarters in jurisdictions where there are restrictions on Brazilian banks will not be allowed to purchase more than 30% of the voting capital of Brazilian banks. The National Monetary Council, through internal decrees, limits foreign capital in financial institutions to a maximum of 50% of total capital and 33% of voting capital.

Article 192 of the 1988 Federal Constitution provides that the national financial system will be regulated by legislation determining the conditions of foreign capital participation in financial institutions, considering national interests and the international agreements. Article 52 of the Transitory Provisions provides that until such conditions are fixed, new agencies of financial institutions domiciled abroad are not permitted to incorporate in Brazil and, in addition, individuals and legal entities domiciled abroad are not permitted to increase their participation in the capital of the financial institution. However, this restriction does not apply to

authorisations to establish banks as a result of international agreements of reciprocity or governmental interest. According to Central Bank of Brazil Notice n. 005796 of 9 September 1997, the Central Bank of Brazil must be previously consulted on the possibility of foreign participation in transactions involving acquisition of quotas or shares of companies integrating the National Financial System based on Article 192 of the 1998 Constitution. Consequently, until legislation is passed to regulate conditions of foreign capital participation, restrictions on foreign capital investments will be in force.

1.7.4. Restrictions on the Acquisition of Rural Real Estate and Frontier Area Real Estate

Foreign individuals resident in Brazil as well as foreign legal entities authorised to operate in the country who desire to invest foreign capital in the acquisition of rural properties must follow the rules established in Law 5.709 of 7 October 1971 and Decree 74.965 of 26 November 1974. The law permits the acquisition of rural property for approved industrial, agricultural or cattle-raising projects exclusively. Further, such rural property acquisition must be approved by INCRA (the National Institute of Colonisation and Agrarian Reform), as well as other regulatory agencies, depending on the nature of the project. Acquisition of rural property above a certain size will also depend on approval of the National Congress. Purchases of rural real estate for other purposes or without a recorded deed are void under Brazilian law.

Brazilian legislation also imposes certain restrictions on the purchase by foreigners of property located in border areas, which are considered essential to national security. The border area consists of a strip of land 150 km wide which runs along the Country's borders. Foreign individuals and legal entities may purchase real estate situated in essential (border) areas only after previous approval by Brazilian authorities.

1.7.5. Other Restrictions

Under Article 222 of the 1988 Federal Constitution, foreigners are precluded

from owning interests in the written and broadcasting media. The Brazilian government has amended Article 21, XI and XII of the 1988 Federal Constitution and published a number of amendments to the legislation in order to allow private initiative to take over most of the activities previously reserved to the public sector regarding telecommunications. Law 8.977 of 06 January 1995 provides that concession of cable television services will be granted to companies with at least 51% of the voting capital directly or indirectly held by Brazilian citizens. Law 10.610 of 20 December 2002 provides that foreigners or Brazilians naturalised less than 10 years ago are permitted to hold no more than 30% of the social capital of media and broadcasting corporations. And the Brazilian Congress has voted on the Bill on Mobile Phones and Satellite Services under which concessions are to be granted to companies with at least 51% of the voting capital directly or indirectly held by Brazilian citizens. Lastly, according to the administrative rules of the National Nuclear Energy Commission, nuclear energy is an area reserved exclusively for development by the Brazilian Government.

2. FORMS OF ASSOCIATION

2.1. Types of Companies

Brazilian law provides for several types of companies. The most frequently used company structures are the “Sociedade Anônima” (S.A.) and the “Sociedade Limitada” (LTDA). This is due to the fact that in both cases the participants have limited liability. The law grants legal status to these companies as entities separate from their participants.

Brazilian Law also provides for other forms of association such as joint ventures and consortia or special types of partnership which do not acquire a legal status separate from their participants; in these cases the parties contract rights and obligations individually for the common benefit of the group. These other contractual structures are usually adopted to fulfill specific purposes or for non corporate business.

2.2. The Sociedade Anônima: “S.A.”

By legal definition, the S.A. is always a commercial entity and its capital is represented by shares.

The liability of a shareholder is limited to the amount of the issue price of the subscribed shares. Once their subscription is paid up, the shareholder does not have any further liability to the company or its creditors.

The S.A.’s name must be either preceded or followed by the Portuguese expression “Sociedade Anônima” (or the abbreviation “S.A.”), or preceded by “Companhia” (or the abbreviation “Cia”).

There are two kinds of S.A.: (i) the Listed S.A., whose shares are publicly traded on the stock market, and (ii) the Closed Capital S.A., which obtains its capital through private offerings of its shares.

Notwithstanding the type chosen, there are five basic requirements to incorporate an S.A.:

- (a) subscription by at least 2 persons of the entire allotted share capital;
- (b) payment of at least 10% of the subscribed capital to be paid in cash;
- (c) deposit with Banco do Brasil S.A., or any other financial institution authorised by the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários (CVM)*), of 10% of the amount of the subscribed shares;
- (d) registration of the Articles of Incorporation with the Commercial Registry (Board of Trade (*Junta Comercial*)); and
- (e) publication of the Articles of Incorporation in the Official Gazette of the Federal or State Government and in a widely circulated newspaper, within thirty days after their registration.

Listed S.A.'s are subject to additional regulations and oversight by the CVM.

The capital of an S.A. is divided into shares representing parts or fractions of the capital. Shares can either have par value or no par value. An S.A. which issues shares with par value cannot issue shares at a price lower than the par value of its outstanding shares. As regards the shares without par value, they also have a price: their issue price. The issue price of shares without par value is set at the time the company is formed, or by the General Shareholders' Meeting or the Board of Directors at the time of a capital increase.

An S.A.'s capital may be:

I - increased:

- (a) by resolution of an Ordinary Shareholders' Meeting or of the Board of

Directors, subject to the provisions of the S.A.'s by-laws relating to capital increases;

- (b) by conversion of debentures or founders' shares into shares or by exercise of rights conferred by subscription warrants or stock options; and
- (c) by resolution of an Extraordinary Shareholders' Meeting when prior authorisation for an increase of the capital does not exist or when the limit of the prior authorised capital has already been reached; or

II - decreased:

- (a) for the purpose of reimbursing a dissenting shareholder;
- (b) upon the forfeiture of shares where a holder has failed to meet subscription obligations; and
- (c) when the company capital has been eroded by losses or when the capital stock exceeds the amount necessary to achieve company objectives.

Either the publicly held or the privately held S.A. may have its capital structure organised as an authorised capital S.A. An authorised capital S.A. can be incorporated with less capital than that set forth in its by-laws, which will merely represent the limit within which the subscribed capital may be raised without the necessity of an amendment to its by-laws. In authorised capital S.A.s, the by-laws usually confer upon the Board of Directors the authority to increase the subscribed capital within such authorised limit, thus avoiding the necessity of holding a Shareholders' Meeting and accelerating the funding of the company.

Brazilian law does not permit bearer shares. Ownership of all shares must be registered in the Nominative Shares Registry. The transfer of shares is registered in this corporate book in accordance with the corresponding legal evidence of

such transfer (agreements, succession, etc.). The law also permits issuance of “Book Shares” which transfer the responsibility for registration of shares to a financial institution.

Generally, shares are fully transferable to third parties without any requirement that preference be given to other shareholders. In a Closed Capital S.A., however, the by-laws can impose some restrictions on the transfer of shares, provided that any restrictions do not prohibit transfer or require approval of any such transfer by a majority of the shareholders or by the Board of Directors. In a Listed S.A., shares can only be transferred after at least 30% (thirty) percent of the shares’ issue price has been paid. In Closed S.A. there is no such requirement.

Shares may be ordinary, preferred or fruition shares, depending on the rights they confer on their holders. Shares of the same class confer the same rights on their owners.

Ordinary shares entitle the holder to common or essential shareholder’s rights, including the right to vote in the Shareholders Meetings. Preferred shares have special rights of a financial or policy nature. Usually, the preferred share confers to its holder financial advantages *vis-a-vis* the ordinary share as a compensation for the lack of the right to vote. Preferred shares cannot account for more than 50% (fifty percent) of an S.A.’s outstanding shares. Fruition shares result from amortisation of common or preferred shares.

All shareholders are guaranteed the following essential rights notwithstanding the type of share held:

- (a) the right to a proportional share in the company’s profits;
- (b) in the event of liquidation, the right to a proportional share of the company’s assets remaining after debts are paid;
- (c) the right to supervise the management of the company’s business;

- (d) the right of preference in the subscription of shares (including shares converted from founders' shares, debentures and subscription warrants); and
- (e) the right to withdraw from the company in the cases permitted by law.

In addition to these essential rights, there are also special rights that are reserved for holders of certain types of shares. For example, the rights of preferred shareholders, according to Law 10.303 of October 2001, consist of:

A) In a Closed Capital S.A.:

- (i) the right to priority in the distribution of fixed or minimum dividends, accumulated or not with item (ii) below; and
- (ii) in the event of liquidation, the right to priority in the return of capital, with or without premium.

B) In a Listed S.A.:

- (i) in the event of liquidation, the right to priority in the return of capital, with or without premium, accumulated with at least one of the rights referred to in items (ii), (iii) and (iv) below;
- (ii) the right to receive dividends of at least 25% of the annual net profit, with a minimum priority dividend of at least 3% of the net value of the share, and the right to participate in the distribution of dividends on the same terms as the ordinary shareholders after receiving priority dividends;
- (iii) the right to receive dividends at least 10% greater than those granted to ordinary shareholders; or
- (iv) the right to be included in public offers for the sale of a controlling

interest in the company, being assured of a dividend at least equal to that provided to holders of ordinary shares (“Tag Along”).

The law expressly permits shareholders to enter into shareholders’ agreements concerning the transfer of shares, pre-emptive rights to purchase shares, and the exercise of voting rights or controlling powers.

To become enforceable before third parties and the company, a shareholders’ agreement must be registered in the proper S.A.’s corporate books. Any shares subject to a shareholders’ agreement cannot be negotiated on the stock market.

There are two kinds of General Shareholders’ Meetings: (i) Ordinary, which shall be held at least once a year in order to discuss the company’s management and financial statements and to elect members of the Board of Directors and Audit Councils; and (ii) Extraordinary, which can be held at any time to deliberate any issues which do not fall within the competence of an Ordinary Shareholders’ Meeting.

Both meetings are summoned and conducted in the manner prescribed by law and the By-laws. The authority to summon Shareholders’ Meetings normally rests with the Executive Board or the Board of Directors, but the Law also foresees cases in which they can be summoned by the Audit Council or one or more shareholders.

Summons of the meeting is given by publishing an advertisement at least 3 times in the Official Gazette of the Federal or State Government and in a widely circulated newspaper. Notwithstanding, the absence of prior summons through the newspaper can be deemed unnecessary if all shareholders attend the meeting.

Shareholders’ Meetings may be called to order, on first call, only if shareholders representing at least 1/4 of the voting shares are present. If the purpose of the meeting is to amend the by-laws, however, shareholders representing at least 2/3 of the voting shares must be present. On second call, irrespective of the agenda, the meeting may begin with any number of attending shareholders.

Shareholders can be represented in Shareholders' Meetings by an administrator of the company, another shareholder, or an attorney who has been granted a power-of-attorney less than one year before the date of the meeting.

With few exceptions, decisions voted at Shareholders' Meetings must be approved by absolute majority (fifty percent plus one) of all votes cast. Minutes of all meetings must be drawn up, registered in the appropriate books and filed with the Commercial Registry in order to ensure enforceability against third parties of the decisions taken.

The administration of an S.A. is conducted by one or two corporate bodies, each with specific authority and responsibilities: the Board of Directors ("*Conselho de Administração*") and the Executive Board ("*Diretoria*").

However, from a managerial perspective, the Shareholders' Meeting may also be considered an administrative body as it is its legal responsibility to establish the general business, financial and administrative guidelines for the company.

Every S.A. is required to have an Executive Board. The Board of Directors is mandatory in Listed S.A.s and authorised capital S.A.s, but optional in a Closed Capital S.A.

The Board of Directors is a non-executive body. It must be composed of at least three members. The members must also be shareholders but do not have to be residents in Brazil. The members are elected, and can be removed at any time, by the Shareholders' Meeting. Their term of office may not exceed three years, but re-election is permitted.

The Board of Directors is responsible for (i) establishing the general business, administrative and financial policies of the company in accordance with guidelines established by the Shareholders' Meeting, (ii) electing and dismissing the members of the Executive Board, (iii) supervising the carrying on of the business by the members of the Executive Board, (iv) examining the company books and papers,

(v) monitoring the company's contractual relations and negotiations, (vi) and any other acts related to the company's business.

The Executive Board is the executive body responsible for the routine operations of the company and for representing the company before third parties in the ordinary course of business.

The Executive Board is composed of at least two officers, who do not have to be shareholders, but who must be resident in Brazil. Officers are appointed, and may be removed at any time, by the Board of Directors or by the Shareholders' Meeting if the company has no board. The maximum tenure for officers is 3 years, but re-election is permitted.

The law permits that 1/3 (one third) of the members of the Board of Directors may also serve as members of the Executive Board.

The S.A. may have an Audit Council, which is created when the Shareholders' Meeting deems it necessary to maintain strict control over the company's management. The Audit Council is elected by the Shareholders' Meeting and shall be composed of a minimum of three and a maximum of five members (with an equal number of alternates). The members of the Audit Council need not be shareholders and cannot be members of the Board of Directors or Executive Board or employees of the company.

The financial reporting period of an S.A. is one year, the closing date being established in the by-laws.

In the case of Listed S.A.s, the financial statements must be audited by an independent auditor or auditing company duly registered with CVM, and must be published in the Official Gazette of the Federal or State Government and in a widely circulated newspaper.

In the case of a Closed S.A.s, the auditing of financial statements is optional, but the statements must be published. However, a Closed S.A. which has less than

20 shareholders and a net equity of R\$ 1 million or less on the date of its financial report is not required to publish its financial statement, if properly recorded with the Commercial Registry.

The dissolution of an S.A. may take place: (i) at the end of its term specified in the by-laws; (ii) by resolution of the Shareholders' Meeting; (iii) by the existence of only one shareholder in an Annual Shareholders' Meeting, if the minimum of two is not reestablished prior to the subsequent Annual Shareholders' Meeting; or (iv) by court decision or the administrative decision of a competent public authority.

The liquidation of the company's assets in order to pay off outstanding debts precedes dissolution. Any assets remaining are distributed to shareholders in proportion to their investment (subject to any priority rights granted to preferred shareholders). The liquidation may be voluntary or imposed by judicial action.

2.3. The Sociedade Limitada: "LTDA"

The LTDA is established by the partners' signatures in the respective Articles of Association ("*Contrato Social*") and has only a single class of partners, the limited liability quotaholders. Depending on the nature of the corporate objectives set forth in the respective Articles of Association, the LTDA may be a commercial or civil company and, accordingly, will be registered with the commercial or civil Companies Registries.

The company name of an LTDA must always be followed by the expression "Limitada" (or the abbreviation "LTDA").

The capital of an LTDA is divided into quotas. The quota represents the amount (in money or other assets) that a quotaholder contributed to the formation of the company. The law expressly forbids contribution through the rendering of services. The quotaholders are jointly liable for the payment of the entire amount of the company's capital. After the payment of the capital the quotaholders do not have further responsibilities towards third parties who contract with the company.

The capital of an LTDA may be:

I – Increased

- (a) after being fully paid up, by resolution of quotaholders representing at least 3/4 (three-quarters) of the company's capital.

II – Decreased

- (a) when the capital has been eroded by losses;
- (b) when the capital exceeds the amount necessary to achieve the company's objectives; or
- (c) when a quotaholder fails to pay-up his subscribed quotas;

The LTDA can be managed by one or more individuals who must be resident in Brazil. The manager can be one of the quotaholders or not. However, before the company's capital is fully paid up, appointing a manager who is not a quotaholder requires the approval of all quotaholders. After the full payment of the capital the decision to appoint a manager who is not a quotaholder can be taken by quotaholders representing 2/3 (two thirds) of the company's capital.

The manager is not personally responsible for the company's liabilities. A manager will however, be personally liable to the company or third parties for any acts which exceed the limits of his or her authority or which violate the law or the company's Articles of Association.

The Articles of Association can also provide for the creation of an Audit Council, in case the quotaholders deem it necessary to closely supervise the management of the company.

The Articles of Association may be amended by resolution of the quotaholders to, *inter alia*:

- (a) increase or decrease the company's capital;
- (b) extend the term of the company's duration;
- (c) change the company's name;
- (d) change the company's registered office;
- (e) admit new quotaholders;
- (f) recognise the withdrawal of a quotaholder; or
- (g) remove a former quotaholder's name from the list of partners, if provided for in the Articles of Association.

Quotaholders who disagree with an amendment to the Articles of Association have the right to withdraw from the company.

Quotas are not represented by securities or certificates but instead their ownership is conferred by the Articles of Association. Consequently, any transfer of title of the quotas requires an amendment to the Articles of Association. The law requires the approval of quotaholders representing at least 3/4 (three quarters) of the total company capital to amend the Articles of Association.

Decisions requiring the approval of quotaholders must be made in a formal meeting, convened under the terms of the Articles of Association.

In addition, at least once a year quotaholders must hold a Quotaholders' Meeting to discuss the management report and financial statements.

Meetings are called and conducted in the manner prescribed by the Articles of Association (or, if the Articles are silent, in the manner specified in the relevant law). The manager usually has the authority to call meetings, but the law also

provides that in some cases quotaholders representing at least 1/4 (one quarter) of the company's total capital can summon the meetings.

Summons of the Quotaholders' Meetings must be provided as set forth in the relevant law, unless the Articles of Association provide otherwise. However, prior summons will be deemed unnecessary if all quotaholders declare in writing that they knew that a meeting would be held, actually attended such meeting or unanimously decided in writing any matters on the agenda.

The total dissolution of a LTDA may take place in the following cases: (i) at the end of its term as set forth in the Articles of Association; (ii) by the unanimous resolution of all quotaholders; (iii) by the resolution of quotaholders representing an absolute majority, in companies with an undetermined term of duration; (iv) by the existence of only one quotaholder, if the minimum of two is not reestablished within 180 (one hundred and eighty) days; (v) if applicable, due to the expiration of its license to operate; and (vi) by bankruptcy.

The death of a quotaholder does not bring about dissolution of an LTDA if the succession by the quotaholder's heir(s) is provided for in the Articles of Association.

The Brazilian Civil Code has provided for a number of company structures and established specific legal framework for each structure. In the case of the LTDA, the legal dispositions governing companies in general will be applied to any issues not covered by either the company's Articles of Association or the specific legal regime of the LTDA. However, the quotaholders may choose to alternatively establish in the Articles of Association that Law 6.406/76, which governs the S.A., will be applicable for the issues not covered by the LTDA specific legal framework or by the Articles of Association.

Also, the law makes no mention as to the procedure for calling a general meeting of the quotaholders and if the Articles of association also fail to specify any procedure on this subject the rules for calling such meetings under the law for S.A.s will be applied.

2.4. Rules Common to the S.A. and the LTDA

All companies permitted under Brazilian law may spin-off a portion of their assets, transform to another type of entity, merge into or consolidate with another legal entity.

Transformation alters a company's legal type to another without dissolving it. A merger is an operation by which one or more companies are absorbed by another. Consolidation unites two or more companies to form a new company which will succeed the consolidated entities in all rights and obligations. A spin-off is an operation whereby a company transfers all or part of its assets and liabilities to another company, already in existence or to be incorporated. If a company spins-off all of its assets and liabilities, it will be dissolved.

Foreign entities holding shares or quotas in Brazilian companies must maintain an attorney resident in Brazil with powers to receive services of process in legal actions involving its holding of shares or quotas, as well as register with the Registration Department of the Brazilian Internal Revenue Service (“*Cadastro Nacional de Pessoas Jurídicas*” – CNPJ). The registration must be effected at the CNPJ office with jurisdiction over the tax domicile of the foreign investor's attorney in Brazil.

To apply for registration before the CNPJ, a foreign entity must present a copy of its incorporation documents, a copy of the corporate resolution approving the issue of the power-of-attorney to an attorney resident in Brazil, a copy of the power-of-attorney issued to the attorney resident in Brazil, and a declaration stating its own controlling shareholders.

Foreign individual share or quotaholders must be registered in the Individual Taxpayers' Registry of the Brazilian Internal Revenue Service (“*Cadastro de Pessoas Físicas*” - CPF). A foreign individual must present a copy of the power-of-attorney to an attorney resident in Brazil and a copy of a document indicating his or her mother's name.

Corporate names are protected in Brazil under Law n. 8.934 of 18

November 1994 (regulated by Normative Instruction n. 53 of the National Department of Commercial Registry). This protection is granted automatically in the State where the company's head-offices will be located upon registration of the Articles of Association or by-laws with the competent Commercial Registry. However, as Brazil is composed of 26 States plus its Capital, the Federal District, to extend the protection to any additional State after the incorporation, specific applications must be made before the Commercial Registry of each State where protection is intended.

Prior to registering the Articles of Association, a name search must be performed to determine the availability of the proposed corporate name. Priority is given to the company that first registers a corporate name, without consideration of any existing trademark registration(s) or application(s). Reservation of a name is not possible in Brazil.

Regardless of the legal structure adopted by the company, it is necessary to indicate the company's objectives to some extent in the company name.

2.5. Incorporation Procedures

Incorporation of a company in Brazil requires registration with several governmental authorities. The mandatory registrations are the following:

I - Commercial Registry or Civil Registry

As a first step, the Articles of Association or By-laws must be filed with the Commercial Registry or the Civil Registry (depending on the company's objectives), in the State where the company is headquartered. Companies become corporate entities, with a legal status separate from their owners, only after the Articles of Association or By-laws are registered. However, at this stage, the company cannot yet operate.

Generally, the request for filing the Articles of Association or By-laws must be accompanied by the following documents:

- (a) three original counterparts of the Articles or by-laws, signed by the partners and by an attorney;
- (b) a power-of-attorney, granted by foreign shareholders or quotaholders to an attorney resident in Brazil;
- (c) a document proving the existence of a foreign entity holding shares or quotas;
- (d) certified copies of the identity and taxpayer cards of all shareholders, quotaholders, directors, partners, and managers;
- (e) completed forms containing data on the company and its shareholders, quotaholders, directors, partners, and managers;
- (f) receipt of payment of the application fees; and
- (g) for civil companies, a copy of the official publication of an extract of the company's Articles of Association.

In order to be enforceable before third parties in Brazil, all foreign documents must first be signed before a notary public in their country of origin and legalised before the Brazilian Consulate with jurisdiction. In Brazil, the foreign documents must be translated into Portuguese by a public sworn translator and registered at a Deeds and Documents Registry Office.

II - CNPJ

After registration of the Articles of Association, the company must also be registered with the CNPJ. The application must be filed at the CNPJ office with jurisdiction over the tax domicile of the company in Brazil.

Once the Brazilian company is registered with the CNPJ, it is possible to

open bank accounts and make purchases, but the company still cannot make any sales or issue invoices.

III - State and Municipal Taxpayers' Registries

To become fully operational, companies involved in commercial activities must also register with the State and Municipal Taxpayers' Registries before invoicing. Companies that only render services do not need to be registered with the State taxpayers' registry.

Filing with the State Taxpayers Registry is done before the agency with jurisdiction over the tax domicile where the company's headquarters is located. Among the documents required are a copy of the registration with the CNPJ and a copy of the latest real state tax bill over the property where the company's headquarters is located.

Filing with the Municipal Taxpayers Registry is done before the agency of the city where the company is located. The municipality is the authority in charge of granting business licenses ("*Alvará de Funcionamento*") and ensuring that the company complies with applicable municipal laws.

6. Additional Considerations

Brazilian law also provides for the formation of civil associations, foundations and co-operative associations which, due to their non-profit nature or to the particular characteristics of their formation or objectives, are not commercial organisations and accordingly receive different legal treatment.

3. TAXATION

The government financial system has as its objective the collection, administration and use of the means which enable it to carry out political, social, economic, administrative or educational objectives of the State and those necessary for the realisation of the public interest.

3.1. The Brazilian Tax System

The Brazilian Tax system was established by the Federal Constitution of 1988, in force since 1 March 1989. Prior tax laws not compatible with the Constitution remain in force as long as the “complementary laws” (enabling legislation) described in the Constitution are not enacted. The Income tax regulations are set out in Decree n. 3.000 of 26 March 1999, as amended.

Among other subjects, complementary laws establish general tax norms, especially with regard to the definition of taxes, expenses, tax bases, taxpayers, tax obligations, assessments, and statutes of limitations.

The Federal Government, the States, the Federal District and Municipalities may raise revenue through the use of:

- (a) taxes;
- (b) fees; and
- (c) contributions for improvements resulting from public works.

The Constitution provides that “whenever possible” taxes should be personal and progressive.

3.2. Taxation of Individuals

3.2.1. Taxpayers

All individuals residing or domiciled in Brazil are liable to income tax and capital gains pursuant to Article 2 of Decree 3.000/99. Individuals resident or domiciled abroad are liable to tax on income and capital gains arising in Brazil.

For the year 2003, the first R\$ 12,696 of income per annum is exempt from tax. Income in the range of R\$ 12,696 to R\$ 25,380 per annum is taxed at 15% and income in excess of R\$ 25,380 per annum is taxed at 27.5%. (Law 10.451/2002).

3.2.2. Tax Domicile

The tax domicile of the tax payer is the place where the individual maintains a permanent home.

3.2.3. Individual Taxpayer's Registry (CPF/CIC)

The following must register with the CPF pursuant to Normative Instruction 190/2002 issued by the Brazilian Inland Revenue:

- (a) individuals required to file a tax return;
- (b) individuals whose income is subject to withholding tax at source;
- (c) independent professionals;
- (d) lessors of real estate;
- (e) those who participate in real estate operations;
- (f) individuals obliged to withhold tax at source;

- (g) individuals who own a bank account or financial applications;
- (h) individuals who operate on stock exchanges, the commodity and futures markets;
- (i) individuals registered as contributors to the National Institute of Social Security; and
- (j) non-residents who own real estate, participate in partnerships of a permanent nature, make financial applications or own automotive vehicles.

3.2.4. Foreigners Who Transfer Their Domicile to Brazil

- (a) Holders of a Permanent Visa

Income will be taxed as any other resident of Brazil, as of the date of arrival in Brazil.

- (b) Holders of a Temporary Visa

Those holders of temporary visas who enter Brazil under an employment relationship will be liable to taxation, as any other Brazilian resident, from the date of their arrival in the Country. Those arriving for any other reason will be considered resident for tax purposes upon completion of a stay of 183 days, whether consecutive or not, within a 12 month period. In the interim period, income arising in Brazil will be taxed at source.

3.2.5. Transfer of Residence Abroad

Individuals domiciled or residing in Brazil who leave Brazil permanently must, in addition to filing a tax return, file a declaration of definitive departure and obtain a certificate from the tax authorities confirming that all tax has been paid. In the event that the referred declaration is not made, the individual will be considered resident in Brazil for tax purposes for the first twelve months in which he resides abroad.

3.2.5.1. Employees of Foreign Governments and International Organisations

The following are exempt from tax on earned income¹ :

- (a) diplomatic personnel of foreign governments;
- (b) employees of international organisations of which Brazil is a member, and with which it has agreed to grant the exemption;
- (c) non-Brazilian employees of embassies, consulates and government agencies of other countries in Brazil, as long as there is reciprocity of treatment.

3.2.6. Taxable Income in Brazil

The gross income received by an individual is subject to income tax with the following deductions:

- (a) alimony;
- (b) dependants;
- (c) contributions to the social security and medical insurance plans of the Federal, State, Municipal, and Federal District governments;
- (d) the exempt portion of the retirement and pension plan income.

Gross income includes earned income, alimony, palimony, child support and pensions received in cash, as well as income of any nature including increases in assets which are not explained by the income declared.

¹ Art. 22, Decree 3.000/99 and Vienna Convention on Diplomatic Relationship 1961.

The following are taxable:

- (a) earned income;
- (b) income earned by professionals;
- (c) income from rents, royalties, leases and licenses;
- (d) income and capital gains received from abroad;
- (e) one quarter of the earned income received from the Brazilian government, in the case of employees of the government serving abroad;
- (f) bonuses and special dividends;
- (g) other income and capital gains not subject to withholding tax.

3.2.7. Income Withheld Exclusively at Source

The following income (in addition to others) is subject to withholding tax exclusively at source:

- (a) lottery winnings in general paid in cash;
- (b) net benefits resulting from the lottery element of capitalisation securities;
- (c) short term financial operations, initiated and closed on the same day;
- (d) gross income from any fixed interest financial investment;
- (e) gross income from financial operations carried out in the stock market, commodities market, or futures market and any other market of a similar nature;

- (f) capital gains from the alienation of rights or property which exceed R\$ 20,000; and
- (g) net income from stock market, commodities market, or futures market operations, and any other market of a similar nature.

Individuals must present an annual income tax return which will determine additional tax payable or refundable.

3.3. Taxation of Legal Entities

Brazilian tax legislation has in recent years undergone constant modifications not only at the Federal level but also at the State and Municipal levels. These changes have also affected legal entities.

3.3.1. Income Tax

The principal legislation regulating Income Tax in Brazil is set out in Decree 3.000/99 as amended.

Companies domiciled in Brazil are liable to Corporate Income Tax on profits arising both in Brazil and abroad. Brazilian branch offices, agencies or representative offices of companies domiciled abroad are subject to income tax on income arising in Brazil.

The basic rate of Income Tax on corporate profits (including capital gains), as adjusted for tax purposes, for 2003 is 15% with an additional surtax of 10% on taxable profits exceeding R\$ 240,000 (approximately US\$ 80,000) per annum.

Article 219 of the Decree 3.000/99 determines that Income Tax will be payable based on either the real, presumed or imputed profits (“lucro real, presumido ou arbitrado”).

3.3.2. The Real Profit Basis

Article n. 246 of Decree 3.000/99 determines that the following legal entities are required to compute their tax assessment based on real profits:

- (a) those with gross revenue, including capital gains, exceeding R\$ 24,000,000 in the calendar year, calculated pro-rata when appropriate;
- (b) financial institutions or their equivalent;
- (c) those with profits, income or gains arising abroad;
- (d) those who authorised by the taxation law enjoy tax exemption and reduction;
- (e) those who during the fiscal-year made monthly payments on the basis of presumed profits;
- (f) those who render continuous and cumulative consultation service related to credit, marketing, credit management, risk selection, management of accounts payable and receivable, acquisition of credit rights resulting either credit sales or the rendering of services (“factoring”).

So-called “real profit” is represented by accounting profit as adjusted for tax purposes, whilst the estimated or imputed profits are calculated by applying a percentage over the company’s turnover to determine the “profit” figure, upon which Income Tax is calculated at the rates indicated above. The imputed profit basis is used when a company fails to produce proper accounting or to make annual tax returns and is calculated based upon the application of certain percentages fixed by law as to the company’s turnover.

Under the real profit regime, a company may opt for its final tax liability to be determined either on an annual basis or on a quarterly basis. On the quarterly basis, a company is required to produce quarterly accounts and calculate and

pay income tax based on the adjusted profit or loss arising within such quarter. A significant disadvantage of this regime is that it is not possible to compensate profits arising in one quarter with losses arising in a subsequent quarter, even within the same accounting year, given that each quarterly period is considered a separate and distinct period for tax purposes. Consequently, the majority of companies adopt for taxation on the so-called “annual real profit” basis (“lucro real anual”).

On this annual basis, a company’s final tax liability is determined according to its financial statements drawn up at the end of the fiscal year. Income tax, however, must be paid monthly and is calculated based on estimated profits (determined as a fixed percentage of turnover) plus capital gains. The rates of taxation are as described above with the additional surtax payable on monthly profits which exceed R\$ 20,000. In such a scenario, when the yearly accounts are prepared any additional tax due must be paid by 31 March of the following year, with any surplus tax paid available for set-off in the following tax year.

The fixed percentages referred above for the determination of the monthly taxable profits depend upon the nature of the company’s activities. Article 15 of Law 9.249/95 determines the application of the following percentages to a company’s turnover:

- (a) 8% on the sale of goods and merchandise;
- (b) 1.6% in relation to the sale, for consumption, of petroleum, derivatives and natural gas;
- (c) 16% for financial institutions;
- (d) 16% on transport except cargo services (8%); and
- (e) 32% for other services.

Income and expenses are recognised on an accruals basis and the general

rule for the deduction of expenses² is that they should be “necessary to the activity of the company and the maintenance of the respective income producing source.” Necessary expenses are considered to be those “paid or incurred and which may be considered normal or usual in the company’s transactions, operations or activities.” Certain expenses, such as medical assistance, are only considered deductible when the benefit is extended to all the company’s employees and are not permitted if only extended to, for example, the company’s directors.

According to Brazilian legislation, the losses originating in an accounting period may be carried forward for relief against future profits, without time limit, but with a maximum limit of 30% (Article 15, Law 9.065/95). No carry-back of losses is allowed under Brazilian legislation.

3.3.3. The Presumed Profit Basis

Companies who are not obliged to adopt the real profit basis may opt for taxation on the presumed profit basis.

On such basis, tax will be calculated and paid on a quarterly basis ending 31 March, 30 June, 30 September and 31 December. The basis for calculation of the presumed profit is the application of the percentages referred above to the quarterly turnover of the company.

3.3.4. Annual Tax Return

Whatever the basis adopted for the determination of taxable profits, every company is legally obliged to prepare and deliver a tax return covering its results for the period ending 31 December. The return should be delivered by 30 April of the following year.

² Article 299, Decree 3.000/99.

3.3.5. Social Contribution on Net Profits

In addition to the liability for income tax on profits, as referred above, a company is liable to social contribution upon its income and capital gains (“Contribuição social sobre o lucro”). This social contribution is not deductible in calculating either corporate income tax or the contribution itself and generally the taxable base for the contribution is the same as that for corporate income tax.

Relative to the period from 1 January 2003 onwards, the contribution for companies in general will be levied at the rate of 9% (nine per cent).³

In relation to companies which opt for taxation on the basis of the “annual real profit” or “presumed profit” bases the Social Contribution is payable monthly or quarterly as appropriate and the basis for the calculation is 12% of the turnover plus any capital gains realised in the base period.

3.3.6. Income arising abroad

Prior to the introduction of Law n. 9.249 of 26 December 1995, Brazilian companies were taxed on the principle of territoriality. Under the principle of territoriality, Brazilian tax law is only considered applicable to activities carried out in Brazil. Hence, Brazilian companies were only liable to taxation in Brazil on their profits earned in Brazil and profits earned abroad were therefore exempt.

The provisions of Law 9.249/95 radically amended the above referred concepts and effectively introduced a new concept of universality by subjecting profits and income earned abroad to taxation in Brazil.

Under Law 9.249/95, the following are liable to taxation in Brazil:

- (i) foreign-source operating income;

³ Law 10.637/2002, article 37.

- (ii) foreign-source non-operating income, including interest, royalties and foreign dividends; and
- (iii) income earned indirectly abroad through branches, subsidiaries and associated/related companies.

3.3.7. Taxation of subsidiary and associated companies

Relative to the above, Article 25 of Law 9.249/95 states:

“Art.25 - the profits, income and capital gains arising abroad will be included in the determination of real profits in relation to the accounts prepared on 31 December each year.

Para.1.....

I.....

II.....

Para.2 - the profits arising abroad in branches or subsidiaries of legal entities domiciled in Brazil will be included in the determination of real profits in accordance with the following:

I.- the branches and subsidiaries will determine their profits for each fiscal year in accordance with the norms of Brazilian legislation.

II.- the profits referred to in item I above will be included in the net profit of the parent company in the proportion of its shareholder participation for the determination of real profits.

III.-....

IV.-.....

Para.3 - the profits arising abroad from associated companies of legal entities domiciled in Brazil will be included in the determination of real profits in accordance with the following:

I.- the profits realised by the associate will be included in the net profits in the proportion of the shareholding held.

II.-...

III.-.....

IV.-.....”

In view of the controversy and legal argument that ensued from the provisions of Law 9.249/95 the legislation was subsequently amended by Law 9.532/97, Article 1 of which determines that the profits arising abroad will only be included in the determination of the real profit (“*lucro real*”) for the calendar year in which such profits are “made available” (“*disponibilizados*”) to the Brazilian company. The profits of a subsidiary are considered “available” to the parent on the date of payment or credit. An increase in capital is considered payment. Article 3 of Law 9.532/97 further provides that interest paid to an overseas subsidiary in respect of loans contracted with the same will not be deductible for tax purposes by the Brazilian company whilst the accounts of the subsidiary contain profits not “available” to the Brazilian company. Additionally, an increase in capital of the subsidiary through a capitalisation of reserves is also considered a “payment” for the purposes of such legislation.

The rules were further tightened by Provisional Measure 1.924 first issued on 7 October 1999 which provides that in the event that a subsidiary, which has accumulated undistributed profits, makes a loan to its parent then such loan will be considered as a distribution of profits for the purposes of taxation under Article 1 of Law 9.532/97.

Finally, the Brazilian tax authorities endeavoured to close any loopholes in

the prevailing legislation through the issue of Provisional Measure 2.158 of 27 August 2001 which states in its Article 74 that for the purposes of calculating income tax and social contributions on profits (“CSLL”) the profits of overseas subsidiaries and associated companies will be considered “available” to the Brazilian company on the date of the financial statements in which such profits arise.

3.3.8. Withholding Tax on Abroad Remittances

In addition to taxation on income and profits, certain remittances of funds from Brazil are subject to deduction of tax at source (“Imposto de Renda Retido na Fonte” - withholding tax) in Brazil.

In principle, unless specifically exempt under prevailing legislation,⁴ all payments from sources located in Brazil to legal or physical persons resident or domiciled abroad are subject to withholding tax in Brazil. Usually the applicable rate of withholding tax, depending upon the nature of the payment, is either 0 or 15%. However, for certain remittances this tax rate may increase to 25%.

Royalties payable abroad in relation to the use of brands, patents, trademarks, technical assistance and others contracts for transfer of technology, duly registered with the National Institute of Intellectual Property (INPI) are subject to a 15% (fifteen per cent) withholding tax, unless a lower rate is available under the terms of a prevailing double tax treaty. In addition to the withholding tax the Brazilian payee is liable to a further contribution of 10% (ten per cent) on the amount remitted under the title of CIDE (Contribution for Intervention in the Economic Domain).

Pursuant to Article 10 of Law 9.249/95, no tax is deductible at source on the remittance of profits and dividends by a Brazilian company to overseas shareholders or on the remittance of profits by Brazilian branches or representative offices of foreign companies. No withholding tax is applicable on the return of

⁴ Such as, for example, the remittance of dividends and profits by a Brazilian company to non-resident shareholders.

foreign capital up to the amount of the foreign investment registered with the Central Bank of Brazil. Capital gains, however, on the disposal of investments in Brazil are subject to tax at source at 15%.

Pursuant to Article 685 of Decree 3.000/99 all amounts paid, credited, or remitted, from a source situated in Brazil, to physical or legal persons resident abroad, are subject to tax at source at the rate of 25% when the payment relates to the provision of labour, with or without an employment relationship, and from the provision of services.

Additionally such Article further provides that, save for certain specific exemptions, the income arising from any operation, in which the beneficiary is resident or domiciled in a country which does not tax income or which taxes income at a maximum rate less than 20%, will be subject to tax at source at the rate of 25%.

The notion of defining a favourable tax regime as one which taxes income at less than 20% arises from Brazilian transfer pricing legislation and specifically the Brazilian authorities have determined that the following jurisdictions shall be considered as favourable: Andorra, Anguilla, Antigua and Barbudas, Aruba, Bahamas, Bahrein, Barbados, Belize, Bermudas, British Virgin Islands, Campione D'Italia, Cayman Islands, Channel Islands (Alderney, Guernsey, Jersey and Sark), Cyprus, Singapore, Cook Islands, Costa Rica, Djibouti, Dominica, Dutch Antilles, Gibraltar, Granada, Hong Kong, Lebuan, Lebanon, Liberia, Liechtenstein, Luxembourg, Macau, Madeira Islands, Maldives Islands, Malta, Isle of Man, Marshall Islands, Mauritius, Monaco, Montserrat Islands, Nauru, Niue Islands, Sultanate of Oman, Panama, San Marino, St. Cristovao and Nevis Federation, St. Vicent and Granadines, St. Lucia, Seychelles, Tonga, Turks and Caicos Islands, United States Samoa, United Arab Emirates, West Samoa, U.S Virgin Islands, and Vanuatu.

In view of the above, the principal withholding tax rates applicable in Brazil, in the absence of a lower rate available under a prevailing treaty, are as follows:

Dividends	zero
Interest	15%
Royalties	15%
Tax Havens	25%
Service	25%

3.3.9. Social Contribution on Invoicing - COFINS

Supplementary Law 70 of 30 December 1991 instituted the social contribution on invoicing to help finance the Social Security Program. Pursuant to Article 8, *caput*, of Law 9.718, the social contribution is charged monthly at a rate of 3% on the gross receipts from sales of merchandise and the rendering of services.

3.3.10. Contribution to the PIS/PASEP

Contributions to the Social Integration Program (PIS) were instituted in 1970. All private commercial undertakings which are classified as such by the income tax statutes are liable for this tax. This contribution is charged at 1.65% per cent of added value by private legal entities and 1% when levied on payroll.⁵

3.3.11. Tax on Industrial Products - IPI

IPI is a federal tax charged on industrial products at selective rates varying according to the class of products per the classification in the table included in the IPI tax law (Laws 4.502/64 and Decree Law 34/66).

According to Law 9.532/97, products for export can leave the industrial establishment with suspension of the IPI when: (i) acquired by an export trading company, with specific purpose of export; and (ii) remitted to customs deposit areas or other places where customs brokerage takes place.

An industrialised product is considered as being a product resulting from

⁵ Decree 4.524/2002.

any process which is classified as industrialisation, such as an operation which modifies the nature, function, finish or appearance of a product. The rate varies and depends on the classification of the goods as specified by the law.

The IPI tax on the wholesale purchase price of a product is registered as a credit in the books of the business acquiring the product, and, on the sale of the finished product, the amount of tax shown on the invoice is registered as a debit. The balance which results each month is the tax to be paid to the State Authority.

3.3.12. Tax on Operations on the Circulation of Merchandise and Services - ICMS

The ICMS is a State tax charged on all products. In the case of São Paulo, the rate is 18% of the value added on the merchandise or services. When materials are purchased, the ICMS tax is already included in the price (Decree Law 406 of 31 December 1968). In operations between South of Brazil and the Southeast, the rate is 12%, and between the Southeast and Northeast the rate is 7% (Article 52 of State Decree 45.490/2000). ICMS and IPI calculations are similar.

3.3.13. Import tax - The Common External Tariff - CET

Mercosul introduced the Common External Tariff – CET, created by the Protocol of Buenos Aires and in Brazil by Decree 1.343 of 23 December 1994 as amended.

The CET tariff applicable to trade between any signatory of Mercosul with third party countries varies between 0% and 35% depending upon the product.

The Brazilian Government's most recent modifications to the CET and its exception list were established by the Chamber of Foreign Trade (CAMEX) in the Resolution 42 of 26 December 2001, wherein certain products are labelled as "sensitive" and thus are not designated to compete with similar products of other countries. Each calendar year the number of products on this list is reduced.

For imports from other countries, the rates vary based on the fiscal classification of the product, pursuant to Decree Law 37/1966.

3.3.14. Service Tax - ISS

ISS is a tax charged by the municipal authorities, on the rendering of services in the city of São Paulo, according to Municipal Decree 42.836 of 7 February 2003, the tax is charged at 10% on entertainment, 5% on service providers and 2% on independent professional services.

3.3.15. Real Estate Transfer Tax

The tax is charged in three situations: on lifetime transfer, inheritances and donations. In the first case, the tax is regulated by Municipal law and is only charged over real estate. The rate in São Paulo varies from 0.5% to 2% in the event that the real estate is financed by the housing finance system (SFH); in other cases, the rate is 2%. In the other two cases, the legislative competency is that of the States pursuant to Article 155, paragraph I of the Federal Constitution relative to bank deposits, finance investments, shares, etc., and real estate. Inheritances up to circa US\$ 30,000.00 and donations up to circa US\$ 10,000.00 are exempt. Over these values, the rates vary from 2.5% to 4% to be paid before the celebration of the act or corresponding contract.

3.4. Double Taxation Treaties Entered into by Brazil

Brazil has signed double taxation treaties with Argentina, Austria, Belgium, Canada, China, the Czech and Slovak Republics, Denmark, Ecuador, Finland, France, Germany, Holland, Hungary, India, Italy, Japan, Korea, Luxembourg, Norway, Philippines, Portugal, Spain and Sweden.

4. INTELLECTUAL PROPERTY

In the past few decades, industrial property, a subclassification of the more comprehensive term “intellectual property”, has been the focus of attention of Brazilian scholars and lawmakers. Laws and legal principles have been drafted and generated aimed at the protection of this kind of property right in the fields of industry and commerce, as well as in the subjects related to preventing unfair competition.

The first step for the foreign investor wishing to establish or accomplish business in Brazil is to obtain appropriate protection for the industrial property rights for the products or services already in the company’s possession or those soon to be. The investor also should become acquainted with the legal ramifications of entering into agreements and contracts that may affect the company’s industrial property rights.

In Brazil, the INPI (National Institute of Industrial Property) is the agency to which all requests concerning the protection of rights related to industrial property should be addressed, as well as requests for the registration of technology transfer contracts. This kind of contract, once in effect, also produces taxation and exchange consequences.

According to the Brazilian laws in force, technology transfer contracts are classified for the:

- (a) use of patents;
- (b) use of trademarks and geographic indicators;
- (c) technology supply; and
- (d) technical and scientific assistance services.

4.1. Patents

The patent is a privilege granted for the protection of inventions and utility models. The protection granted by a patent extends to 20 years for inventions, and 15 years for utility models, from the date the request for protection is filed at the INPI.

The protection granted by a patent cannot extend for a period less than 10 years for inventions and 7 years for utility models from the date the request for protection is filed at the INPI, except in the event INPI is prevented from the examination of the request by court order or by force majeure.

In Brazil, there is no law specifying categories of inventions. On the other hand, those which are not subject to patent protection are described in detail as, for example, scientific inventions, games, rules, software and inventions designed to break laws or which are against the moral, health and public safety concerns of society.

The modern trend when defining these categories of inventions subject to patent protection is to fill those gaps left in the legislation.

4.2. Trademarks and Geographic Indicators

Trademarks include every sign which, when connected with products, goods or services, identifies them and separates them from others of an identical or similar class. Brazilian law establishes 4 categories of trademarks eligible for protection: products, services, certifications, collective trademarks. Law 9.279, from 14 May 1996, includes geographic indicators into a special classification.

The registration of a trademark before the INPI creates the exclusive right to use the trademark in connection with the class of services in which it has been registered. Trademark use signifies the exclusive right to use the mark, especially in documents and papers, to distinguish services and activities which are offered. This right is exercised basically for the economic exploitation of the sign and/or registered name.

Brazilian law establishes several categories in which one may apply for the registration of trademarks for services, products, certifications, and collective and geographic indicators with the INPI. Such categories are: the name (“nominativa”); the design (“figurativa”); and the word and design (“mista” and “tri-dimensional”).

INPI has recently enacted a new Normative Act which establishes a classification of products and services based on the Nice Convention on International Classification. According to this classification, trademarks are registered before the INPI according to the products or services with which they are related.

As occur with patents, when dealing with the use of trademarks by a third party, reference should be made to the regulations concerning technology transfers below.

4.3. Technology Supply and Technical and Scientific Assistance Services

The laws in force have created 2 categories: Technology Supply & Technical and Scientific Assistance Services, to cover all assignments of technological expertise, know-how and technical and scientific services directed toward the production of consumer goods and the manufacture of industrial equipment.

The INPI oversees industrial property and technology transfer. The guidelines adopted by the INPI for its inspection of technology supply and technical assistance contracts are described in Normative Act 135/97 and in Law 9.279/96. These laws determine that the validity of these contracts against third parties is dependent upon registration with INPI. The parties can freely negotiate contract terms provided that Brazilian national sovereignty, public order and morality are observed. However, the registration of these contracts is dependent upon satisfying several INPI requirements, which are: the observance of applicable limits - as to the prevailing tax and exchange control regulations regarding deductibility for income tax purposes and the remittance in foreign currency of the contractual payments; the specification of the costs and the detailed specification of the

remuneration of the technicians per hour; the term for the performance of the services or the evidence that the service has already been performed; and as to the total cost of the services, even if estimated.

Law 8.383/91 permits the remittance and tax deduction of royalties paid by a Brazilian subsidiary to its controlling company abroad if the contract is registered with the INPI and the Brazilian Central Bank.

4.4. Franchising

On 15 December 1994, Brazil enacted Law 8.955/94, the first effective step taken by the country towards clear-cut regulation for franchising activities in Brazil.

In the past, the INPI and the Brazilian patent and trademark office, responsible for the formal examination and approval of contracts involving the transfer of technology, the licensing of trademarks and related matters, had adopted a restrictive approach with regard to a franchise relationship with a foreign franchisor. Although the technology transfer laws were not intended to regulate franchising, every agreement relating to the transfer of technology had to be registered with the INPI and the foreign franchisor was required to comply with the transfer of technology laws and regulations. In fact, INPI would not register a composite franchise agreement containing both the transfer of technology and know-how and the license agreement. Therefore, it was virtually impossible to have a legally enforceable franchise agreement in a single contract. Due to the refusal of INPI to register the franchise agreement as such, the Central Bank of Brazil, responsible for the control of the foreign exchange, would not permit the remittance of the corresponding royalties abroad.

With the liberalisation of the Brazilian economy in recent years and the ever growing need to attract foreign investment to the country, Brazilian authorities, including the INPI, have adopted a more flexible policy with regard to international agreements. INPI Resolution 115 of 30 September 1993, regulating the registration of franchise agreements as a single contract, served as a clear precursor to this new attitude.

The Franchise Law (Law 8.955/94) is a protective measure for the franchisee. By obliging the franchisor to follow certain procedures and make full disclosure to potential franchisees, the franchisee is able to make a more informed choice regarding the acquisition of the franchise offered. Accordingly, franchisors are required to provide prospective franchisees with a circular offer, previous to the execution of the franchise agreement, containing general information on the franchisor, the franchise business and the terms of the franchise relationship, including a profile of the ideal franchisee.

The circular offer must be delivered to the prospective franchisee at least 10 days prior to the execution of the franchise agreement or pre-agreement. In the event of the failure of the franchisor to comply with this requirement, the franchisee may argue a violation of the agreement and require the reimbursement of all amounts already paid to the franchisor or third parties indicated by same, as franchise fees or royalties, plus damages and losses.

The law further provides that the circular must state whether the franchisee is entitled to exclusivity for a certain territory and under which conditions. It must clearly define franchisee obligations with regard to the acquisition of real estate, goods, services, etc., as well as what is being effectively offered by the franchisor in terms of training and know-how. Finally, the circular must contain provisions concerning surviving obligations and non-competition clauses after termination of the agreement.

A draft of the standard franchise agreement utilised by the franchisor must also be submitted, together with the circular offer, for preliminary examination previous to entering into any definitive agreement.

Apart from those requirements imposed by the law, franchisors must also comply with Brazilian competition (anti-trust) and consumer protection laws and regulations and the general legal guidelines established in the Brazilian Civil and Commercial Codes.

5. INTERNATIONAL TREATIES

5.1. WTO/GATT

Since 1947, the General Agreement on Tariffs and Trade (GATT) has been the world's primary multilateral treaty for trade, despite the fact that technically the treaty was only "provisional" in nature. The GATT was established after the Second World War following other new multilateral institutions dedicated to international economic co-operation, notably the "Bretton Woods" institutions now known as the World Bank and the International Monetary Fund.

The GATT's objective was the liberalisation of world trade, with the consequent prosperity and development which could result therefrom. The treaty was originally signed by 23 countries, including Brazil, in 1947 and came into force in January 1948. Over the years, the GATT was updated and had its scope broadened by way of amendments resulting from "round" negotiations. To date, there have been 7 GATT rounds, the Uruguay Round negotiations having taken place from 1986 until 1994. By the end of 1994, the GATT had been signed by 128 countries and has represented more than 4/5 of the world trade.

The end of the 8 year Uruguay Round of trade negotiations in 1994 brought a profound change to the legal structure of the institutions for international trade. The rush of new members joining the GATT during the Uruguay Round demonstrated that the multilateral trading system was recognised as the foundation for world-wide development and economic and trade reform. Now, though, the results of the Uruguay Round have created a new and more clearly defined international organisation - a World Trade Organisation (WTO) - to carry forward GATT's work.

The WTO was established on 01 January 1995. Governments had concluded the Uruguay Round negotiations on 15 December 1993 and Ministers had given their political backing to the results by signing the Final Act at a meeting in Marrakech, Morocco in April 1994. The "Marrakech Declaration" of 15 April 1994 affirmed that the results of the Uruguay Round would "strengthen the world

economy and lead to more trade, investment, employment and income growth throughout the world”.

The WTO has the same structure as the GATT, modified by the Uruguay Round, and comprises all the agreements and understandings concluded under its auspices, together with the complete results of the Uruguay Round. Thus, the WTO provided a common institutional structure for the conduct of commercial relations between the member-states in case of disputes on the object of the agreements and other legal instruments of the Agreement that established the WTO.

This Agreement is composed of GATT 1947, as subsequently rectified, amended or modified and GATT 1994, in the form of Annex 1 A of the Agreement. Other agreements, understandings or treaties that arise from the Agreement are as follows:

5.1.1. Understandings on GATT 1994

- (a) Understandings on the Interpretation of Article II: 1(b), which charts the concessions made in the round;
- (b) Understandings on the Interpretation of Article XVII, which increases the control over commercial public corporations;
- (c) Understandings on balance-of-payments provisions specified in Articles XII and XVIII:B, which stipulate that if the contracting parties impose restrictions, in view of problems in the balance of payments, they should act in a manner that least compromises trade;
- (d) Understandings on the Interpretation of Article XXIV, which establishes rules concerning Customs Union and Free Trade Zones;
- (e) Understandings on the Interpretation of Article XXXV, which discusses waivers to the obligations assumed in the Agreement;
- (f) Understandings on the Interpretation of Article XXVIII, which

considers the changes in the reciprocal concessions between the contracting parties; and

- (g) Understandings on the Interpretation of Article XXX, which disposes on the non-application of the agreement in relation to bilateral negotiations, which ought to be multilateral.

5.1.2. Marrakech Protocol - GATT 1994

The Marrakech Protocol charts the results of the concessions formulated by the contracting parties during the Uruguay Round for the Purpose of Multilateralisation, in other words, the equal application of conditions for all member-countries.

The Protocol contains in its 6 appendices the arrangements made by the parties with the objective of tariff reduction, as well as the elimination of non-tariff barriers. The appendices are as follows:

Appendix I Section A: Agricultural Products/tariff concessions;

Appendix I Section B: Agricultural Products/tariff quotas;

Appendix II: Tariff Concessions for other products, based on the most favoured nation principle;

Appendix III: Preferential Tariffs;

Appendix IV: Concessions on non-tariff measures;

Appendix V: Agricultural Products/agreements to limit subsidies;

Section I: Domestic Support;

Section II: Subsidies for Exports/agreements for the reduction of values; and

Section III: Subsidies for Exports/agreements for the reduction of the area of jurisdiction.

5.1.3. Other Agreements

- (a) Uruguay Round Protocol of the General Agreement on Tariffs and Trade of 1994;
- (b) Agreement on Agriculture;
- (c) Agreement on Sanitary and Phyto-Sanitary Measures;
- (d) Agreement on Textile and Clothing;
- (e) Agreement on Technical Barriers to Trade;
- (f) Agreement on Trade-Related Investment Measures;
- (g) Agreement on the Implementation of Article VI of GATT;
- (h) Agreement on the Implementation of Article VII of GATT;
- (i) Agreement on Preshipment Inspection;
- (j) Agreement on Rules of Origin;
- (k) Agreement on Import Licensing Procedures;
- (l) Agreement on Subsidies and Countervailing Measures;
- (m) Agreement on Safeguard;
- (n) General Agreement on Trade in Services;

- (o) Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods;
- (p) Understandings on Rules and Proceedings Governing the Settlement of Disputes; and the
- (q) Trade Policy Review Mechanism.

5.1.4. WTO Functions

The objective of the WTO is to facilitate the implementation, administration and operation of the establishing Agreement, and any other legal instruments of which it is comprised, as well as to promote a forum for negotiation on multilateral trade among the member-states. The WTO also has the function of administering Arrangements on the Rules and Proceedings Governing the Settlement of Disputes and on the Trade Policy Review Mechanism.

5.1.5. The WTO Structure

Every member of the WTO has accepted the terms and conditions of GATT 1947, as well as GATT 1994 without reservation, in their entirety. The highest organ of the WTO is the Ministerial Conference, composed of representatives of all members, which meets at least once every 2 years and decides as authorised by the Agreement and other relevant legal instruments.

There is also a General Council, ranked immediately below the Ministerial Conference and composed of representatives of all members, which meets whenever necessary in between meetings of the Ministerial Conference. The General Council acts as the Body for Settlement of Disputes and the Trade Policy Review Mechanism. The General Council orients the activities of the Council for Trade in Goods; the Council for Trade in Services; and the Council for the Trade-Related Aspects of Intellectual Property Rights.

The WTO has a secretariat, directed by a director-general appointed by the Ministerial Conference, which also determines its powers, duties, the conditions of service and the terms of its mandate. In strict fulfilment of its duties, neither the director-general nor any other member of the secretariat shall be instructed by any government or authority apart from the WTO.

The WTO is a corporate entity and has legal capacity to develop its activities; its operatives have all privileges and immunities necessary to exercise its functions.

5.1.6. Decision-making Process

The WTO continues with the practice of taking decisions by consensus as established by GATT 1947. If it is impossible to reach a decision by consensus, the subject is submitted to a vote, each member having one vote. Generally the decisions of the Ministerial Conference and of the General Council are taken by a majority of votes. This dispositive is altered if specific quorums are demanded.

In exceptional circumstances, the Ministerial Conference can excuse a member from the fulfilment of an obligation assumed under the Agreement and of the juridical instruments signed concurrently with it and integral to it. In such circumstances, the quorum will be 75% of the member-states. Similarly, interpretations of the Agreement are taken with a quorum of 75% of the member-states.

The Agreement can be amended, on the initiative of any member of the WTO, through the submission of a proposal to the Ministerial Conference for approval by consensus. If there is no such consensus, the amendment is approved by a 2/3 majority vote by the members, in which case the amendment only applies to the 2/3 of the members that voted in favour; or by 75% of the members in cases that apply to all the members. The member-state that does not conform must withdraw from the WTO, unless a special waiver is granted.

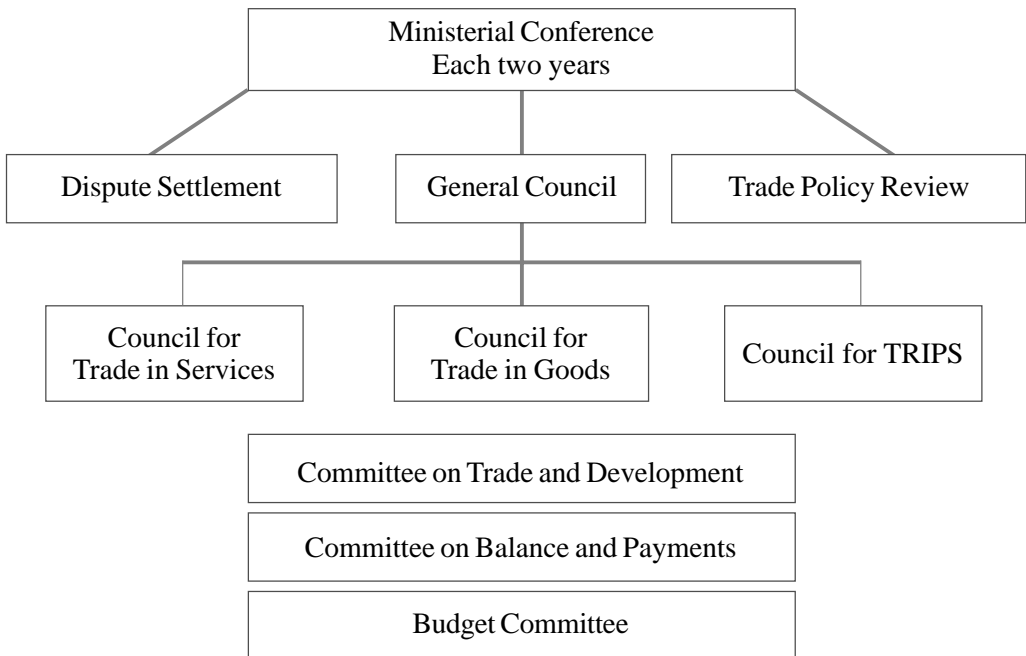
There are various other specific quorum provisions for the legal instruments which form part of the Agreement.

Finally, it is worth mentioning that there are certain other waivers which stem from GATT 1947 and are conferred according to the terms of Article XXV and form part of the Agreement. US imports on the terms of the Caribbean Basin initiative, as well as the agreements of the United Kingdom with countries of the British Commonwealth for preferential access, are examples of such dispensations.

5.1.7. Miscellaneous

At the ceremony of signature of the Agreement, the Brazilian Chancellor, Ambassador Celso Amorim, declared that the Uruguay Round “will be remembered as the first in which the developing countries had an active participation in the entire negotiations,” emphasising that “developing countries relied on trade liberalisation and on the multilateral trade system.” The Indian Minister for Trade, Mr. Pranab Mukherjee, also commented that the survival of the multilateral trade system depends on striking a balance with the current inequality of international trade and reducing the marked differences between developing and developed countries.

The Organisational Chart of the WTO in 1995



5.2. ALADI

The Latin American Integration Association, known as ALADI for its acronym in Spanish and Portuguese, was created in 1980 by the Treaty of Montevideo, replacing the ALALC regional association. The goal of ALADI is to gradually develop a Latin American Common Market through preferential tax and duty treatment and other mechanisms encouraging free trade.

ALADI member-countries are Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela and Cuba. The Association is organised into a Political Branch and a Technical Branch.

The Political Branch is composed of the Foreign Relations Minister Council, the Evaluation and Convergence Council, and the Representatives Committee.

The Foreign Relations Minister Council is the lead body of ALADI and forms the guiding policies of the Association's economic integration process.

The duties of the Evaluation and Convergence Council include examining and overseeing the operation of the different trade mechanisms provided by the treaty, as well as promoting activities that lead to greater integration.

The Representatives Committee is the Association's permanent political body. It is responsible for the adoption of whatever measures are necessary to accomplish the goals of the Treaty of Montevideo and to create ALADI's governing rules.

The Technical Branch consists of the Secretary General, which is responsible for the evaluation and management of measures to best accomplish ALADI objectives.

Trade is governed by some basic guidelines, including a commitment by members to work toward uniformity in trade policies, to develop flexible policies

of differing treatment based on the development level of member countries, and to allow for various ways of concluding commercial agreements.

Many ALADI member countries still suffer severe problems in commerce and financing. Among the main problems are the likelihood of continuing protectionism policies in the developed countries, economic instability, the slow recovery of international trade and the high cost of basic products. Flexibility in the ongoing ALADI negotiations is seen as a key element in overcoming obstacles and concluding successful short-term agreements.

The treaty provides various mechanisms to provide tariff and tax relief and stimulate trade, including several types of bilateral and multilateral agreements, such as:

- (a) **Regional Duty Preferences:** ALADI provides for reciprocity among member countries concerning tariffs and duties. Duties on goods from non-member countries are applied according to the policies in force in those countries;
- (b) **Limited Scope Agreements:** These involve trade arrangements in which only some countries may participate for the specific purpose of strengthening the regional integration process. The contracting parties are governed exclusively by the rights and liabilities established by these contracts;
- (c) **Regional Comprehension Agreements:** Because development levels vary among member countries, all members grant special non-reciprocal tax and duty concessions to lesser-developed member countries; and
- (d) **Limited Scope Commercial Agreements:** The industrial sectors of member countries may participate under the ALADI framework in commercial agreements. These agreements usually contain exclusive advantages for the signatory countries, especially for the lesser-developed countries of Bolivia, Ecuador and Paraguay.

5.3. Mercosul

5.3.1. Purpose

In view of the formation of large trading associations such as the European Union and the North American Free Trade Association, the southern Latin American countries have been working since July 1986 on a means to stimulate trade between the region and the rest of the world, and to encourage foreign investment.

In July 1990, a timetable for the formation of a Common Market between Brazil and Argentina was established. After December 1990, Brazil and Argentina signed a treaty incorporating all previous agreements liberalising trade between the 2 countries. This agreement already reflected the characteristics and objectives of what was to become Mercosul.

On 26 March 1991, Argentina, Brazil, Paraguay and Uruguay signed the Treaty of Asuncion formalising the decision to integrate the economy of these countries into a Common Market of the South (MERCOSUL), effective as of 01 January 1995.

The first country to fully approve the Treaty of Asuncion was Uruguay, by Law 16.196 of 22 June 1991, followed by Paraguay, which approved it on 28 June 1991 (Law 91/91). Argentina approved the Treaty by Law 23.981 on 15 August 1991. In Brazil, the Treaty was approved by Legislative Decree 197 of 25 September 1991, promulgated by Decree 350 of 21 October 1991. Brazil filed the ratification instrument on 30 October 1991.

Mercosul has as its purpose the co-ordination of macroeconomic and sectorial policies; the free transit of goods, services and means of production; the establishment of joint customs duties; and the adoption of a common commercial policy towards other countries and communities.

5.3.2. Administration

Clause 9 of the Treaty of Asuncion establishes that the administration and resolutions adopted by Mercosul will be carried by the Common Market Council and the Common Market Group. The Council, which is composed of the Foreign Affairs Minister and the Minister of the Economy of each of the signatory countries, is the highest-level decision-making body. It is responsible for the political guidance of the Common Market and for assuring that the purposes and terms established for the implementation of Mercosul are met. The Common Market Group is the executive body. It is co-ordinated by the Ministry of Foreign Affairs of each country and is composed of 4 members and 4 substitute members per country. These members are representatives of the Ministry of Foreign Affairs, the Ministry of the Economy and the head of the Central Bank of the respective member-states.

According to Article 17 of the Internal Rules of the Common Market Group, the group is allowed to create work subgroups, when necessary, to accomplish the obligations of the Common Market Group. Each work subgroup will have a national co-ordinator, indicated by each signatory country, and while its commission may have the participation of private sector members, private sector members are not allowed to participate in decision making.

Resolution 8/93 of the Common Market Group mandates that the Administrative Secretary is to carry out a quarterly review of the practice and application of the Decisions of the Common Market Council and the Common Market Group.

The Administrative Secretary of Mercosul was created by the Protocol of Ouro Preto (Article 31) with the main purpose of maintaining the files of all Mercosul Documents, to facilitate the organisation's publicity, and to facilitate the direct contact of the authorities of the Common Market Group. The Administrative Secretary also functions as a centre of communication and exchange of information related to Mercosul and guarantees the legal effect in each signatory country of the decisions reached by the different bodies of Mercosul.

Uruguay hosts the permanent headquarters of Mercosul. The presidency is also temporarily being held by Uruguay, for a period of 6 months, until December 2003.

5.3.3. Legislative Procedures

As per Chapter VI of the Protocol of Ouro Preto, the decisions of Mercosul may operate as follows:

- (a) Once a rule is approved, the signatory countries will adopt the necessary measures to incorporate that rule in their national legislation and communicate its incorporation to the Administrative Secretary of Mercosul;
- (b) When all the signatory countries have communicated the incorporation mentioned in item (a) above, the Administrative Secretary of Mercosul will communicate such act to the other signatory countries; and
- (c) The approved rule will simultaneously come into force within the signatory countries 30 days after the communication described in item (b) above.

For the purpose of implementing and following such rules the Common Market Group, in its XII Meeting held in Montevideo on 13 and 14 January 1994, determined that the subgroups will report quarterly on the degree of implementation of the decisions and resolutions adopted by Mercosul in each signatory country.

5.3.4. Dispute Resolution

The Protocol of Dispute Settlement, signed by the signatory countries of Mercosul in Brasilia on 17 December 1991 and promulgated in Brazil by Decree 922 of 10 September 1993, recognises the importance of the Treaty of Asuncion and is an effective mechanism to guarantee the accomplishment of the treaty.

On 18 February 2002, the four member countries signed the Protocol of Olivos for a Dispute Settlement Body in Mercosul. This Protocol improved the dispute settlement system foreseen in the Protocol of Brussels, which will therefore be revoked when the Protocol of Olivos comes into force.

5.3.5. Protection of Competition

The Protocol of Protection of Competition (Decision 18/96) was defined during the Fortaleza Meeting held in the second half of 1996, which was adopted by Brazil by means of Decree 3.602 on 18 November 2000. The Protocol determines the restrictive practices to competition (imposition of prices and conditions of selling and buying of goods, barriers to access to the market, manipulation of the market in order to determine prices, etc.) and the applicable penalties, such as fines. Taking into consideration the need of regulating Mercosul's Protocol of Protection of Competition, the signatory states signed the Agreement on the Regulation of the Protocol of Protection and Competition on 5 December 2002, which currently awaits for notifications from its parties.

5.3.6. Safeguards

During the Fortaleza Meeting, the signatory countries of Mercosul also determined the rules on safeguard measures before third parties. The approval of Decision 17/96 permits protection to the industries of the regional market against the increase of unfair imports from non-signatory countries. By means of a common understanding present in the Agreement of Asuncion and in Decision 17/96, the members agreed not to apply intra-zone measures. The Committee of Commercial Defence and Safeguards was recently created with the purpose of co-ordinating such matters.

5.3.7. Dumping and Subsidies

In August 2002, by means of Decisions n. 13 and 14 of the Council of the Common Market of Mercosul (CMC), the Antidumping Agreement and the Agreement on safeguards and Compensatory Measures of the WTO were adopted

in the ambit of the Mercosul, regarding the treatment of dumping and subsidies within intra-zone trade.

Considering such decisions, the CMC disciplined the procedures and rules for antidumping investigations and subsidy solutions in the intra-zone trade, by means of Decree n. 22/02.

5.3.8. CET

One of the most important instruments to motivating the signatory countries to become externally competitive is the Common External Tariff (CET) created by the Protocol of Buenos Aires and introduced in Brazil by Decree 1.343 of 23 December 1994, which also created the Mercosul Common Nomenclature (CNM), which specifies all products to be traded between the signatory countries.

Resolution CAMEX n. 42 of 26 December 2001, in accordance with Decrees 4.679, of 24 April 2003 and 4.732, of 11 June 2003, and Resolution 65/01 of the CMC contain the most recent alterations of the CET made by the Brazilian Government, as well as the exception list to the CET which contains products labelled as “sensitive” and which thus are not designated to compete with similar products of other countries. This exception list is reduced after each calendar year.

The CET represents, generally, tariff levels from 0 to 21.5%, which can in some cases rise to 35%. The principal objective of the CET is to avoid deflections in trade flow between member-states, as this would cause problems on a macro-economic level with damaging consequences to the development of Mercosul.

Currently, Brazil has a Convergency List of the Sector of Telecommunications and Electronic Goods, which is valid until 2006. The Medication List also has an expiry date, which is 31 December 2003.

5.3.9. Rules of Origin

Mercosul's rules of origin, which were established by the Agreement of Economic Complementation n. 18, were replaced by the Eighth Additional Protocol of the Agreement of Economic Complementation (ACE/18), signed by the signatory countries of Mercosul on 30 December 1994, and updated with later modifications.

This important issue for Mercosul concerns rules of origin defining the proportion of domestic components (originating in Mercosul) which products must contain. To this end, a program had been established to achieve the convergence of individual country rules to be implemented on a uniform and gradual basis to reach the general norm, according to the 39th Additional Protocol of ACE/18, incorporated in Brazil by Decree 4.106 of 28 January 2002.

5.3.10. International Contracts

Decree 2.095 of 17 December 1996 promulgated in Brazil the text of the Protocol of Buenos Aires on International Jurisdiction in Contractual Subjects, concluded in Buenos Aires on 05 August 1994. Under this decree, the signatory countries of Mercosul adopted common rules concerning international jurisdiction related to contracts of a civil or commercial nature signed between individuals and legal entities.

5.3.11. Banking

Concerning the banking sector, Mercosul Sub Group n. 4 intends to consolidate the supervision of global banking through a convention of the Central Banks of the signatory countries, reducing the differences existing between the banks with regard to national treatment of the signatory countries or harmonisation of the practice of insurance and reinsurance, etc.

Through Decision CMC n. 11/94, the signatories of Mercosul approved the Protocol for the Promotion and Reciprocal Protection of Investments of Non-

Signatory Countries. Such Decision establishes that investors of non-signatory countries will be given the same treatment as local investors.

Also, Decision CMC n. 12/94 has adopted the Principles of the Consolidated Global Banking Supervision, in force in Brazil owing to Resolution of the National Monetary Council n. 2.723 of 31 May 2000.

5.3.12.Environment

As the world concerns itself with environmental protection measures which can affect the comparative advantages of some countries, creating barriers to the access of some markets and altering their competitiveness by an increase in production costs, Mercosul signatory countries, by means of Work Sub Group n. 6 and taking into account the results of the International Summit on Sustainable Development, held in Johannesburg, South Africa, in 2002 and Resolution 45/02 of the CMC, agreed to:

- (i) permanently analyse the restrictions and non-tariff measures which relate to the environment;
- (ii) increase the industrial and economic competition and environmental preservation by means of a greater efficiency in the use of raw materials and in the procedures used for the production of goods and services, by the year 2005;
- (iii) permanently incorporate the environmental factor in the other setorial policies of the Mercosul;
- (iv) permanently implement the “Environment Agreement of the Mercosul” (Decision of the CMC n. 2/01), through developing instruments which assure its execution;
- (v) create instruments and mechanisms for the improvement of the environmental management, by December 2004;

- (vi) permanently operate the “Environmental Information System”, created with the purpose of maintaining the public well informed;
- (vii) formulate initiatives of sustainable development which contribute to the economic growth, by December 2005;
- (viii) protect and administrate a base of natural resources for the economic and social development, by December 2005;
- (ix) administrate, in an adequate manner, dangerous chemical substances and products, by December 2003;
- (x) permanently follow the International Environmental agenda.

5.3.13. Industry

Concerning industry, Mercosul Sub Group n. 7 has as its priority the realisation of an evaluation of the competitiveness of sectors that are sensitive to the economy of the signatory countries; the identification of the opportunities to make foreign alliances; implementation of mechanisms which will allow the continuation of the industrial incentives adopted by each signatory country for its own industry; the promotion of the co-operation of the productivity of the signatory countries; implementation of a project for the integration of small, medium and large-sized companies of the signatory countries; development and support of the regional industrial arts and the protection of intellectual property.

5.3.14. Agriculture

In order to facilitate the free circulation of combined agriculture and stock raising, as well as agricultural and industrial products, Mercosul Sub Group n. 8 will harmonise the Mercosul Health and Sanitation Agreement with the rules of the WTO. In order to determine the basis of co-ordination at regional levels, the actions and instruments for the agriculture areas, Mercosul will analyse the agricultural policies

of each signatory country, as in the example of “Negotiations Agenda” of the Sub Group n. 8, approved by Resolution n. 22/01 of the GMC.

5.3.15.Labour

Mercosul will also continue to follow the rules established by the International Labour Organisation. Work Sub Group n. 10 will analyse the reports prepared by the BIRD (Inter-American Development Bank) on labour costs and labour migration and make proposals related to these matters. It is also the intention of Mercosul to sign multilateral agreements on Social Security and to implement a system of technical co-operation in the area of professional education.

5.3.16.Accession

The members of ALADI may join the Treaty of Asuncion through negotiation 5 years after its signature. Countries that do not take part in any sub-regional integration organisations may join sooner.

Negotiations with Chile and Bolivia have already concluded, but negotiations with countries such as Venezuela, Colombia and Ecuador are very advanced, proving the initiative of the countries of Mercosul to extend their economic and commercial relationship in order to promote globalisation.

5.3.17.Mercosul and Chile

In June 1996, the signatory Mercosul countries and Chile signed the “Agreement on Complementary Economy of the countries of Mercosul and Chile”, which has been in force in Brazil through Decree 2.075 since 11 November 1996.

The Agreement establishes free trade, elimination of tariff barriers and non-tariff barriers in a variable timetable.

Products that already had preferences with several agreements with ALADI had their preferences extended in October 1996, with the minimum initial preference

of 40%. In January 1997 a linear increase in such rates commenced, reaching 100% by 2004.

For the products on the exemption lists, total elimination of tariffs will occur in 15 years.

Since January 1997, new products which were not included in agreements of bilateral preferences have the initial preference of 40%, increasing every year until 2004.

The rules of origin were determined at 60%, including the basic rules of qualification of origin. For some products, national production and special rules of origin were determined.

5.3.18. Mercosul and Bolivia

The Agreement signed between the signatory Mercosul countries and Bolivia, which became effective, in Brazil, on 25 March 1997 through Decree 2.188, has as its scope to improve bilateral trade and commercial relations between the parties and the creation of a free zone within 10 years from its coming into force.

Besides the commercial preferences of products listed in its Annexes, the present Agreement also establishes the promotion and complementation of industrial, commercial and technological integration, with the scope of having the best use of the sources available, the increase of trade between the parties and the opportunity to facilitate exports to third parties. Joint development is to be stimulated in order to allow the development of activities of products and services, through international companies, or joint ventures or other forms.

The parties agreed to follow the rules established by the WTO concerning unfair practices and Resolution 70 of ALADI concerning safeguards.

The products listed in the Agreement of Economic Complementation n. 36

(Mercosul-Bolivia) will have their commercial preferences extended from 30% to 100% in 2006.

5.3.19. Automatic Payment Program

From 1 May 1991, a transitory financing mechanism of the credits due to the multilateral compensation balances (Automatic Payment Program) was incorporated into the Agreement. This mechanism attempts to foresee the occasional liquidity difficulties that the Central Banks of member countries might face at the closing of multilateral compensation periods. This mechanism is multilateral and automatic and consists in postponing the payment of obligations derived from the situations described above for a period of 4 months.

5.3.20. Bilateral Relations

With respect to economic associations, the European Union has already joined Mercosul through an Agreement of Inter-Regional co-operation between the 15 European Union countries and the 4 Mercosul countries signed in December 1995 in Madrid. This new agreement gives new opportunities of economy and investment to both blocks. Sectors such as intellectual property, technology and scientific investigation benefit from the said agreement.

On 17 June 2003, the Framework Agreement was signed between Mercosul and India.

PARTIAL AGREEMENT - Economic Complementation

Agreement of Economic Complementation n. 35 of 30 September 1996, signed between Argentina, Brazil, Chile, Paraguay and Uruguay, created a free trade area among the signatory countries.

PARTIAL AGREEMENT - Economic Complementation

Agreement of Economic Complementation n. 36 of 17 December 1996, created a free trade area between its signatory countries: Argentina, Bolivia, Brazil, Paraguay and Uruguay.

PARTIAL AGREEMENT - Trade Agreement

Agreement for the creation of a free trade area among Mercosul and the “Andean Community”, which scope is the expansion and diversification of trade exchanges, and elimination of restrictions and barriers to reciprocal trade, was signed on 16 April 1998 between Argentina, Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela. An Economic Complementation Agreement between Mercosul and Andina was signed on 6 December 2002.

PARTIAL AGREEMENT - Trade Agreement

Agreement between Mercosul and the Central American Common Market (MCCA, in Portuguese: “Mercado Comum Centro Americano”) signed on 18 April 1998, aimed to strengthen economic relations in commerce, inversion and technological transference.

PARTIAL AGREEMENT – Economic Complementation

Partial Scope Economic Complementation Agreement of 25 August 2003 between Mercosul and Peru.

PARTIAL AGREEMENT – Economic Complementation

Agreement of Economic Complementation n. 55 of 27 September 2002, between Mercosul and Mexico, created a basis for the establishment of the automotive sector in the free trade.

6. ENVIRONMENTAL LAW

6.1. Sustainable Development and Investment - A New Market with an Increasing Demand

The increasing worldwide acceptance of the concept “sustainable development” must be taken into account when considering investment in Brazil.

Sustainable development is a framework for redefining progress and redirecting economies to enable all people to meet their basic needs and improve their quality of life, while ensuring that the environmental systems, resources and diversity upon which they depend are maintained and enhanced both for their benefit and for that of future generations.

Environmental impact must be considered in any new investment in Brazil. Although in the past the environment was not a priority, today strict compliance with environmental legislation is enforced and it is no longer possible to consider development without taking into account the limitations imposed by environmental factors.

The principles of environmental protection and sustainable development should not, however, be viewed as hindrances to economic development, as just another cost of doing business. Incorporation of environmentally friendly practices is an opportunity for business development - waste reduction, energy efficiency, and pollution prevention make economic sense. So much so that efficiency in business has become inextricably linked with sound environmental practices.

An Environmental Impact Study (EIA-RIMA), for example, is required for any project which might significantly impact the environment. (Article 225, paragraph 1, IV, of the Federal Constitution, regulated by Law 9.985/00 and Resolution n. 001 of CONAMA). Such a study may prove beneficial to the business making the investment if it reveals that the proposed location of the project is inappropriate.

Similarly, investments in “clean” technologies can not only improve productivity, they can save money over the long term by preventing environmental damage, avoiding the significant costs associated with remedial action to restore of the environment. This kind of investment can be made with the assistance of international banking institutions (such as the World Bank and the Inter-American Development Bank) or through the private banking sector.

Growing environmental concerns, coupled with public pressure and stricter regulations, are changing the way people do business across the world, including in Brazil. While the cost of compliance with environmental legislation can be significant, especially for small - and medium - size companies, far more significant liabilities associated with remediation, cleanups and penalties for breaches of legislation face businesses that fail to anticipate their potential environmental liabilities and to improve their environmental performance. The environment must be considered in any new investment in Brazil.

6.2. Brazilian Environmental Law

It is important for foreign investors interested in Brazil to become acquainted with Brazilian Environmental Law, which is extensive.

The Federal Constitution provides that:

“Article 225. All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.”

The Constitution, which devotes an entire chapter to environmental matters, explicitly requires that the government:

- (i) ensure ecological preservation;
- (ii) demand environmental impact studies where activities may cause

significant degradation of the environment;

- (iii) promote environmental education in schools, including awareness of the need to preserve the environment;
- (iv) protect plant and animal life;
- (v) require restoration of environmental degradation caused by mining; and
- (vi) implement civil, criminal, and administrative sanctions for activities and conduct considered to be damaging to the environment (“Procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused”).

The principal environmental legislation is Law 6.938 of 31 August 1981 (amended by Law 7.804/89 and Law 9.966/00; regulated by Decree 97.632/89, by Law 8.028/90 and by Law 9.960/00) (“The Environmental Law”). The Environmental Law established the National Environmental Policy, the objective of which is the “preservation, improvement and recuperation of the environment quality, adequate for life, assuring the country conditions for socio-economic development, of interests of national security and of protection of the dignity of human life.”

The Environmental Law is a well-developed regulatory framework which emphasizes environmental improvement in addition to environmental protection.

The Environmental Law established the means for implementing environmental policy - establishment of standards for environmental quality and measurement of environmental impact; licensing and review of actual or potential polluting activities; and imposition of criminal or civil penalties on parties that fail to comply with environmental regulations.

The legislation imposes strict liability for environmentally harmful activity (including pollution): liability requires no evidence other than how much environmental damage has been caused and who caused it (there is no requirement that intent be proved). In addition, liability follows a company regardless of the owner. Where a business that has caused damage to the environment has been acquired by a new owner, the new owner will be responsible and answerable for any damage caused, regardless of blame or intent (the parties can contractually provide for a right to indemnification).

The Environmental Crimes Law (Law 9.605 of 12 February 1998), provides criminal and administrative punishments for specified acts which cause damage to the environment. The acts include pollution, damage to plant and animal life, and damage to culturally or historically significant buildings, monuments or sites.

The Environmental Crimes Law holds legal entities administratively, civil and criminally responsible for infringement of environmental laws in instances where a violation is committed by decision of its legal or contractual representative or of its collective body, in the interest, or for the benefit, of the entity. In addition, individual representatives of an infringing entity who in any way contribute to an infringement, or knew of an infringement and did nothing to prevent it, can also be held liable.

The Environmental Crimes Law provides for a wide variety of criminal and administrative penalties for environmental law violations, including house arrest, community service, fines, confiscation, and suspension or cancellation of licences.

Law 7.347/85 (amended by Laws 8.078/90, 8.884/94, 9.494/97 and 10.257/01) permits public civil actions (“Ação Civil Pública”) to be brought by public prosecutors, environmental protection groups and other interested parties where potential environmental violations exist.

In addition to licensing requirements, potential administrative and criminal penalties, and potential civil liability, businesses in Brazil are subject

to various federal, state and municipal regulations relating to: zoning, air pollution, water pollution, deforestation, use of toxic substances, and hazardous waste management.

6.3. Public Environmental Agencies

In order to achieve the objectives of the National Environmental Policy, the Environmental Law established the National System for the Environment (“Sistema Nacional do Meio Ambiente” (SISNAMA)). SISNAMA is made up of all environmental bodies and entities of federal, state and local governments, as well as the foundations responsible for the protection and improvement or environmental quality.

- (a) Superior (Governing) Body: The Government Council consults with the President of Brazil regarding the elaboration of national policy and guidelines relating to the environment;
- (b) Consultative and Deliberating Body: The National Counsel for the Environment (“Conselho Nacional do Meio Ambiente” (CONAMA)) is the federal normative body. CONAMA conducts studies and creates proposals for environmental standards, guidelines and regulations, consulting with the Government Council on environmental policy;
- (c) Central Body: Executive secretary of the Ministry of the Environment (“Ministério do Meio Ambiente” (MMA)) is the executive branch agency responsible for formulating national policy and government guidelines for the environment as well as planning, coordinating, and monitoring activities related to the National Environmental Policy;
- (d) Executive Agency: The Brazilian Institute for the Environment and Renewable Resources (“Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis” (IBAMA)) is responsible for execution and enforcement of all federal environment laws;

- (e) State and Local Agencies: State and municipal agencies regulate the use of land and other environmental resources, conduct inspections and grant licenses in their respective jurisdictions.

7. COMPETITION LAW

7.1. Background

In recent years, Brazil has instituted privatisation and deregulation policies as part of a major structural change from an active industrial policy (which included State-owned monopolistic practices) to a market economy. As it moves toward a free market system, however, it has become increasingly concerned that its antitrust policies accompany this evolution, thereby protecting market economy development by preventing certain forms of non-competitive behaviour.

Brazil's Competition Law dates from 1939 and was enacted during the dictatorial regime of the "Estado Novo". Further legislation followed in 1945 in the form of administrative repression of cartels and trusts, but it was not until the constitution of 1946 that an express admonition against abuse of economic power was set forth - Article 148 of the Federal Constitution.

Article 148 of the Federal Constitution provided that the law shall repress all and any forms of abuse of economic power, including unions or groups of individual companies of whatever nature having the object of dominating the domestic market, eliminating competition or arbitrarily increasing profits. The reasoning behind the constitutional provision was premised on the liberal economic principle that free disposition of the means of production and free competition is the basis of a free market economy. Economic power results from having the use of the means of production. Abuse of economic power occurs when these means of production are dominated in certain sectors of economic activity by a company or group of companies. This reasoning later became the basis of the first true competition "antitrust law", Law 4.137 of 10 September 1962, which followed the guidelines and the legislation of the American anti-trust system as adapted to the Brazilian judiciary.

Law 4.137/62 created the Administrative Council for Economic Defence - CADE, an administrative agency autonomous and independent from the Executive

Branch, defining abuse of economic power broadly as domination of domestic markets and elimination of competition by unfair means and monopolistic practices. Due to the military coup of 1964, however, Brazil experienced almost 20 years of a planned economy, under which circumstances the newly created anti-trust agency played a minor and insignificant role. With the promulgation of the 1988 Federal Constitution and the move toward a free market structure, antitrust considerations returned to their former place of prominence. Paragraph 4 of Article 173 of the 1988 Federal Constitution provided that the law shall repress the abuse of economic power aiming at the domination of markets, the elimination of competition and the arbitrary increase of profits.

Several new laws were enacted, among which was Law 8.137/90. This penal law, which is still in effect with a few changes, provided for crimes against the Tributary and Economic Order and penalties thereof, including fines and imprisonment. Crimes punishable by 2 to 5 years incarceration include the abuse of market position by dominating the market, or by totally or partially eliminating competition, price fixing or discrimination, tying arrangements and exclusivity of advertising in detriment to competition. And Law 8.078 of 11 September 1990, “the Consumer Protection Code”, provided basic consumer protection against unfair or abusive business practices and unfair competition.

7.2. Law 8.884/94

In June 1994, a new antitrust law was promulgated which consolidated previous legislation into one simplified regulatory framework and reinforced enforcement mechanisms. Law 8.884 of 13 June 1994 as amended by Law 9.069 of 29 June 1995, established antitrust measures in keeping with the constitutional principles of free enterprise and competition and restraint of abuses of economic power. Accordingly, it contains provisions detailing violations of the economic order in terms of effects such as abusively exercising a dominant position or acts such as collusive behaviour or unfair business practices.

Most importantly, the new law elevated CADE to the independent federal agency (“autarquia federal”) it was envisioned to be in earlier legislation, having

the authority throughout all of Brazil to enforce the provisions of Law 8.884/94. Moreover, it determined that certain acts and agreements considered anticompetitive must be submitted to CADE for review and approval. Furthermore, certain acts such as mergers, acquisitions or joint ventures must be submitted to CADE for approval if they exceed certain market share or gross annual sales criteria.

CADE is composed of 6 members and a president who are appointed by the President of the Republic after Senate approval. The term of office is 2 years with 1 re-election allowed. The president or members may only be ousted by a Senate decision upon request of the President of the Republic and only as a result of criminal misconduct or other improper behaviour. Besides authorising mergers and acquisitions, the CADE board also has authority to ensure compliance with the law, order that action be taken to restrain violation of the economic order, approve cease and desist and performance commitments, and request court execution of its decisions. CADE is also assisted by the Attorney General's Office, the Economic Law Office of the Ministry of Justice – SDE and the Secretary of Economic Protection – SPE in these endeavours.

Law 8.884/94 provides CADE with long arm jurisdiction to question acts which although practised abroad may have effects on Brazil and consequently be of competitive concern. Under the terms of Article 2 of Law n. 8.884/94, as amended by Law n. 10.149 of 21 December 2000, branches, agencies, subsidiaries, offices, establishments, and agents of representatives located in Brazil of foreign companies shall be deemed to be situated in the Brazilian Territory.

CADE authorises a merger, acquisition or joint venture subject to the reporting requirement only if it can be shown that the transaction will increase productivity or that competition will not be substantially reduced in a relevant market. If CADE approves the transaction, it may define performance commitments to be assumed by the interested parties so as to ensure compliance with conditions mentioned above. Failure to comply with CADE reporting requirements may subject the parties to fines or criminal action. Finally, a decision by CADE cannot be appealed through the administrative channels, but only directly through the courts,

nor can a case under review by CADE be requisitioned by any other member of the Executive Branch including the President of the Republic or the Department of Justice.

Article 16 of Law 8.884/94 holds the company and each of its managers or officers jointly liable for violations to the economic order. Companies or entities within the same economic group, either “de facto” or “de jure”, shall also be held jointly liable for violations of the economic order.

Penalties for violations of the economic order include fines ranging from 1 to 30% of the gross pre-tax revenue for companies. A personal and an exclusive fine may be imposed on managers who are directly or indirectly responsible for violations from 10 to 50% of the fine imposed on the company. It is important to point out that the company cannot pay the fine which must be totally borne by the manager. Mitigating factors include the violator’s good faith. Aggravating factors include the severity of the violation and the advantages obtained or envisaged. The statute of limitations runs 5 years from the date of violation or, if violation is repeated or ongoing, after the date the violation has ceased.

Article 20 of Law 8.884/94 lists 4 “effects” that can be violative of the economic order. These are: to limit, defraud or harm in any manner free competition and free enterprise; to control or otherwise dominate a relevant market of goods or services; to arbitrarily increase profits; and to exercise in an abusive form a dominant position. A dominant position takes place when a company or group of companies controls a substantial part of a relevant market as a supplier, intermediary, buyer or financier of a product, service or technology relating thereto. A dominant position is presumed when a company or group of companies controls 20% or more of a relevant market. However, the abuse of a dominant position cannot be considered to be an autonomous effect, independent of the other effects above mentioned and which are expressly described in Article 173 and 174 of the 1988 Federal Constitution.

It is important to note that under the strict liability provisions of Law 8.884/94 the parties need not have the “intent” to cause any of the violations listed in

Article 20. An illustrative list of acts that will be a violation of the economic order if they cause one of the 4 effects listed above include collusion among competitors, division of the market, creation of barriers or hindering access to the market, imposing vertical pricing controls, abusive prices or unreasonable price increases.

Concerning monitoring mechanisms, Article 54 of Law 8.884/94 provides that any act or agreement that has the effect of limiting or restraining competition or that results in control of a relevant market must be submitted to CADE for review. Moreover, as amended by Law n. 10.149 of 21 December 2000, any action intended for any form of economic concentration, whether through a merger with other companies, an organisation of companies to control third party companies or any other form of corporate grouping wherein either the company or group of companies accounts for 20% of the relevant market, or has recorded in its latest balance sheet R\$ 400 million, must also be submitted.

Furthermore, the Securities Exchange Commission (CVM) and the Brazilian Commercial Registry Department of the Ministry of Development, Industry and Foreign Trade (DNRC/MDIC) must report to the SDE any change in the control of publicly held companies or registrations of consolidations within 5 business days.

Acts must be submitted to the SDE, with 3 copies, in advance or not later than 15 days after the occurrence. Failure to abide by the deadline will subject violators to a fine between UFIR 60,000 (about R\$ 81,504) and UFIR 6,000,000 (about R\$ 8,150,400). The SDE will then promptly submit 1 copy to CADE and 1 to the SPE. The SPE will issue a technical report within 30 days to the SDE, which will then pronounce on the case within the same time period.

The case and evidence will then be sent to CADE, which shall make a determination within 30 days. Failure by CADE to arrive at a decision within the 30 day period will cause the act to be automatically approved. CADE approval becomes retroactive to the date of the act, however, all of these time periods imposed on CADE or the other anti-trust agencies may be stayed by requests for clarification or documents considered to be essential, and which are not submitted as requested.

7.3. Mergers and Resolution 15/98

To discipline the formalities and the procedures for the application for authorisation of the acts prescribed in Article 54, CADE enacted Resolution 15 of 19 August 1998. Under Resolution 15, the application should contain the justification for the act and it should also be accompanied by a number of documents pertinent to the transacting parties and relevant market information. According to CADE, the documents required should provide information that will permit a preliminary analysis of each case and which will immediately give a picture of the applicant's behaviour in the market and of the competitive conditions of the sector.

In addition to standardising the information and document requirements for the agencies involved, Resolution 15 introduced the possibility of a dual phase procedure whereby trivial acts that are clearly not relevant to competition law may be judged accordingly in a Phase One summary procedure, the rehearing of an act to which approval was not granted, and Phase Two negotiation wherein the companies may reformulate their original proposal so as to comply with CADE recommendations for making the transaction a viable one was also maintained from the previous resolution.

It is important to point out that Resolution 15 defines the countdown for the 15 day mandatory notification period as starting from the signing of the first binding document between the parties, that is to say from the date when the parties effectively ceased competing or commenced collaboration. Pursuant to Provisory Measure n. 2.055/00 now converted into Law n. 10.149 of 21 December 2000, starting from 1 January 2001 a fee of R\$ 45,000 will be charged for presentation of acts of concentration.

With regard to reporting requirements, CADE Resolution 18 of 25 November 1998 provides that any interested party may consult CADE on the legitimacy of conduct or hypothetical acts or contracts susceptible to causing restriction to competition or economic concentration.

The CADE Board may also define performance commitments to be

assumed by any interested party that submitted acts for review under the terms of Article 54 of Law 8.884/94. Such performance commitments shall take into consideration the international competition in the specific industry as well as its effect on employment levels and other relevant circumstances. Performance commitments shall provide for volume or quality objectives to be obtained within predetermined terms.

The SDE will monitor compliance, and failure to comply, without good cause, with the performance commitments may cause the approval to be revoked, as well as the opening of an administrative proceeding for the adoption of applicable measures.

7.4. Preventive Measures

Besides monitoring and compliance activities, another function of the SDE is to provide preventive enforcement in conjunction with CADE. Accordingly, this agency may carry out preliminary investigations on purported violations of the economic order and commence administrative proceedings.

Preliminary investigations may be instigated upon a written and reasonable request of interested parties. Upon evidence that there is a violation of the economic order, the SDE may order administrative proceedings to be brought against potential violators within 8 days of the formal complaint, the closing of the preliminary investigation or cognisance of an underlying fact. The defendant will then have 15 days to file a defence, and a further 45 days wherein to produce evidence. Failure to file a defence will result in judgement by default.

At any time during the administrative proceedings the SDE or CADE may adopt preventive measures whenever there are signs of good reason to suspect that the defendant directly or indirectly may cause irreparable or substantial damage to the market or that the defendant may render the final outcome of the proceeding ineffective. Such measures shall order prompt cessation of the damaging acts and the resumption of the previous situation, as well as the imposition of a daily fine.

CADE, or the SDE with the approval of CADE, may reach an agreement with the defendant on a commitment to cease any acts under investigation at any time during the administrative proceeding without having such commitment construed as a confession by the defendant as to the matter under review or acknowledgement of guilt. Such commitment by the defendant will cause the case to be put on hold while the commitment is being met and will be rescinded after a pre-established time if all the conditions have been fully met.

The SDE is provided with ample discovery powers and may subpoena anyone to provide evidence within 15 days. The discovery phase must be concluded within 45 days but may be extended upon good cause when necessary. The defendant may produce any new evidence or documents before the conclusion of the evidentiary process and has the right to call a maximum of 3 witnesses. Upon conclusion of the discovery phase the SDE may send the process to CADE for judgement or file an appeal to CADE requesting that the investigation be discontinued.

Upon receipt of the case records from the SDE, CADE will then request the Attorney General's Office to prepare an opinion within 20 days. CADE may invite any person to provide clarification on any relevant matter. Before the CADE decision is made both the Attorney General and the defendant may offer final arguments.

The CADE decision in an administrative proceeding must be taken by a majority vote of at least 5 members. The decision must substantiate the violation of the economic order and shall contain a detailed report of the violating acts and actions to be taken by the proper authorities, the terms for starting and ending the remedial action, any applicable fine, and any daily fine to be applied while the violation is occurring. The SDE shall monitor compliance with the CADE decision and any total or partial non-compliance shall be reported to the CADE president who shall then request the Attorney General to have the decision enforced by the courts.

7.5. Enforcement

CADE decisions, including both fines and obligations to act or to refrain from acting are extra-judicial execution instruments that cannot be reviewed by

the Executive Branch but must be promptly executed. CADE decisions shall be executed either at the Federal Court of the Federal District, or in the courts having jurisdiction over the defendant's domicile or headquarters.

In the event that the courts have sound reason to believe that there might be substantial or irreparable damages, they may order immediate adoption of all or a portion of the action required under the instrument of execution regardless of whether fines have been deposited or bonds have been posted. Daily fines for an ongoing violation shall be applied starting from the deadline established by CADE for the voluntary compliance up to the date of actual compliance. In those executions for the collection of fines and enforcing compliance with obligations on required action, or refrain, the courts at their discretion shall order either specific performance or provide for alternative acts that guarantee in practical terms a similar outcome. In the event that a CADE decision requires action, a suit for damages and losses is possible if specific performance or obtaining an equivalent outcome is not possible.

Enforcement of a CADE decision shall be carried out by all means including intervention of the company if necessary. The Courts shall order intervention when required to ensure specific performance and shall appoint a receiver. Court intervention shall be limited to those acts required for compliance with the court decision that gave rise to such action and shall be effective for a maximum period of 180 days. Intervention shall be borne by the defendant company. The Courts may also remove managers if it is shown that they are preventing the performance of the acts set by the court. Persons may be held criminally liable for obstruction of the execution process pursuant to relevant provisions of the Criminal Code.

Recent enforcement of the above provisions of the antitrust law by CADE has resulted in many cease and desist order and several demergers. Probably the most controversial cases involved CADE are orders to spin-off divisions in a proposed joint venture between Rhodia S.A. and Sinasa S.A. in the polyester and acrylic fibers markets, and an order to partially demerge an acquisition by the Grupo Gerdau in the plain-steel market. This is indicative of the more active antitrust stance that the agency has assumed now that it has become independent.

7.6. Restructuring

A significant restructuring of the anti-trust system is now underway in Brazil. There is a draft law for the creation of a National Agency for Competition and Consumer Protection (ANC). The function of the agency will be to analyse only those operations impacting on the Brazilian economy. Only such acts as will not prejudice the local market or its consumers will be approved by a Competition Tribunal which will substitute the present anti-trust structure comprised by CADE, SDE and SEAE. The SDE will become extinct and the SEAE will lose all of its functions relative to economic review of merger proposals.

To discipline the formalities and the procedures for the application for authorisation of the prescribed acts, the ANC will consist of various boards which shall receive and process consumer complaints, perform markets studies and propose laws, structure policy, combat cartels and analyse merger, acquisitions and joint ventures.

The most noteworthy positive factor of the ANC project is its mechanism for the pre-evaluation of concentration activity and analysis to be completed within 120 days. There is, however, criticism of the ANC project for the fact that some merger and acquisition transactions between Brazilian and international companies will not necessarily be analysed by ANC as the gross sales criteria has been altered from R\$ 400 million of world wide turnover to R\$ 150 million in annual domestic sales. There is also some criticism over the fact that consumer defence (protected under the rubric of the Consumer Defence Code which would be modified with the formation of the new agency) and anti-trust concern would be overseen by the same agency.

As Brazil moves closer to a globalised economy, antitrust concerns will continue to grow in importance and the anti-trust agency will play a key role in protecting the free market system. It is hopeful that despite its shortcomings, the ANC project will provide an effective basis for workable competition and rigorous enforcement of anti-competitive practices.

8. THE BRAZILIAN JUDICIARY SYSTEM

Brazil has a civil law system derived from Roman and Germanic law, strongly influenced by provisions of the Napoleonic Code of 1804 and of the Germanic Code of 1896. Under Brazil's civil law system, judges are bound only by the codified law (under a system of common law, like those adopted in the United States and the United Kingdom, judges are bound by both the law and precedent (prior decisions of higher courts). Where the codified law is silent, "the judge must decide the case in accordance with analogy, customs, and general principles of law."

Article 2 of the Federal Constitution establishes three independent branches of government: the Legislative, the Executive and the Judiciary. The Judiciary is granted the authority to interpret and apply the law, resolving cases and conflicts.

The Constitution vests judicial power in the Federal Supreme Court ("*Supremo Tribunal Federal*"), the Superior Court of Justice ("*Superior Tribunal de Justiça*"), Regional Federal Courts, Labour Courts, Electoral Courts, Military Courts and State Courts, and defines the matters over which each has jurisdiction.

The Federal Supreme Court is the court of final appeal for matters related to the violation of the Constitution and hears appeals in other specific cases, including political crimes. It is also the court of original jurisdiction for certain matters specified in the Constitution (*e.g.*, legal proceedings against the President for criminal offences, litigation between Brazil and another country). The Federal Supreme Court is composed of 11 Judges (appointed by the President after approval by the Senate), and is based in the capital, Brasília.

The Superior Court of Justice is the court of final appeal (from decisions by both federal and state courts) for matters related to federal law and also hears appeals in other specific cases, including litigation between a country or international organisation against a person who resides in Brazil. Further, it is the court of first instance for a number of matters specified in the Constitution (*e.g.*, legal proceedings

against state Governors for criminal offences, conflicts of competence between courts). The Superior Court of Justice is composed of a minimum of 33 Judges (appointed by the President after approval by the Senate).

The Labour Courts have the power to conciliate and judge individual and collective disputes between workers and employers as well as other disagreements arising from labour relations. The Labour Courts include Boards of Conciliation and Judgement, Regional Labour Courts and the Superior Labour Court (composed of 27 Judges, appointed by the President after approval by the Senate). In order to promote settlement of labour disputes, Law 9.985 was enacted in February 2000 permitting companies and unions to create Settlement Boards (“*Juntas de Conciliação Prévia*”). Once a Settlement Board is created, individual labour disputes must be submitted to the Board before any action can be filed in Labour Court. This law establishes that actions for execution can be brought to enforce settlement agreements.

The Electoral Courts are the bodies of Electoral Justice, with jurisdiction over elections and the process of creation and registration of political parties. The Electoral Courts include Electoral Boards, Electoral Judges, Regional Electoral Courts, and the Superior Electoral Court (composed of a minimum of 7 members).

The Military Courts have jurisdiction over military crimes and are composed of Military Courts and the Superior Military Court (composed of 15 Justices, appointed by the President after approval by the Senate).

Federal Regional Courts (composed of a minimum of seven judges) have jurisdiction to hear appeals from cases decided by Federal Judges (and State judges deciding federal matters) and have original jurisdiction over a number of matters specified in the Constitution (*e.g.*, legal proceedings against federal judges for criminal offences). There is a Federal Regional Court in the capital of each state and in the Federal District.

Federal Judges have jurisdiction to hear a number of matters specified in the Constitution, including:

- (a) cases to which the federal government, a federal governmental agency or a federal public company is a party;
- (b) cases between a foreign country and a person residing in Brazil;
- (c) crimes against the organisation of labour and, in the cases determined by law, the financial system and the economic and financial order;
- (d) crimes committed aboard ships or airplanes;
- (e) immigration matters;
- (f) disputes over the rights of Indians.

The states are responsible for organising their judicial systems in accordance with the Federal Constitution. State courts are divided into criminal and civil courts. State civil courts hear disputes between parties that are not subject to federal jurisdiction. Judges try all civil legal proceedings in Brazil; there are no civil juries.

The state appeals courts (*“tribunais de justiça estaduais”*) decide appeals filed from decisions rendered by courts of first instance, and have original jurisdiction over certain cases defined in state Constitutions.

In certain jurisdictions, where judicial caseloads are exceptionally high, legislatures have created specialised courts, such as small claims court, to hear specific types of cases. These include:

- (a) Public Finance Courts, which have jurisdiction over litigation involving state or municipal finance secretariats;
- (b) Courts of Family and Successions, which have jurisdiction over family matters, including maintenance and inheritance;

- (c) Courts of Public Registries, which have jurisdiction over cases involving acts involving public notaries and registrations made in Public Registers; and
- (d) Courts for Minors, which have jurisdiction over minors.

State criminal courts are divided into criminal trial courts and criminal appeals courts, which have original and appellate jurisdiction, respectively, for trials of ordinary citizens alleged to have committed crimes, as defined in the Penal Code. (Note, however, that certain criminal matters fall under federal jurisdiction.)

There are specialised state criminal courts, including courts which have jurisdiction to hear minor offences and:

- (a) Jury Courts, which have jurisdiction over crimes that involve a malicious intent against human life (*e.g.*, murder); trials for such crimes are decided by juries;
- (b) Courts to Instruct Compliance with Criminal Penalties, which oversee the application of criminal sentences and penalties; and
- (c) Police Internal Affairs and Prison Supervisory Courts, which have jurisdiction over police and prison administration actions.

8.1. Representation in Court

Parties must be represented by a lawyer in order to bring any legal action before the courts (with the exception of certain cases in labour, criminal and small claims court).

8.2. The Arbitration Law

On 23 September 1996, Law 9.307, the “Arbitration Law”, was enacted.

The Arbitration Law provided for significant changes and made it possible for commercial disputes in Brazil to be definitively settled through arbitration rather than recourse to the judiciary.

Prior to enactment of the Arbitration Law, inclusion in a contract of an arbitration clause did not obligate a party to the contract to submit to arbitration. Furthermore, enforceability of an arbitration award required judicial ratification.

The Arbitration Law provides that parties to a contract may refer disputes concerning disposable rights to arbitration and that the parties will be bound by an arbitration clause. The law provides for a rapid procedure by which a party can enforce such a clause. Furthermore, the new law establishes that an arbitration decision, the “arbitration award”, will have the same effect as a sentence pronounced by a judge and can be considered an executable title. Under the Arbitration Law, foreign arbitration awards must be ratified by the Federal Supreme Court before they are enforceable.

9. THE BRAZILIAN FINANCIAL SYSTEM

9.1. Banking Law

Law 4.595 of 31 December 1964, also known as the Brazilian Banking Law, was enacted in order to regulate the whole of the Brazilian financial system, and is responsible for its present structure.

In accordance with its Article 17, any “public or private legal entities which have as their primary or accessory activity the assessment, intermediation or application of financial resources of their own or of third parties, in Brazilian or foreign currency, as well as the custody of third parties’ properties” are considered to be financial institutions. Additionally, the Banking Law establishes that individuals who regularly or occasionally perform any of the above-mentioned activities shall be treated as financial institutions.

Pursuant to the Banking Law, the Brazilian financial system is composed of:

- (a) the National Monetary Council (“Conselho Monetário Nacional”);
- (b) the Central Bank of Brazil (“Banco Central do Brasil”);
- (c) the Bank of Brazil S.A. (“Banco do Brasil S.A.”);
- (d) the National Bank of Economic and Social Development (“Banco Nacional do Desenvolvimento Econômico e Social” - BNDES); and
- (e) other public and private financial institutions.

9.2. The National Monetary Council

The National Monetary Council, created by Law 4.595/64, replaced and abolished the former Council of the Superintendence of Money and Credit

(“Conselho da Superintendência da Moeda e do Crédito”).

The objective of the National Monetary Council is to establish Brazilian Monetary and credit policies aimed at the economic and social development of Brazil.

In accordance with Article 3 of the Banking Law, the National Monetary Council policy has as its functions:

- (a) to adapt the volume of resources of payments to the real necessities of the national economy and its respective development process;
- (b) to regulate the internal volume of the Brazilian currency by means of preventing or correcting outbreaks of inflation or deflation of an internal or external origin, as well as preventing or correcting economic depressions and any other unsteadiness;
- (c) to regulate the value of the Brazilian currency overseas and the equilibrium in the Brazilian balance of payments, aiming at the best use of resources in foreign currencies;
- (d) to orientate the application of public or private financial institutions' resources, in order to help create favourable conditions for the national economic development;
- (e) to help improve institutions and financial institutions, aiming at the efficiency of the payments system and at the mobilisation of resources;
- (f) to protect the liquidity and solvency of financial institutions; and
- (g) to co-ordinate monetary, credit, budgetary and tax policies and public internal and foreign debt.

The National Monetary Council is the controller of the Brazilian currency,

thus being responsible for the authorisation of the issuance of paper money and for the determination of its characteristics.

It also establishes norms and guidelines concerning exchange policy, approves monetary budgets, regulates credit operations in all their forms, and is responsible for regulating financial institutions as regards to their constitution, functioning and liquidation.

In addition to the above, the National Monetary Council also issues rules and legislation concerning interest rates, discounts, commissions and charges for banking services and operations; and issues rules and legislation concerning exchange operations and swaps, fixing limits, fees, terms and other conditions.

Law 9.069 of 29 June 1995 created the so-called Technical Commission of Money and Credit, which is an advisory commission of the National Monetary Council.

The Technical Commission of Money and Credit is responsible for issuing declarations relating to the activity of the National Monetary Council, as well as proposing regulations concerning specific matters such as the issuance of Brazilian currency.

The National Monetary Council, in accordance with Article 8 of Law 9.069/95, is composed of:

- (a) the Minister of the Economy, who is its President;
- (b) the Minister of Planning and Budget; and
- (c) the President of the Central Bank of Brazil.

The National Monetary Council is assisted by 7 Consulting Commissions, which address: the rules and organisation of the Brazilian financial system; the securities market and the futures market; rural credit; industrial credit; housing

credit, sanitation and urban infra-structure; public debt; and monetary and exchange policies.

9.3. The Central Bank of Brazil

The Central Bank of Brazil has as its objective to perform and to enforce legal norms and rules issued by the National Monetary Council.

Additionally, the Central Bank of Brazil has the following exclusive functions:

- (a) to issue paper currency and coins under the conditions and within the limits authorised by the National Monetary Council;
- (b) to perform any services regarding the money supply;
- (c) to determine the amount of compulsory deposits of financial institutions within the legal limits;
- (d) to receive compulsory payments and voluntary deposits of financial institutions;
- (e) to effect rediscount and loan transactions with financial banking institutions;
- (f) to exercise control over all forms of credit;
- (g) to control foreign capital;
- (h) to act as custodian of the gold and foreign currency official reserves, and of special drawing rights (SDRs) and with the latter to carry out all the operations provided for in the Convention of Incorporation of the International Monetary Fund;

- (i) to inspect financial institutions and apply penalties;
- (j) to authorise financial institutions: to operate in Brazil; to establish or relocate their head offices or premises, including abroad; to be reorganised, consolidated, merged or expropriated; to carry out exchange and real credit transactions and the regular saving of federal, state or municipal bonds, shares, debentures, mortgage bills and other credit instruments or securities; to extend the periods granted for operations; and to amend their by-laws;
- (k) to establish conditions for the investiture and exercise of any administrative position in private financial institutions, and also for the exercise of any position on advisory, audit or similar bodies, pursuant to the rules issued by the National Monetary Council;
- (l) to carry out transactions of purchase and sale of federal government bonds, as an instrument of the monetary policy;
- (m) to require the head offices of financial institutions to register the record of firms which have dealt with their branches for more than one year.

Other functions of the Central Bank of Brazil are:

- (a) to communicate, on behalf of the Federal Government, with foreign and international financial institutions;
- (b) to promote, as an agent of the Federal Government, co-operation in domestic or foreign loan transactions, also being able to undertake such transactions itself;
- (c) to provide for the smooth functioning of the exchange market, the relative stability of exchange rates and the equilibrium of the balance of payments, and for this purpose to buy or sell gold and foreign currency, as well as to effect credit transactions abroad, including those

referring to special drawing rights, and to separate the financial and commercial exchange markets;

- (d) to effect the purchase and sale of securities of private and public joint stock companies and State companies;
- (e) to issue its own bills, in accordance with conditions established by the National Monetary Council;
- (f) to regulate the performance of cheque and other paper clearance services;
- (g) to exercise payment vigilance in the financial and capital markets over companies which directly or indirectly interfere in such markets, and also over the operational forms or procedures used by such companies; and
- (h) to provide the services of its Secretary's Office, under the control of the National Monetary Council. In accordance with the law in force, the Central Bank of Brazil may only transact with public and private financial institutions. It is, therefore, precluded from conducting operations of any nature with other public or private legal entities, unless expressly permitted by law.

Law 4.595/64, Article 13, determines that the duties and services with the competency of the Central Bank of Brazil may be contracted with the Bank of Brazil S.A. ("Banco do Brasil S.A."), or alternatively with other financial institutions, provided that such contracts are duly authorised by the National Monetary Council.

9.4. The Bank of Brazil S.A.

Before the enacting of Law 4.595/64, the Bank of Brazil S.A. ("Banco do Brasil S.A.") used to function as the Central Bank besides operating as a private bank.

The Bank of Brazil S.A. is today a commercial bank, although it is also engaged in activities which are not common to commercial banks as an instrument for the administration of financial and credit policies of the Federal Government.

In accordance with the law presently in force, the Bank of Brazil S.A. is responsible for the following:

- (a) as a Financial Agent of the National Treasury, it may: (i) receive for the credit of the National Treasury proceeds of the collection of federal revenue taxes and of federal credit operations through advances of budget revenue, or any other funds, within legally authorised limits; (ii) effect payments and provisions required for the implementation of the General Budget of Brazil and supplementary laws in accordance with instruction given to it by the Ministry of Finance; (iii) grant suretyship, securities and other guarantees as expressly authorised by law; (iv) acquire and finance inventories of exportable production; (v) execute the policy of minimum prices for agricultural products; (vi) act as paying agent and receiving agent abroad; (vii) execute the service of the consolidated public debt;
- (b) as the principal executor of banking services to the Federal Government, including its government agencies, receive for deposit, exclusively, the available funds of any federal entity, including agencies of all the civil and military ministries, social security institutions and other government agencies, commissions, departments, entities under special administrative system and any individuals or legal entities responsible for advanced payments, as expressly authorised by the National Monetary Council pursuant to a proposal of the Central Bank of Brazil;
- (c) execute cheque and other paper clearing services;
- (d) collect the voluntary deposits of financial institutions, maintaining the respective accounts;

- (e) exclusively receive the deposits relating to the subscription in cash of the capital of legal entities;
- (f) on its own account and on account of the Central Bank of Brazil, purchase and sell foreign currency, under conditions established by the National Monetary Council;
- (g) be in charge of receipts or payments or other services of interest to the Central Bank of Brazil;
- (h) cause the foreign trade policy to be executed;
- (i) finance the purchase and installation of small and medium-sized rural properties, pursuant to the pertinent legislation;
- (j) finance industrial and rural activities; and
- (k) propagate and orientate credit, including commercial activities, supplementing the activities of the banking network in the financing of economic activities, complying with credit requirements of the different regions of the country, as well as in the financing of imports and exports.

9.5. The National Bank of Economic and Social Development

The National Bank of Economic and Social Development (“Banco Nacional do Desenvolvimento Econômico e Social” - BNDES) is considered by Law 4.595/64 as a public financial institution which primary objective is the execution of Federal Government Investment Policies. It is also responsible for the Brazilian Privatisation Program. The BNDES has two subsidiaries: the BANESPAR, which objective is the development of the stock market, and FINAME, which is the administrator of the export financing operations.

9.6. Public Financial Institutions

Law 4.595/64 defines public financial institutions as auxiliary bodies in the execution of the Brazilian Federal Government credit policy.

As previously mentioned, the National Bank of Economic and Social Development is the main instrument in the execution of such policy.

The first paragraph of Article 22 of the Banking Law establishes that the National Monetary Council is responsible for regulating the public financial institutions.

Notwithstanding the above, the Banking Law (Article 24), determines that the non-federal public financial institutions are subject to the rules concerning private financial institutions.

9.7. Private Financial Institutions

In general, private financial institutions may only be constituted as joint stock companies.

The initial capital of private financial institutions shall be fully paid up in Brazilian currency. Subsequent capital increases of financial institutions may also be made by means of the incorporation of reserves or of accumulated profits within the limits established by the National Monetary Council.

At least fifty percent of the initial capital and subsequent increases in the capital of financial institutions authorised to function by the Central Bank of Brazil shall be paid in upon subscription. The remaining amount shall be fully paid up within one year counting from the date in which the subscription occurred or counting from the approval of the increase of the capital by the Central Bank of Brazil.

Private financial institutions (with the exception of investment institutions), will only be able to participate in the capital of other companies when an authorisation is duly issued by the Central Bank of Brazil; however, this

authorisation will not be necessary in the event such private financial institutions grant subscription guarantees, provided that such grants comply with the general requirements established by the National Monetary Council.

In general financial institutions may engage in the following activities:

- (a) participation in loans and financing operations;
- (b) receiving deposits of any nature;
- (c) share, obligations and other security acquisition for capital market sale;
- (d) the transfer of loans obtained abroad;
- (e) execution of guarantees;
- (f) the distribution and placement of any issue of securities and bonds;
- (g) operating in the Stock and Commodities Exchange;
- (h) the issue and/or registration of shares or obligations;
- (i) participation in exchange operations;
- (j) opening and maintaining accounts; and
- (k) participation in gold operations.

9.8. General Rules Concerning Financial Institutions

Article 18 of Law 4.595/64 establishes that financial institutions shall only operate in Brazil with the previous authorisation of the Central Bank of Brazil or, if foreign, by the decree of the Executive Branch.

Article 10 of the above-mentioned Law establishes the exclusive competence of the Central Bank of Brazil to authorise financial institutions to operate in Brazil; to install or transfer their head offices or premises, including transfer abroad; to be reorganised, consolidated, merged or expropriated; to carry out exchange and real credit transactions and the regular saving of federal, state or municipal bonds, shares, debentures, mortgage bills and other credit instruments or securities; to extend the periods granted for operations; and to amend the by-laws of financial institutions.

On 28 November 2002 the National Monetary Council enacted Resolution n. 3.040, which regulates the requirements and procedures for the incorporation, authorisation, transfer of control and corporate reorganisation of financial institutions in Brazil, as well as the cancellation of the authorisation for such institutions.

With the enactment of Resolution n. 3.040/02, new provisions were incorporated to the already existing rules with the objective of providing the Central Bank of Brazil with more efficient means of evaluating the business objectives as well as the organisational and management structure of financial institutions in Brazil.

The main innovations introduced by Resolution n. 3.040/02 regarding the incorporation and authorisation of financial institutions in Brazil include: (i) preparation of a business plan by the financial institution in formation, which should contain, at least, details on the organisational structure proposed, specification of internal controls and the establishment of strategic objectives; (ii) the authorisation of the Central Bank of Brazil to access information on all the members of the controlling group and stockholders of the financial institution being incorporated, available at the Federal Revenue and any public or private data base; (iii) the financial capacity of the controlling shareholder or the controlling group, which should be compatible with the size, nature and objective of the business; and the definition of the standards of corporate governance to be observed, including the details of the incentive structure and the remuneration policy.

In relation to the authorisation, during the first three years of operation a financial institution must show to the Central Bank of Brazil that its operations are

in compliance with the strategic objectives described in the business plan, by means of a Management Report attached to half-yearly financial statements.

This report shall be submitted to an independent auditor. If it is found that the operations are not in compliance with the strategic objectives described in the business plan, the financial institution must give explanations to the Central Bank of Brazil.

With respect to the transfer of control and corporate reorganisation of financial institutions, the rules regarding the incorporation of financial institutions must be observed. However, the Central Bank of Brazil may lift certain conditions depending on the situation.

As for the corporate control structure, Resolution n. 3.040/02 set out that direct ownership interests of financial institutions can only be held by: (i) individuals; (ii) financial institutions and other institutions that are authorised to operate by the Central Bank of Brazil; and (iii) financial holding companies.

Regarding the cancellation of the authorisation to operate a financial institution, it is worth mentioning that it has become mandatory to publish a statement of purpose for such cancellation. Furthermore, the Central Bank of Brazil only grants this cancellation of authorisation providing that all liabilities have been met.

The granting and validity of authorisations from the Central Bank of Brazil are subject to the financial institution complying, at all times, with the minimum capital requirements established in Annexes II and IV of the National Monetary Council's Resolution 2.099 of 17 August 1994, modified by Resolution n. 2.607/99 and Resolution n. 2.692/00, respectively.

9.9. Multiple Banks

Multiple banks shall have at least two of the following portfolios, one of which must be either commercial or of investments:

- (a) commercial;
- (b) investment and/or development, the latter being exclusive for public banks;
- (c) real estate credit;
- (d) credit, financing and investment;
- (e) leasing.

Multiple banks cannot issue debentures.

9.10. Commercial Banks

Commercial banks operate in the discounting of credit instruments, in exchange operations, in the opening of credits, in the custody of assets, in all types of collections and payments, and in taking deposits for the Employee's Dismissal Fund ("Fundo de Garantia por Tempo de Serviço" - FGTS).

9.11. Investment Banks

Investment banks are private financial institutions constituted as joint stock companies, whose primary objective is to conduct investment or financing operations in medium and extended terms, aiming at the provision of capital for companies in the private sector, from their own resources, as well as by the collection, intermediation and application of third party resources.

The legislation requires that investment banks include in their names the term "investment bank" ("banco de investimento").

9.12. Development banks

A development bank is a non-federal public financial institution constituted

as a joint stock company with head-offices in the capital of the state in which its share control is held. It is required to include in its name the term “development bank” (“banco de desenvolvimento”) followed by the name of the Brazilian State where its head-office is located.

The primary objective of the development bank is to provide an adequate finance program and to assist projects which promote the economic and social development of the state in which it is located, favouring, especially, the private sector.

In order to comply with its objective, the development bank shall support regional or sectoral programs or projects which:

- (a) increase the economy’s production capacity, by means of the implementation, expansion or relocation of ventures;
- (b) benefit productivity, by means of reorganisation, rationalisation or modernisation of companies and formation of inventories of raw materials and final products or by means of the formation of integrated trade companies;
- (c) contribute to the improvement of the local economic environment and local companies by means of the incorporation, merger, association, assumption of the share control and/or the liquidation or consolidation of assets or liabilities;
- (d) improve rural production by means of investment in projects with a view to the formation of fixed or semi-fixed capital;
- (e) promote the incorporation and development of production technology, management improvement, the formation and improvement of technical staff, for this purpose being allowed to sponsor technical assistance programs through specialised companies and entities.

9.13. Credit, Financing and Investment Companies

According to the law in force, credit, financing and investment companies have as their purpose the provision of finance for the acquisition of goods and services, as well as for the working capital.

9.14. Real Estate Credit Companies

A real estate credit company is a financial institution with the objective of providing financial support to real estate operations relating to the incorporation, construction, sale or acquisition of housing.

Its name shall contain the phrase “real estate credit” (“crédito imobiliário”).

9.15. Credit Cooperatives

Credit cooperatives are divided into 2 categories: economy and mutual credit cooperatives; and rural credit cooperatives. However, the Central Bank of Brazil may consider and allow other types of cooperatives, in accordance with the law in force.

Economy and mutual credit cooperatives shall be composed of individuals who engage in a certain profession or other common activities; or who are linked to a determined entity; or, exceptionally, by legal entities which are considered as micro enterprises or small businesses and which have as their objective economic activities exercised by individuals; or certain other entities with non-profit purposes.

Rural credit cooperatives shall be composed of individuals who engage in the same section of activity of the cooperative, agricultural, cattle raising or extraction sectors or who are wholly engaged in fishing; or, exceptionally, by legal entities which perform such activities.

It is important to note that credit cooperatives are prohibited from using in their denomination the term “bank” (“banco”).

9.16. Leasing Companies

Leasing companies shall be constituted as joint stock companies. Additionally, the pertinent legislation establishes that the company's name shall contain the term "leasing" ("arrendamento mercantil").

The principal objective of a leasing company is the practice of leasing operations dealing with movable assets produced within Brazilian territory or abroad, or with real properties acquired from third parties to be used by the lessee in its economic activity.

9.17. Stock Brokerage Companies

Stock brokerage companies, which shall be constituted either as joint stock companies or as private limited liability companies, are those institutions which have the following objectives, among others:

- (a) to operate in locations or in systems maintained by stock exchanges;
- (b) to subscribe, solely or by means of a consortium with other authorised companies, the issuance of securities for resale;
- (c) to intermediate public offers and distribution of securities in the market;
- (d) to purchase and sell securities on its own or third party's account, in accordance with the legislation enacted by the Securities Commission ("Comissão de Valores Mobiliários" - CVM) and by the Central Bank of Brazil;
- (e) to administer securities portfolios and the custody of securities; and
- (f) to subscribe, transfer and certify endorsements, share certificates, receipt and payment of redemptions, interest and other earnings relating to securities.

For the granting, by the Central Bank of Brazil, of an authorisation to operate, it is indispensable that the company be admitted as a member of a stock exchange and has the approval of the Securities Commission for the exercise of activities in the securities market.

The approval of the Securities Commission will also be necessary for the conducting of the following acts: relocation of the head-quarters; establishment, relocation or closure of branches or offices; alteration in the corporate capital; appointment of managers and other officials, fiscal counsels and members of other corporate bodies; foreign participation in the corporate capital; any other kind of alteration of its by-laws; and liquidation.

Additionally, the Securities Commission shall also be consulted in regard to any alienation in the control of the company, as well as in regard to any kind of change of its legal type, merger, incorporation and split.

9.18. Exchange Brokerage Companies

Exchange brokerage companies shall also be constituted as joint stock companies or as a limited liability company, whose name shall expressly contain the term “exchange brokerage” (“corretora de câmbio”).

The main objectives of an exchange brokerage company are to intermediate exchange operations and to conduct operations within the floating rates market.

For the intermediation of exchange operations and the negotiation of the respective bills of exchange (this latter being exclusively conducted by business individuals organised by official brokers of public funds and brokerage companies), the exchange company provided that is not a member of an exchange shall comply with all rules applying to exchange members companies.

9.19. Securities Distribution Companies

A securities distribution company, whose name must contain the term

“securities distribution” (“distribuidora de títulos e valores mobiliários”) shall be constituted either as a joint stock company or as a limited liability company, with the following objectives, among others:

- (a) to subscribe, solely or by means of a consortium with other authorised companies, the issuance of securities for resale;
- (b) to intermediate public offers and distribution of securities in the market;
- (c) to purchase and sell securities on its own or a third party’s account, in accordance with the legislation enacted by the Securities Commission (“Comissão de Valores Mobiliários” - CVM) and by the Central Bank of Brazil;
- (d) to administer securities portfolios and the custody of securities;
- (e) to subscribe, transfer and certify endorsements, share certificates, receipt and payment of redemption, interest and other earnings relating to securities.

In addition to the necessary authorisation granted by the Central Bank of Brazil for their functioning, securities distribution companies shall also apply for the issuance of a previous and express authorisation before the Securities Commission.

The Securities Commission shall also be consulted with regard to any alienation in the control of the company, as well as with regard to any kind of transformation of its legal type, merger, incorporation and split.

9.20. Mortgage Companies

The name of mortgage companies, which shall be constituted as joint stock companies, must contain the term “mortgage company” (“companhia hipotecária”).

Mortgage companies have the following objectives:

- (a) to provide finance for the production, reorganisation or trade of residential or commercial real properties and urban lots;
- (b) to purchase, sell and refinance mortgaged credit of their own or of third parties;
- (c) to manage mortgaged credits of their own or of third parties;
- (d) to manage real property investment funds, provided that the necessary authorisation is obtained from the Securities Commission;
- (e) to transfer resources for the financing of the production or acquisition of residence real properties; and
- (f) to conduct other operations duly authorised by the Central Bank of Brazil.

According to the law in force, mortgage companies cannot be transformed into multiple banks; commercial banks; investment banks; development banks; credit, financing and investment companies; real estate credit societies; leasing companies; stock brokerage companies; securities distribution companies or exchange companies.

9.21. Foreign Financial Institutions

As noted above, Article 18 of Law 4.595/64 establishes that for foreign financial institutions to be able to operate in Brazil a previous authorisation must be granted by decree of the executive branch of government.

The 1988 Constitution was passed with the intention of facilitating foreign investment in Brazil. At the same time, however, the Constitution imposed strict restrictions on foreign investment in Brazilian financial institutions.

For example, Article 52 of the Transitory Provisions of the Constitution provided that any opening of new branches of foreign institutions and any increase in foreign ownership of the capital of existing Brazilian financial institutions be vetoed pending the enactment of a Complementary Law. However, Article 52 determined that such restriction is not applicable in cases where it is in the best interest of the Brazilian government for authorisation to be granted.

Because the Constitution required that all financial matters be covered by a single Complementary Law, its scope would necessarily be very broad, and the federal legislature had significant difficulty agreeing on all of its different aspects. Therefore, little progress had been made in opening up Brazil's financial institutions to foreign investment.

The international community subsequently exerted strong pressures for the lifting of the restrictions on the sector. During the negotiations of the Uruguay Round of the GATT, the opening of the Brazilian financial sector was the chief demand of the United States and the European Community.

In response, on 25 August 1995, the President of the Republic, recognising the Country's interest in the increased participation of foreign financial institutions in the local market, issued an administrative act eliminating the restrictions imposed by the 1988 Federal Constitution. Potential foreign investors were then able to participate in, or increase their previously existing participation, in the capital of private Brazilian financial institutions. Such investments will be authorised by Presidential decree provided the investment is approved by both the Brazilian Central Bank and the National Monetary Council.

In addition, Constitutional Amendment n. 40 was passed in June 2003, providing that these restrictions may be loosened, but the federal government has not yet been able to do so.

9.22. Money Laundering

On 03 March 1998, the Federal Government approved Law 9.613, which

regulates money laundering crimes and creates, under the Ministry of Finance, the Counsel for the Control of Financial Activities - COAF - an agency whose function is to accept, examine and identify suspected occurrences of illicit activities and to discipline and effect administrative penalties.

The purpose of this law is to combat crimes related to money laundering (as the hiding or camouflaging of the nature, origin, disposition, movement or ownership of assets, rights or amounts) and to detect and punish all and any attempts to legalise the assets generated by such crimes. The law makes it possible to have greater control over these kinds of operations and to enable the Central Bank to maintain a closer view of financial transactions.

The groups subject to the law are those companies or other legal entities whose primary or secondary activity is the acquisition, intermediation or administration of financial resources of third parties in Brazilian or foreign currency; the buying or selling of foreign currency or gold as a financial activity or exchange instrument; and real estate activities.

Also included under the legislation are insurance companies and brokers, banks, stock exchanges and futures markets; users of magnetic cards, or their equivalent, which permit the transfer of funds; companies that deal with foreign exchange, leasing, and factoring; individuals or companies dealing in commercial jewels, gemstones and precious metals, objects of art and antiquities.

All of the above groups are required to identify their clients, maintaining an up-to-date client list and, for a minimum of five years, maintain records of all transactions in Brazilian or foreign currency as well as document of all operations having a value which exceeds a level as determined by a qualified authority.

In addition to the loss of their illegally acquired assets to the State, with exception to the rights of bona fide third parties or others who may have suffered injury, various levels of penalties have been established for offenders:

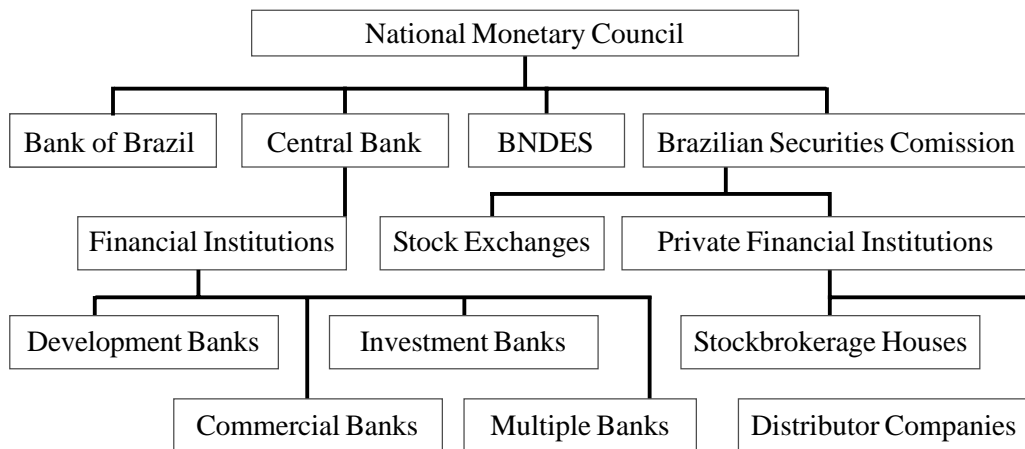
- (a) warnings for irregularities concerning the identification of the clients

and the maintenance of the registry of financial transactions;

- (b) fines ranging from one percent to two hundred percent of the value of the operation or the derived profit, or a fine of up to R\$ 200,000 (fines are levied for negligence in correcting cited deficiencies within a designated period or failure to fulfil the requirement to identify the clients and maintain proper registers);
- (c) suspension, to a maximum of ten years, in the exercise of corporate administrative responsibilities (suspension results from cases of severe, verified infractions of the law, or specific and recurring transgressions previously penalised by fines); and
- (d) cancellation of activities for the repeated incidence of infractions related to the above suspension penalty.

In the event that the crime of money laundering is practised abroad, any assets resulting from the contravention of a treaty or conversation enacted by the competent foreign authority will be seized and apportioned between the country and Brazil, again with exception to the rights of bona fide third parties similar to the above.

National Financial System



10. INSURANCE AND REINSURANCE

Decree-Law n. 73, of 21 November 1966 and Decree n. 60.459, of 13 March 1967, govern the National System of Private Insurance and thus regulate insurance and reinsurance transactions. The National System of Private Insurance is composed of: (i) the National Council of Private Insurance (CNSP); (ii) the Superintendence of Private Insurance (SUSEP); and (iii) the Institute of Reinsurance of Brazil (IRB).

CNSP is responsible for: (i) issuance of guidelines and rules governing private insurance policies; (ii) issuance of guidelines for insurance rates and for investment by insurance companies; (iii) issuance of general guidelines for insurance agreements, and; (iv) issuance of general accounting and statistical rules.

SUSEP is a quasi-governmental agency associated with the Ministry of Industry and Commerce. Its headquarters are located in the city of Rio de Janeiro. In accordance with Article 36 of the Decree-Law n. 73/66, SUSEP is authorised to act as a regulatory agency monitoring and executing the policies issued by CNSP, and overseeing the constitution, organisation, functioning and operation of insurance companies. SUSEP is also authorised to issue rules and guidelines on insurance transactions based on the policies fixed by CNSP and apply penalties, regulate bonds and oversee the extra-judicial liquidation of insurance companies.

IRB is a private and public joint stock company. It was granted a monopoly in the reinsurance market when it was created in 1939. In August 1996, a Constitutional Amendment provided for the lifting of IRB's reinsurance monopoly. However, up to the present, private companies still cannot legally perform direct reinsurance operations in Brazil, until a Complementary Law authorising the creation and operation of private reinsurance companies, as well as of the official body monitoring those activities, is passed.

11. PRIVATISATION OF THE TELECOMMUNICATIONS, ELECTRIC ENERGY AND OIL SECTORS

11.1. Introduction

The first concrete step towards privatisation in Brazil was the creation, in 1981, of a “Special Privatisation Commission”. During the initial phase of privatisation (1981-1989), the government did not implement a broad programme of privatisation, but focused instead on privatisation of small companies that had been absorbed by the government as a result of financial difficulties. Privatisation during this phase had little economic impact: 38 state-owned enterprises were privatised by the federal government, generating only US\$ 723 million.

In 1990, privatisation became a priority for the Brazilian government; the National Privatisation Programme (PND) was established, representing a major expansion in the scope of privatisation. As a result, between 1990 and 1992, 15 enterprises were privatised generating approximately US\$ 3.5 billion, including US\$ 2.3 billion for sale of the Minas Gerais Iron and Steel Mills, Inc. (Usiminas). From 1992 through 1994, an additional 18 state-owned enterprises (including the airplane manufacturer “Empresa Brasileira Aeronáutica” (Embraer)) were sold. Between 1990 and 1994, the federal government privatised 33 companies, yielding US\$ 11.9 billion in total (US\$ 8.6 billion in sales proceeds and US\$ 3.3 in transferred debt).

Nonetheless, privatisation did not become a major element of Brazilian economic reform until 1995.

In August 1995, Amendments to the Federal Constitution (Nos. 6-9) were passed which paved the way for the privatisation of the public utility sector of Brazil’s infrastructure. The Amendments allowed the government to authorise private enterprises to provide oil, natural gas and telecommunications services, effectively ending the government monopoly in these areas, and expanded the

concept of a Brazilian company to include foreign companies headquartered in Brazil, clearing the way for privatisation of the mining and electricity sectors. The Amendments opened the door for one of the largest and most ambitious privatisation programmes ever undertaken. In addition, that same year, the Concessions Law (Law 8.987), was also enacted, establishing the regulatory framework for the concession of public utility services.

11.2. Privatisation Program

Two government agencies are primarily responsible for the PND: the National Council of Privatisation (CND), which is the institution responsible for the implementation and monitoring of the privatisation programme, and the National Bank for Economic and Social Development (BNDES or the Brazilian Development Bank), which was created for the purpose of financing privatisation and manages the National Privatisation Fund (FND).

The main purposes of Brazil's privatisation programme have been to:

- (a) change the government's economic policy and position in the economy (from supplier of goods and services to regulator);
- (b) reduce government debt and increase tax revenue;
- (c) free the public administration to direct governmental resources and efforts towards health, education, housing and public security;
- (d) modernise the Brazilian industrial complex, improving its competitiveness and improving the quality of the services offered;
- (e) promote investment in companies and activities transferred to the private sector; and
- (f) strengthen the capital market by increasing the number of securities offerings.

Public service companies and financial institutions directly or indirectly controlled by the federal government, as well as state-owned financial institutions, were candidates for privatisation. Privatisation was accomplished by means of sale of direct control, capital offerings, capital increases, and dissolution of companies and sale of their assets.

As a result of these changes in the institutional framework, the scope of the privatisation programme was greatly expanded. In 1997 alone, privatisation by the federal government generated a total of US\$ 27.7 billion, surpassing the total collected in the six previous years. In 1998, Brazil's giant telecom company, Telebrás, was sold for US\$ 19 billion, in one of the largest privatisations ever, and privatisation generated a total of US\$ 37.5 billion. Between 1995 and 2002, the federal government's privatisation programme yielded US\$ 93.4 billion in total (US\$ 78.6 in sale proceeds and US\$ 14.8 in transferred debt).

Brazil's ambitious privatisation programme was one of the largest ever undertaken; involving over 100 state and federal companies, and generating over US\$100 billion in total sales proceeds and transferred debts, liberating governmental resources for social programs and creating investment opportunities.

11.3. Telecommunications Sector

In 1995, Telebrás held monopoly control over the Brazilian telecommunications sector, which included 26 operating subsidiaries (state telephone companies) and the long distance carrier, Embratel, and was the largest telephone system in Latin America, with 13 million lines installed. The federal government held majority control of Telebrás.

Constitutional Amendment n. 8 ended the state monopoly on the operation of telecommunication services. But a number of additional steps were required to move the Brazilian communications sector from a state-owned to a private sector model. The government had to alter the complex rate structure in order to make it attractive to investors, to enact legislation to change the state's role in the

telecommunications sector, and to establish a regulatory agency (and regulations) to govern the telecommunications market.

On 16 July 1997, the General Telecommunications Law (Law 9.472) was enacted, providing that the state should cease to be a telecommunications provider and become a telecommunications regulator.

The General Telecommunications law established that “telecommunications services will be organised on the basis of free, wide-ranging and fair competition between all service providers,” defined and organised telecommunications services and created a regulatory agency, the National Telecommunications Agency (*Agência Nacional de Telecomunicações* (Anatel)).

Anatel’s administration is comprised of:

- (a) an Attorney-General;
- (b) a Director’s Council, the responsibilities of the council include: establishing agency administrative policies and directives, proposing modifications to governmental telecommunications policies, exercising regulatory power over the telecommunications industry; and
- (c) a Consultative Council, responsible for providing telecommunications policy suggestions to the Ministry of Communications.

Anatel is responsible for oversight of telecommunications services and equipment, including licensing of service providers, equipment certification and receiving and resolving subscribers’ complaints. In addition, pursuant to competition law and Law 8.884/94, Anatel oversees unfair competition issues in the telecommunications market (together with the Brazilian antitrust agency CADE). In this regard, Anatel Resolution 195 of 07 December 1999, specifically provides for administrative procedures governing antitrust issues.

Decree 2.617 of June 1998 stipulates that public telecommunications

concessions, permissions and authorisations may be granted to companies established and having their domicile and administration in Brazil but that a majority of voting shares may be held by foreign legal entities. Thus, there are no limitations placed on foreign capital participation in the telecommunications sector.

Law 9.472/97 defines, *inter alia*, telecommunications services, value-added services and public and private systems of service rendering. Public services are granted by concession for maximum terms of 20 years subject to a single renewal for an equal term. Private services are granted by authorisation.

Fixed Switched Telephony Services, divided into local, national long distance and international long distance services, are regulated by the Plan of General Licensing (“PGL”) enacted by Decree 2.534 of April 1998. The PGL provides for universal service obligations established in concession contracts and include the following guidelines:

- (a) concession are freely granted until 31 December 2005, subject to renewal for an additional 20 years. In the case of renewal, a 2% fee will be charged over the income of the previous year, for every 2 years, during the renewal period;
- (b) operators are able to freely define their investments in accordance with their own business strategy;
- (c) concessionaires must obtain insurance for material damages, to guaranty the continuity of the services and to ensure compliance with quality and universalisation goals;
- (d) concessionaires commit to expand and modernise telephone services, observing the General Act of the Goals of Universalisation and Quality;
- (e) Brazilian suppliers of telecommunication services and equipment are accorded preference in event of a tie with foreign suppliers;

- (f) Anatel can fine concessionaires for violations of quality of service or equipment standards or for unfair competition; and
- (g) Anatel can intervene in companies in cases of unjustified interruptions of services, inadequate performance, poor administration, violation of the economic order or non-compliance with the objectives of universalisation.

Cellular telephony service is regulated by Law 9.472/97, Law 9.295/96 and Decree 2.056 of November 1996. In 1997, Band B (a sub-frequency used for cellular telephone service) mobile cellular telephone concessions were auctioned. In 1998, eight Band A cellular telephone companies were transferred to the private sector. Later, in 2002, Bands D and E cellular telephone concessions were auctioned. (By law, Fixed Switch Telephony Service concessionaires are obligated to provide interconnection to cellular phone networks).

Mass communication services such as radio and television are subject to Decree 52.795/63 and monitored by the Ministry of Communications. Ownership is restricted by the Federal Constitution to Brazilian nationals at a rate of, at least, 70% (Law 10.610 of 20 December 2002). Subscription television, however, does not fall within the constitutional restrictions.

Cable television is regulated by Law 8.977/95 and Decree 2.206 of April 1995. Multipoint Multichannel Distribution Service (MMDS) Paging, Trunking and Direct to Home System (DTH) are regulated by Special Services Decree 2.196 of April 1997 and relevant rulings.

Private network services destined to the use of persons or companies are subject to authorisation from Anatel and may require a bidding procedure depending on whether the network system employs a radio frequency.

11.3.1. Internet and E-commerce

With regard to the Internet, a legislative measure taken concerning the

network's infrastructure, Interministerial Norm MCT/MC n. 147 of 31 May 1995, created the Brazilian Internet Committee. Administrative Ruling MCT n. 148 of 31 May 1995 approved Rule 004/95 regarding the use of the Public Telecommunications Network for Internet access. Resolution CG n. 1 and Resolution CG n. 2 of 15 April 1998 were formulated to govern domain name registration for Internet connections and provide for distribution of IPS addresses and maintenance of the Internet network.

11.4. Electric Energy Sector

In December 1996, Law 9.427 was passed, providing for the creation of a national agency to regulate the national electric system and to execute the electric energy policy and program. The National Agency of Electric Energy (Aneel) was created by Decree 2.335 of October 06 1997. Aneel is administered by an independent Board of Directors, comprised of five members who serve four-year terms.

Aneel's main responsibilities are:

- (a) to oversee the bidding process and to solicit bids for concessions for the production, transmission and distribution of electric energy;
- (b) to institute technical parameters to assure quality service;
- (c) to establish criteria for transmission costs and to determine and implement retail tariff revisions; and
- (d) the regulation and inspection of the production, transmission, distribution, and marketing of electric energy;

In 1998, a wholesale electricity market and the National Operator of the Electric System (ONS) were created. The ONS is an independent system operator responsible for the coordination and control operations of electric power generation and transmission facilities in the Brazilian electric system.

The Brazilian Government has enacted legislative and regulatory reforms to foster private sector investment in distribution and generation of the electric energy sector and to privatise the generation and distribution assets of “Centrais Electricas Brasileiras” (Eletrobrás). The Eletrobrás System is responsible for generating 50% of Brazil’s total energy and accounts for 60% of total installed capacity; Eletrobrás’ total assets are estimated at US\$ 50 billion.

Hydro generation produces over 95% of Brazil’s total electric power, mainly from large dams in the centre, south and Southeast of the country. To take advantage of Brazil’s large, still untapped hydropower potential, the federal government has encouraged small hydropower projects (up to 30 MW); including a series of eolian parks in three different states of Brazil with an average capacity of 2.0 MW each (the first of these projects is expected to become operational in December 2003). In addition, a natural gas pipeline between Bolivia and Brazil has been in operation since 31 March 2000 and is expected to provide, in the near future, large scale thermal generation.

11.5. National Petroleum Policy

Petrobrás (the Brazilian National Oil Company) was created in 1953 by Law 2.004. For 43 years, until 1997, Petrobrás had a monopoly in the Brazilian oil and gas market. In 1995, Constitutional Amendment n. 9 ended the state monopoly on petroleum and natural gas and opened the industry to participation by the private sector.

The Petroleum Regulation Act of 1997 allowed private sector participation in the oil and gas industry, including exploration, production, refining, and distribution. Law 9.478 of 6 August 1997 (regulated by Decree 2.455 of 14 January 1998), created an administrative agency, the National Petroleum Agency (ANP), to regulate the activities of the petroleum industry, and to execute the national policy for petroleum. ANP is administered by a board of five directors appointed by the President for a 4 year term. In addition, pursuant to competition law and the provisions of Law 8.884 of June, 1994, ANP oversees any unfair competition in the petroleum industry (together with the CADE).

Privatisation of the Telecommunications, Electric Energy and Oil Sectors

The purposes of the national oil energy policy are to:

- (a) promote the development of energy resources;
- (b) protect the consumer's interest in relation to the prices and quality of the products offered;
- (c) protect the environment and encourage reduced consumption of energy;
- (d) encourage the use of natural gas;
- (e) promote free competition;
- (f) attract foreign investments in energy production; and
- (g) strengthen Brazil's competitive position in the international market.

The National Council on Energy Policy (CNDPE) was also created to advise the President on national policies, and specifically:

- (a) set out directives for specific programs such as the use of natural gas, alcohol, coal and thermonuclear energy; and
- (b) establish directives concerning import and export and to comply with the internal consumer demand of oil and its derived products.

Law 9.478 established that Petrobrás was to have the form of a “mixed economy corporation” controlled by the federal government and connected to the Ministry of Mines and Energy (MME). Petrobrás is subject to the law governing “*Sociedades Anônimas*” (corporations) in addition to laws applicable to the petroleum industry and is free to compete with other companies in the areas of exploration, mining, research, processing, refining, distribution, transport and other petroleum-related activities.

The ANP has authorised construction of a private refinery and a number of private pipeline projects. Petrobrás has returned to the ANP many undeveloped off-shore oilfield prospecting blocks for re-tender alongside those in the Brazilian sedimentary basins.

Petrobrás has structured a substantial number of partnerships in its prospecting areas. Petrobrás submitted 17 evaluation plans to the ANP regarding petroleum discoveries in the 22 areas related to the first contracts signed with the ANP. Petrobrás discovered petroleum in 16 of the 22 zones, 5 of them in partnership with other companies.

12. LABOUR LEGISLATION

12.1. General Considerations

The Federal Constitution guarantees, to all workers in Brazil, a number of specific rights, including the right to: protection against arbitrary dismissal, a nationally uniform minimum wage, unemployment insurance, maternity and paternity leave, and occupational accident insurance. In addition, the Constitution prohibits employment discrimination on the basis of sex, age, colour or marital status.

The primary labour legislation enforcing these rights is Law-Decree 5.452 of 01 May 1943, the Consolidated Labour Laws (“*Consolidação das Leis do Trabalho*” (CLT)). Promulgated during a period when the government strictly regulated employment relationships, the CLT took some autonomy away from the parties involved in employment relations.

12.2. Formation of Labour Agreements

Labour Agreements (employment contracts) can either be in writing or implied from the relationship between the parties. Under Articles 1 and 2 of the CLT, an employer-employee relationship exists (and a labour agreement will be implied if a written agreement does not exist) where one party, who must be a natural person, habitually renders services for payment, and is subordinate to and otherwise under the direction of the other party.

It is not common in Brazil for employers to enter into written individual labour agreements with unskilled or less qualified employees.

All employees in Brazil must have an employee work and social security booklet (“*Carteira de Trabalho e Previdência Social*” (CTPS)) in which employers are required to register the main characteristics of the employment relationship (including employer name and information, employee position and wages, and date of hiring).

12.3. The Labour Agreement

Once the employee has been hired, the employer is legally required to follow labour regulations providing for certain basic employee rights and employer obligations; these cannot be negotiated between the parties. They include rules relating to minimum wage, holidays, maximum working hours, and the “13th salary”.

12.3.1. Minimum Wage

The current minimum wage in Brazil is R\$240 reais (approximately \$80 US dollars) per month. The minimum wage can vary depending on the professional category of the employee.

12.3.2. Working Hours

The Constitution provides for “normal working hours not exceeding eight hours per day and 44 hours per week.” For certain categories of employees, however, the normal working hours may be reduced (for example, the regular working period of bank employees may not exceed 6 hours per day). The Constitution also provides that the “rate of pay for overtime [must be] at least 50% higher than that of normal work.” Employees are also entitled to a weekly rest of at least 24 hours (generally taken on Sunday).

12.3.3. Holidays

For every 12 months of employment, an employee is entitled to paid holiday (vacation) “with remuneration at least one third higher than the normal salary.” Where an employer fails to grant an annual holiday, the employee must be remunerated in an amount double that of the holiday payment owed.

12.3.4. Thirteenth Salary

Employers are required to pay an annual year-end bonus, equal to one month’s salary, which is known as the “13th salary”.

12.3.5. Mandatory Fund for Employment Benefit

Each month, the employer is obligated to deposit an amount corresponding to 8% of the employee's gross salary in a bank account, in the name of the employee (Employee Dismissal Fund - "*Fundo de Garantia por Tempo de Serviço*" - FGTS). During the employment period, the amounts deposited remain in the account and may only be withdrawn by the employee under circumstances defined by law (including dismissal without cause, retirement, and certain cases of illness).

12.3.6. Protective Measures for Expectant Mothers

The law grants expectant mothers employment stability from the moment the employer is notified until 5 months after childbirth. The employee also has the right to a remunerated maternity leave of 120 days to be granted during the period closest to childbirth (normally 28 days before childbirth and 92 days after childbirth). The remuneration paid to the employee during the pregnancy period is paid by the National Social Security Institute ("*Instituto Nacional de Seguridade Social*" (INSS)). The law also provides for a five-day paid paternity leave.

12.3.7. Profit Sharing

Profit sharing is constitutionally prescribed in Brazil and is regulated by Law 10.101 of 19 December 2000, which provides that collective labour agreements are to define the terms of profit sharing plans.

12.3.8. Social Security

Employers are required to contribute 20% of gross salary to the INSS, an additional 5.8% to cover other social security payments (SESC, SENAC, etc.), as well as paying an additional variable tax of between 1% and 3% for occupational accident insurance.

The employee must also contribute a variable percentage (between 8% and 11%) of his or her gross monthly salary to the INSS. This contribution applies

only to the initial R\$ 1,869.34 of an employee's monthly salary; any part of the salary received that exceeds R\$ 1,869.34 is not subject to the contribution.

12.4. Labour Agreement Extinction

Labour agreements may be extinguished for a number of reasons - termination by the employer with or without cause, resignation by the employee, expiration of the employment agreement, death of one of the parties, and extinction of the employer.

Depending on how the labour agreement is extinguished, the employee receives different remuneration.

12.4.1. Advance Notice

For agreements of an indeterminate period, a party wishing to terminate a labour agreement without just cause must provide at least 30 days advance notice to the other party.

The law provides that if the employer does not provide at least 30 days advance notice, the employee must be paid his or her salary in an amount corresponding to the period of the required notice. Where an employee does not provide sufficient notice, the employer is entitled to retain an amount corresponding to the period of insufficient notice.

12.4.2. Indemnities for Dismissal

When an employee is terminated without just cause, the employer is required to pay the employee a fine equivalent to 40% of the amount deposited in the FGTS. In addition, the employee is entitled to receive any salary owed for work performed; remuneration for unused holiday proportionate to the number of months worked in the prior year; and a "pro rata" share of the 13th salary corresponding to the actual period the employee worked that year.

Where an employee resigns or an employment contract expires, the employee is entitled to any salary owed for work performed; pay for unused holiday; and a “pro rata” share of the 13th salary.

Where an employee is terminated with just cause, the employee is only entitled to any salary owed for work performed and pay for unused holiday; the employee is not entitled to the 40% fine of the amount deposited as FGTS, and cannot withdraw the balance of the FGTS deposits.

13. CONSUMER PROTECTION LEGISLATION

13.1. General Considerations

The Federal Constitution mandates that the government shall provide “for the defence of the consumer.” As a consequence, the Consumer Defence Code (“*Código de Defesa do Consumidor*” (CDC) (Law 8.078 of 11 September 1990, as regulated by Decree 861 of 09 July 1993), was enacted to govern consumer protection. The CDC articulates a national consumer protection policy that is based on the recognition of the vulnerability of the consumer in the consumer market, and that seeks to restrict abusive practises in the consumer market and improve product and service quality while not prejudicing the economic and technological development of the country. According to Article 6 of the CDC, it can be understood that consumers are entitled to:

- (a) life and health protection, regarding consumer relations;
- (b) consumer acknowledgement on products and services;
- (c) protection against misleading or abusive advertisements;
- (d) contractual guarantees;
- (e) compensation on damages;
- (f) access to justice;
- (g) facilitated defence of their rights; and
- (h) good quality public services.

The CDC protects consumers by defining basic consumer rights and the obligations of commercial suppliers and by providing for supplier liability and other appropriate sanctions.

In Article 2, the CDC defines “consumer” as “the natural person or legal entity that buys or uses product or service as the final user.”

In Article 3, the CDC defines “supplier” as “the natural person or legal entity, private or public, domestic or foreign, as well as the depersonalised entities,

which performs the activities of production, assembly, creation, construction, transformation, importation, exportation, distribution or commercialisation of products or services.”

The concepts of consumer and supplier are broadly defined in order to ensure that the CDC is applicable whenever there is a transaction with an apparent supplier on one side and consumer on the other.

13.2. Principal Innovations of the CDC

In order to provide the consumer protection envisaged by legislation, the CDC established norms already foreseen by Brazilian courts in the judgement of cases involving consumer relations. Among such norms it is important to adduce:

- (a) *Reversal of the burden of proof* - upon the criteria of the courts, whenever the consumer is deemed the weaker party, or has shown its allegations to be reasonable, the courts may invert the burden of proof, transferring to the supplier the obligation to prove that the facts alleged by consumer did not occur, or occurred differently than claimed;
- (b) *Strict liability of the supplier* - consisting in the liability of the product or service supplier for the repair of the damages caused to consumers by the product or service provided, regardless of fault. The only defences available are the non introduction of the product or service into the market, the non existence of the defect claimed or the complete fault of the consumer.
- (c) *Subsidiary liability of the seller* - consisting in the possibility of holding the seller directly liable whenever the identification of the product supplier is not possible; whenever the product is sold without precise identification of the supplier; or whenever the merchant does not keep perishable products adequately stored;

- (d) *Disregard of legal entity* - consisting in the possibility of holding the administrators and shareholders directly responsible by ignoring the legal personality of the relevant company, whenever damages are caused due to abuse of rights, illicit acts or facts, or violation of the bylaws of the company whose legal entity may be disregarded;
- (e) *Contractual protection* - consisting in the prohibition and restriction of clauses or contractual practices considered to be abusive to consumers. Abusive clauses or practises are deemed null by the CDC, including the prohibition of any clause which prejudices consumers;
- (f) *Access to data bases and credit reports* - consisting in granting access to consumers to their own data bases and credit reports for the purpose of analysing and revising their personal or credit data. If wrong information is held, the consumer has the right to amend it;
- (g) *Protection from false or misleading advertising* - the CDC prohibits false or misleading advertising and provides for fines, imprisonment and corrective advertising in the same media used by the infractor; and
- (h) *Broad liability for infractions* - consisting in administrative and criminal liability for determined infractions as foreseen in the CDC, without prejudice to applicable civil liability.

13.3. Consumer Defence Organisations

Supplemental to the possibility of individual claims before the courts, legislation envisaged and established class actions that may be brought concurrently by the Public Ministry, the Federative Union, the States, Federal District and Municipalities, by public consumer defence agencies and civil associations for consumer defence.

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The consumer defence agencies include the:

- (a) Department of Economic Law (SDE);
- (b) National Department of Consumer Defence;
- (c) Consumer “Police” (DECON);
- (d) Local Consumer Advice and Protection Agencies (PROCON); and the
- (e) Institute of Weights and Measures (IPEM).

Lastly, it is necessary to emphasise that the protective measures adopted by the entities above-mentioned include steep fines and indemnities against suppliers that do not comply with the norms set forth in the CDC.

14. SPORTS LAW IN BRAZIL

14.1. Introduction

Sport has always intersected with other disciplines, including law. Indeed, since sport cannot exist without rules and regulations, in a sense sport has its origins in the law. Today, however, law has become more important to sport than ever before.

There are few areas of human activity more subject to legislation than sport. There are “rules of the game”, “sporting codes of justice”, “technical rules of competition”, “player transfer laws”, “statutes of sporting entities”, “fair-play discipline” and “medical regulation”. Without rules, regulations and laws, sport would be chaotic and disorderly.

Due to the great importance of football (soccer) to Brazilian history, culture and society, much of Brazilian sports law is focused on that sport. In Brazil, as in the rest of the world, football is in a state of transformation, transcending its traditional role as a competitive sport and cultural event, and assuming an ever-increasing commercial aspect. Football has become a US\$ 280 billion dollar a year global industry - involving leagues, clubs (teams), owners, players, agents and attorneys; licensing agreements and player contracts; broadcasts of individual games, as well as television shows and networks devoted to football; advertising; manufacturing of football equipment, merchandise, and memorabilia; and stadia and arenas and their concessionaires – all aimed at, and fueled by, the millions of devoted fans worldwide.

Brazil has more football players than any other country in the world. It also has one of the ten largest economies in the world. Despite this, Brazil accounts for only about 1% of the total amount generated by the sport known as the beautiful game.

14.2. Period Prior to the Federal Constitution of 1988

Football was first brought to Brazil in the second half of the nineteenth century, and the first official football match was played in 1894. Professional football was only introduced in 1933. At that time, however, there was essentially no legislation regulating sports in Brazil.

In 1941, during the regime of President Getúlio Vargas, the first legislation governing sports in Brazil, Decree Law 3.199, was enacted. Law 3.199 was a carbon copy of Italian legislation in effect at the time and reflected the authoritarian regime which originally created it. The legislation contained strict directives regarding the organisation and administration of sports entities (professional leagues, federations and clubs).

Some years later, another sports law, Law 6.251, was enacted, but did little to change the system that had been imposed by Law 3.199.

In 1976, the Brazilian government promulgated Law 6.354, which governed the labour relations of professional football players. This legislation covered a number of important subjects, including:

- (a) the concepts of employer and employee, as they effect football;
- (b) the contents of the labour contract between an athlete and a club; the conditions that allow a breach of contract for good cause; the conditions under which a club may apply penalties, pecuniary or not, to an athlete; the conditions under which an athlete may refuse to play if his salary is delayed; provision for automatic suspensions of a club which delays an athlete's salary for a period of three months or more;
- (c) the age limit at which a professional athlete may sign a contract;
- (d) the weekly and daily working hours; the annual holiday period;

- (e) the conditions to cede and/or transfer an athlete and that athlete's rights when there is a transfer; and
- (f) the "passe", a legal bond which connected an athlete to a club even after the termination of the labour contract.

Law 6.354 provided that the sports courts would be the only authority competent to solve labour disputes between professional athletes and clubs: "Claims will only be admitted to the Labour Court after exhaustion of all appeals to the sports courts, which will pronounce a final decision no later than 60 (sixty) days from the commencement of the proceeding." (Article 29.) Although many of the Articles contained in Law 6.354 have been replaced by subsequent legislation, this Article remains in force.

14.3. Federal Constitution of 1988

After a new Federal Constitution was adopted in 1988, Brazilian sports entered a new era. For the first time, sports were addressed in the Brazilian Magna Carta. Because of their importance, the Constitutional Articles relating to sports are summarised below:

- (a) Art. 5, XVII, establishes freedom of association for lawful purposes⁶;
- (b) Art. 5, XVIII, allows creation of sports entities (professional leagues, confederations, federations, clubs) without governmental approval or authorisation, and prohibits state interference in the functioning of associations, provided they engage solely in lawful activities approved in their Article of Association;
- (c) Art. 5, XXVIII, ensures the protection of the human image and voice in sports activities;

⁶ In Brazil the majority of clubs are still non-profit associations (as opposed to most European Union countries, where clubs are private, for-profit companies).

- (d) Art. 24, IX, establishes that the federal governmental, the states and the Federal District share legislative authority over sports;
- (e) Art. 217, establishes that it is a governmental obligation to foster the practice of formal and informal sports, with due regard for: (a) the autonomy of sports entities in their management, organisation and operation; (b) a priority in the allocation of public funds to educational sports and, in specific cases, to high profit sports; (c) the different treatment to be accorded to professional and non-professional sports; and (d) the protection and support of national sports activities;
- (f) Art. 217, Paragraph 1, establishes that the Judicial Power will admit actions related to sports discipline and competitions only after exhaustion of appeals to the sports courts, as regulated by law;
- (g) Art. 217, Paragraph 2, establishes that the sports courts will have a maximum of 60 (sixty) days after the filing of a suit to issue a final decision; and
- (h) Art. 217, Paragraph 3, establishes that the state must encourage leisure for the social good.

14.4. Subsequent Legislation: Lei Zico, Lei Pelé & Current Sports Law

The sports-related provisions of the Constitution led to the enactment of laws governing professional sports. In 1993, the first of these laws, Law 8.672, known as “Lei Zico”, was enacted. In 1998, Lei Zico was revoked by Law 9.615, popularly called “Lei Pelé”.

From the time of its enactment until the present date, Lei Pelé has been amended a number of times; the following analysis focuses on the current state of the law, following the substantial amendments made by Law 10.672, of 15 May 2003.

The most important innovations introduced by these laws, which also proved to be some of the most controversial, deal with the contractual relationship between

athletes and clubs and with the financial management of the various entities involved in professional football (leagues, federations, confederations and clubs).

Law 10.672 was the government's response to problems of mismanagement and corruption which had plagued professional football in Brazil. The law implemented reforms making football associations and clubs more financially and administratively transparent and holding their management more accountable.

Law 10.672 established that professional sports entities in Brazil, although founded on freedom of association and self-regulation, were part of the Brazilian cultural heritage and were organised in the social interest. This provided the public prosecutor's office with legal grounds to intervene (where necessary) in the affairs of leagues, federations and clubs since it is the legal responsibility of that office to defend the Brazilian cultural heritage and the social interest.

In order to provide for increased financial accountability, Law 10.672 established that:

- (a) professional leagues, federations and clubs (regardless of their legal structure) are considered commercial corporations for financial and administrative purposes (including tax, social security and accounting purposes);
- (b) all leagues, federations and clubs involved in professional sports competitions (regardless of their legal structure), are required to publish independently audited financial statements (for the annual period ending on the last business day in April);
- (c) if a member of the management of a professional league, federation or club improperly appropriates any of the entity's assets (or benefits) for his or her own personal use (or for the use of third parties), those assets and/or benefits will be recovered; and
- (d) any members of the management of a professional league, federation or club who violate the laws governing sports entities may not, for a period

of 5 (five) years, be elected or appointed to any office at any entity or corporation directly or indirectly related to professional sports. In addition, administrative, criminal and civil penalties may also be applied.

Law 10.672 significantly changed the law governing the relationship between an athlete and a club. Law 10.672 provided that the relationship is purely contractual and is concluded when the contract expires or is terminated. The parties of the contract can freely negotiate its terms (subject to certain limitations), including provision for a “penalty” that must be paid where the contract is prematurely terminated by one of the parties.

Although the value of a penalty clause can be negotiated between the contracting parties, Law 10.672 provides that such a payment is limited to one hundred times the amount of the annual compensation provided for in the contract. Further, an automatic reduction of the penalty amount must be made for each year the contract is in effect. The reduction is as follows:

- (a) 10% after the first year;
- (b) 20% after the second year;
- (c) 40% after the third year; and
- (d) 80% after the fourth year.

In the case of an international transfer of a professional athlete, however, a penalty clause expressly included in the athlete’s contract will not be subject to any limitation.

In order to protect professional athletes from exploitation by agents, Law 10.672 limited to a period of one year or less: (i) a grant of a power-of-attorney relating to a professional athlete’s contract, or (ii) a contract licensing the rights to a professional athlete’s image.

The non-professional athlete in development, between fourteen and twenty years of age, can receive financial assistance from a club in the form of a scholarship (freely established by a formal contract) without creating an employer-employee relationship between the parties.

A club which discovers and develops (including through provision of a scholarship) an athlete will have the right to sign that athlete, when the athlete is over sixteen years of age, to a professional contract for a period of not more than five years. Law 10.672 also establishes that a club that develops an athlete and enters into a initial contract with that athlete, will also have a priority in the first renewal of the contract (the renewal cannot be longer than 2 years). In order words, the athlete will be able to enter into a contract with a new club only if the proposal made is better (financially) than that offered by the athlete's initial club.

Any club that provides financial support for the development of a non-professional athlete under twenty years of age is entitled to recoup those costs if, without its express authorisation, the athlete participates in a sports competition representing another club.

The development costs will be reimbursed by the sports entity for which the athlete appeared, according to the following values:

- (a) 15 times the annual scholarship value effectively paid if the non-professional athlete is between 16 and 17 years of age;
- (b) 20 times the annual scholarship value effectively paid if the non-professional athlete is between 17 and 18 years of age;
- (c) 30 times the annual scholarship value effectively paid if the non-professional athlete is between 18 and 19 years of age; and
- (d) 40 times the annual scholarship value effectively paid if the non-professional athlete is between 19 and 20 years of age.

Law 10.672 also provided that companies which obtain the concession, permission or authorisation to broadcast (including by cable television) the sounds and images of a sports competition are forbidden from exhibiting any brand, logo or other mark on the uniforms used in the competition.

Finally, Law 10.672 established that the organisation, functioning and attributes of the sports courts (whose authority is limited to sports competitions and disciplinary infractions) will be defined in sports codes, making it possible for leagues to create their own decision-making bodies with jurisdiction restricted to their own competitions.

14.5. Fan's Statute

Concomitantly with Law 10.672, Law 10.671 was promulgated establishing rules of consumer protection. The main intention of the legislature was to protect fans and to once again assure them of the transparency of competitions.

Under Law 10.671, leagues, federations and clubs must abide by legal regulations and established rules. In order to ensure this, for each competition, the competition's complete rules, the competition's schedule, a list of referees, the name and contact information of an ombudsman for the competition, a list of fans prohibited from attending local sports events, and a written report of the match must be published in the media.

It is the right of the fan that the competition's rules and schedules, as well as the name and contact information for the competition's ombudsman shall be published 60 (sixty) days before the start of the competition.

No changes in any competition's rules may be made after the rules' definitive publishing, unless the publishing of a new annual calendar of official events for the following year is approved by the National Counsel of Sports or after two years of competition under the rules.

Additionally, participation of clubs in competitions organised by federations

or leagues will be based exclusively on the place obtained in the last competition or championship or in a regular tournament with more than one division.

Finally, fans have the right to security in the places where sports events take place (inside stadia or arenas), before, during and after competitions.

Federations or leagues responsible for organising a competition (and their management), shall be jointly responsible with the clubs involved (and their management), independently of the existence of guilt (strict liability), for any loss caused to a fan because of a security failure in a stadium or arena.

15. COMMERCIAL DEFENCE IN BRAZIL

15.1. Introduction

Commercial defence institutes - antidumping, safeguard and countervailing – are important for hindering illicit practices of commerce committed by exporting parties or companies, although developed countries commonly use them in a distorted way.

Ever since the World Trade Organisation (WTO) was created in 1995, the number of commercial defence cases has multiplied, particularly antidumping cases, not only by developed countries, their traditional users, but now also used by developing countries, such as Argentina, Brazil, China, India and Mexico. Nowadays, it is rare to find a successful exporting company that does not face, directly or indirectly, a commercial defence situation in their international markets.

Even in the ambit of the WTO's Dispute Resolution System the most common and inquired theme of trade conflicts is the so-called commercial defence, particularly antidumping and countervailing measures for subsidies.

Commercial Defence themes are regulated in three specific agreements of the WTO: the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which concerns antidumping rules that aim at avoiding that national producers suffer losses from importing at prices of dumping; the Agreement on Subsidies and Countervailing Measures, which concerns the legal instruments available to compensate subsidies that are directly or indirectly granted and, lastly, the Agreement on Safeguards, which aims at temporarily increasing the protection of a domestic industry.

In Brazil Decree no. 1.355 of 30 December 1994, enacted the Final Act containing the results of the Uruguay Round of the GATT, which adhered to the agreements regarding commercial defence in a general way, with the purpose of adopting them as internal legislation. Therefore, the administrative procedure that

regulates the application of antidumping measures is regulated by Decree no. 1.602 of 23 August 1995. In the same way, Decree no. 1.571 of 19 December 1995, provides the rules for the application of countervailing measures, and finally, Decree no. 1.488 of 11 May 1995, regards the application of safeguard measures.

The Chamber of Foreign Trade - CAMEX, the Secretariat of Foreign Trade – SECEX, and the Department of Commercial Defence – DECOM, are the Brazilian government bodies directly involved with Commercial Defence procedures. All these bodies integrate the Ministry of Development, Industry and Foreign Trade.

Besides those government bodies, the Internal Revenue Service of the Ministry of Treasury, the State Ministry of Development, Industry and Foreign Trade, and other ministries, directly or indirectly participate in the application of definitive measures, depending on the sector involved.

By means of Decree no. 4.732 of 10 June 2003, CAMEX received further attributions. The Decree foresees a compulsory previous consultation with CAMEX regarding any foreign trade matter.

Specifically concerning commercial defence measures, the competence to impose antidumping and countervailing measures, either provisory or definitive ones, and safeguards, has been transferred from the Ministries of Treasury and Developed to CAMEX.

In short, SECEX, by means of DECOM, is responsible for the processing of Commercial Defence instruments, including the establishment of the criteria for launching investigations. Yet CAMEX is responsible for the decision stage, based on the final approval of DECOM's Technical Note and on the imposition of antidumping and countervailing duties, both provisory and definitive ones, and safeguards.

15.2. The Administrative Procedure of Antidumping and Countervailing Measures

The investigation process begins by means of a petition addressed to

SECEX, in writing, presented by the affected domestic industry, which should represent at least 50 % of the national industry of the similar product.

This opening petition should follow the model created by SECEX, or otherwise will not be accepted. For antidumping investigations, Circular SECEX no. 21/95 should be adopted as a model and, in case of countervailing measures, Circular SECEX no. 20/95 is the foreseen model.

The investigation begins when a Circular from SECEX is published in the Federal Official Gazette and all the known interested parties are notified together with the exporting country's government.

In the investigation procedure of subsidies, after the petition is accepted and before the investigation is launched, the government whose products could become object of investigation is invited to participate in a consultation. This consultation aims at clarifying the situation of the possible existence of a subsidy, its levels and effects, and also aims at obtaining a mutually satisfactory solution.

Decree no. 1.602/95 determines that pieces of evidence proving the existence of dumping and the simultaneous injury caused by it, will be taken into account during the investigation. In the same way, according to Decree no. 1.751/95, the proof of actionable subsidies will be verified in light of the supposed injury caused.

The period to verify the existence of dumping or subsidy concession should be the 12 months before the investigation is launched. The period may exceptionally last less than 12 months but may never last less than 6 months.

Once the investigation process begins, the instruction will be done through questionnaires sent to the interested parties, who will have 40 days counting from the date they were issued, to return them. Only one extension of 30 complementary days will be granted, as long as the request is justified and filed within the 40 days.

In case the interested parties deny access to necessary information, provide it after a determined date, or create obstacles during the investigation, the judicial

order with the preliminary or final decision will be elaborated based on the best information available.

The only compulsory hearing is the one foreseen in Article 33 of Decree no. 1.602/95 and in Article 43 of Decree no. 1.751/95, when the interested parties will be informed of the essential facts under judgement, which form the basis for the definitive order by means of a Technical Note.

However, the proof that a dumping margin or actionable subsidies exist at a value superior to *de minimis*, and the verification that a significant injury simultaneously occurred in the local industry is not enough. It is essential that such practices be the fundamental cause of the injury detected, through the demonstration of the causal link.

The antidumping and countervailing duties, either provisory or definitive ones, may be applied in two distinct forms: by means of an aliquot *ad valorem* over the merchandise's customs value, in CIF, or by means of a specific aliquot, set in Unites States dollars and converted into the national currency, to be added to the product's entry value.

The amounts will be charged, independent of any other tax obligation, on all imports of the investigated product.

No definitive measure will proceed for a period longer than five years after its initial application.

However, the measure may be reviewed, suspended, and even revoked, as long as a minimum period of one year has passed after the definitive imposition or one year has passed after the most recent review.

After the review is over and in case the duties are increased or reduced, they will also be valid for a period of five years. When detected that the duty is higher than the amount necessary to neutralise the injury of the domestic injury, or that its imposition is no longer justified, the due restitution will be determined.

Moreover, there is also the hypothesis of suspending the duties for one year, and extending this suspension for another year, in case market alterations occur, as long as the injury is not characterised and the right to respond is granted to the domestic industry.

15.3. The Administrative Procedure of Safeguard Measures

Safeguard measures aim at temporarily increasing the protection of a domestic industry that is suffering a serious loss or a threat of serious loss due to the increase in the quantity of imports, in general or in its national production, with the purpose of adjusting the domestic industry, by increasing its competitiveness during the period the measures are applied.

The investigation should confirm the existence of a serious loss or a threat of loss caused by the increase of imports, taking into account objective and quantity factors, listed in Article 7 of Decree no. 1.488/95, regarding the situation of the affected domestic industry.

The Decree also provides that the demonstration of the serious loss will be based on objective evidence, as for example the increase of exports to Brazil, and not on simple allegations or remote hypothesis demonstrating the existence of causal link between the increase of imports and the domestic industry's deficit situation.

An adjustment undertaking should be made, with the purpose of developing the domestic industry by means of a restructuring program to be implemented during the period the measure is applied. The program will be presented by the domestic industry so that the competent authorities can evaluate whether it is adequate, and only then will it be taken on as an undertaking by the industry. The implementation of the program will be supervised during the period the safeguard measures are applied, so that in case it is not executed the measure will be revoked.

The request to apply safeguard measures can be made by SECEX itself, by

other interested government bodies and entities and by companies or associations that represent the affected industry, in writing, in accordance with the model elaborated by SECEX (Circular SECEX no 19 of 2 April 1996), presented with sufficient pieces of evidence, demonstratives of increase in imports, of serious loss or threat of serious loss to the domestic industry and the causal link between the two circumstances. The petition should also contain the proposal of the adjustment undertaking of the domestic industry.

It is DECOM's responsibility to examine the origin of the petitions for investigation launchings, and, in case it finds enough evidence to preliminarily determine the existence of serious loss or threat of loss due to the increase of imports, the launching of the investigation procedure will be determined by means of Circular SECEX, published in the Federal Official Gazette. The Ministry of Foreign Affairs must then notify the WTO's Committee on Safeguards about the launching of the investigation.

After the investigation begins, the interested parties have 30 days to request, in writing, hearings, where they will be given the opportunity to present pieces of evidence and respond to the allegations made by other interested parties.

In case a serious loss or a threat of serious loss is detected and a safeguard measure is applied, the Ministry of Foreign Affairs will notify the WTO's Committee on Safeguards of this decision and also of the Brazilian government's willingness to hold previous consultations with any government with substantial interest as an exporting country of the product in question. In this occasion, the available information will be examined in order to arrive at a conclusion regarding a possible compensation that the Brazilian government would have to provide in consequence of the application of a definitive safeguard measure, respecting the rights and obligations agreed to with the WTO.

It is important to note that a provisory safeguard measure can be applied after a preliminary determination of the existence of a serious loss or a threat of serious loss and of critical circumstances whenever a delay could cause injury that would be difficult to repair. The WTO's Committee on Safeguards will be

notified before the provisory safeguard measure is applied and the consultation with any government involved will be held immediately after the adoption of such measures.

By means of the so-called sunset review, the provisory safeguard measure will have effect up to two hundred days, and may be suspended before the determined due date. In case it is decided that definitive safeguard measures are to be applied, the period that the provisory measure were applied will be taken into account in the sum of the total period of effect.

Safeguard measures will be applied to the necessary extent, in the existence of serious loss or threat of serious loss to the domestic industry due to the increase of imports. Another requirement necessary for definitive measure to be applied is the approval of the adjustment program of the domestic industry and the realisation of the consultations with the governments of exporting countries with substantial interest.

The application of safeguard measures observes the principle of non selectivity by which the measures will be imposed on the imported product not taking into account its origin. However, with respect to developing countries, Chapter X, Article 12 of Decree no. 1.488/95 foresees a special treatment.

Article 9 of Decree no. 1.488/95 determines that safeguard measures will be applied during the period the domestic industry needs to prevent or repair the serious loss and to facilitate its adjustment, which will initially proceed for the maximum period of four years, except when extensions are granted.

In order to promote the development of the domestic industry, after a safeguard measure is applied for over one year, it will be progressively liberalised at regular intervals during its effect.

The period of safeguard application can be extended in case MDIC and MRE, by means of an investigation by SECEX, determine that the application is still necessary to prevent or repair the serious loss or serious threat of loss, and

that the adjustment undertaking is being properly executed and the WTO obligations are being followed.

The total duration period of a safeguard measure, including the initial application period and all its extension period, will not exceed ten years and its extension will not be more restrictive than the one which was in effect at the end of the initial period, therefore giving continuation to the progressive liberalisation during the new application period.

When applying safeguard measures or extending its effectiveness term, the Brazilian government will try to maintain an equilibrium in tariff concessions and other obligations taken on within the GATT 1994.

Governments of the countries with substantial interest as exporters of the product in question, will also have the right to respond regarding the case and to request compensations in case the measure is applied at the end of the investigation. The compensation request is justified by the fact that the application of a measure represents a temporary “rupture” in the equilibrium of tariff concessions and other obligations taken on within the ambit of GATT 1994.

Agreements can be made with respect to any appropriate form of commercial compensation for the adverse effects of the safeguard measure.

15.4. Administrative Appeals

Considering that Decree numbers 1.602/95, 1.751/95 and 1.488/95 do not foresee a specific appeal against decisions of merit given in commercial defence cases, Law no. 9.784/99, which regulates the administrative procedure within the Federal Public Administration is to subsidiarily be applied.

Under the terms of art. 59 of Law no. 9.784/99, the period given to present the Administrative Appeal is of 10 (ten) days, counting from the day the act is officially published.

Judicially, art. 13 of the Antidumping Agreement and art. 23 of the Agreement on Subsidies determine that Member States should have arbitrary, administrative or judicial tribunals for the revision of definitive measures or final decisions. In this case, the only requirement established in the Agreement is the independence and impartiality of the authorities responsible for the revisions, and no term is determined for this.

In Brazil, in spite of the provision contained in the Agreement, there is no specific provision for the revisions of antidumping cases. In any event, a Court Injunction presented to the Superior Justice Tribunal (STJ) is accepted against an act made by the president of CAMEX, which is the authority responsible for the Resolution CAMEX in case of applications of definitive measures or price undertakings.

In case of an act by the Secretary of Foreign Trade, such as the act which determines the launching of an investigation or its end without applying measures, the Court Injunction is the instrument which should be presented to the Federal Justice.

16. INTERNET AND E-COMMERCE

As in any kind of transaction, there are certain rules and regulations that are applicable to electronic business and its contracts. Electronic business in Brazil is already protected by general legislation such as the New Civil Code and its Introductory Law, the Consumer Protection Code, the Commercial Code, Intellectual Property legislation, and Copyright legislation. This general legislation provides validity to contracts (including electronic contracts) and as a result, electronic business transactions are widely performed in Brazil.

16.1. The Validity of Electronic Contrats

Regarding the validity of contracts (including electronic contracts) Article 104 of the New Brazilian Civil Code establishes that the validity of a legal act requires a capable party, a legal object and a form prescribed or not prohibited by law.

Insofar as international contracts are concerned, Article 9 of the Introductory Law to the Civil Code determines that the law of the country where the obligations are contracted shall govern disputes arising in connection with the contractual obligations. Obligations will be presumed contracted in the place of residence of the person proposing the contract.

Furthermore, the precise moment at which the contract was concluded must also be known. Under Brazilian law, if there is not a significant amount of time between the contract being proposed/offered and accepted, it will be considered as a contract between present parties, as determined by the New Brazilian Civil Code (Article 428), and therefore it will be considered to have been concluded on the date of its being proposed/offered. On the other hand, when a long period of time has elapsed awaiting a response to the proposal of the contract, then this will be known as a contract between absent parties (Article 434 of the New Brazilian Civil Code) and as such it will be considered to have been concluded on the date of its acceptance. On this basis, if the contract was established by means of an e-mail, for example, it will be considered to be the equivalent of a contract signed

through conventional mail (or between absent parties), whereas if the decision to make a contract takes place in chat-rooms, then it is considered to be a contract between present parties.

16.2. Consumer Protection

Another important aspect of electronic contracts in Brazil is that they are subject to the Consumer Protection Code, like all other contracts, as long as they involve some aspect of consumption.

There is still some controversy as to the application of the Brazilian Consumer Protection Code when the supplier of goods/services is domiciled abroad. Nonetheless, it is by and large accepted that international electronic contracts are qualified by the proviso that mandatory laws (laws that cannot be derogated from by contract) of the countries in question may be applied. Accordingly, the Consumer Protection Code, as a mandatory law, applies to the international electronic contracts in connection with Brazilian consumers.

16.3. Privacy Online

Much has been discussed about privacy online. Currently, however, there is no specific regulation protecting Internet users personal data in Brazil.

Notwithstanding the above, the Brazilian Federal Constitution, the Consumer Protection Code and the Banking Law, determine that anyone that violates the privacy, the private life, honour and image of others, have to indemnify for the material and moral damages caused.

16.4. Security Online

‘ICP-Brasil’, the Brazilian Public Key Infrastructure (PKI), was created by the federal government through the provisional measure n. 2.200-2/01 in order to ensure the authenticity, integrity and legal validity of electronic documents and signatures. This new regulation sets out the framework for

electronic authentication and public key certification which in turn were based on the “United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures”.

Such Public Key Infrastructure (PKI) includes a rule making authority called ‘ICP-Brasil Management Committee’ and a certification authority network.

16.5. Domain Names

16.5.1. Registration of Domain Names

There has been a growing interest in the registration of a domain name with a “.com.br” top domain level and until recently only companies established in Brazil, and therefore companies that were holders of a CNPJ (Brazilian Federal Taxpayers’ Registry) number, could register such a domain name. Nevertheless, FAPESP (the Brazilian agency responsible for the registration of Internet domain names) issued rules that also allow foreign entities without a CNPJ number to register a domain name with a “.com.br” top domain level.

Under these rules, a foreign entity aiming to register a domain name without a CNPJ number, has to nominate an attorney-in-fact who is both legally established in Brazil and registered with FAPESP. Furthermore, the foreign entity must provide its attorney-in-fact with the required documents which shall be delivered to FAPESP. Afterwards, FAPESP will grant a temporary identification number to the foreign entity, which, for the purposes of the registration of the domain name, shall be the temporary substitute of the CNPJ.

During the registration of the domain name with FAPESP, the attorney-in-fact, on behalf of the foreign entity, must designate the people who will be responsible for the communication between the foreign entity and FAPESP, also referred to as the ‘IDs’. Such ‘IDs’ include the administrative ID; the technical ID (used for posting or deleting content from the Web Site at that address) and the institutional ID (used to represent the company in proceedings with FAPESP).

FAPESP's main objective through these rules is to allow foreign entities to be able to register a domain name with a “.com.br” top domain level. The registration process is still somewhat bureaucratic, but it is the first step towards spreading such domain names around the globe.

16.5.2. Trademarks Versus Domain Names

Third party registration of domain names that reproduce or imitate well-known trademarks with the aim of obtaining profits from the sale of these domain names to the respective trademark owner (“cybersquatting”) is becoming, unfortunately, a very common practice.

This practice is increasing in Brazil due to the criterion adopted to confer a domain name, which is based on the principle that the first applicant who satisfies, at the time of the request, the registration requirements of Resolution n. 1 of 15 April 1998 of the Brazilian Internet Management Committee will be the domain name titleholder. This criterion is known world-wide as “first come, first served”.

The “first come, first served” criterion is inefficient as to the protection of consumer relations and well-known trademark holder's intellectual property rights, especially due to the lack of obligation to prove that the trademark was registered before the competent government body, the Brazilian National Industrial Property Institute (“INPI”).

Currently, there is no specific legislation that guarantees trademark holders ownership of domain names, and this creates disputes between the parties involved. As a result the trademark holders resort to the Judiciary or to Arbitration Courts to resolve the issue.

16.6. Internet Banking

In relation to Internet banking, there is no specific law or regulation in Brazil concerning this subject. Thus, the same regulations and controls that are

applicable to traditional banking operations are currently applicable to banking products and services offered through the Internet.

Resolutions n. 2.817/01 and n. 2.953/02 from the Brazil's National Monetary Council, established the rules regarding the opening of new current accounts by electronic means (including the Internet). According to such rules, financial institutions, when opening a new current account through the Internet, do not need to examine original counterparts of the relevant documentation. These new bank accounts may only be opened by individuals and legal entities that are resident and domiciled in Brazil and that already have a current account opened in the original institution or in any other financial institution. Despite the exceptions to the formalities for opening a new current account by the Internet, the manager and the director of the financial institution are not discharged from their responsibility to ensure the true identity of the account holders. Furthermore, the director of the financial institution must still comply with all regulations in force, including the responsibility to carry on the applicable proceedings regarding the prevention and avoidance of money laundering crimes.

As for the liability of the bank, according to Brazilian legislation, the bank is deemed to be fully responsible for any damages or losses that the client may suffer from the normal performance of its banking operations (including Internet banking). This liability still applies if the bank was not negligent or imprudent and was not responsible for the specific event that caused the damage to the client. Thus, banking institutions in Brazil are bound to the so called "strict liability", regardless of the occurrence of any fault by the bank.

16.7. Purchase and Sale of Securities through the Internet

On 23 December 2002, the Brazilian Securities Commission "CVM" enacted Instruction n. 380, which revoked Instruction n. 376 of 11 September 2002 and improved on the rules to be followed by electronic brokers when purchasing and selling securities through the Internet.

Instruction n. 380 defines electronic brokers as securities and commodities brokers authorised by CVM to deal with securities within self-regulatory organisations

that are able to receive orders from their clients through the Internet.

Pursuant to this Instruction, self-regulatory organisations are defined as stock exchanges, commodities and futures exchanges and over-the-counter markets, which operate trading systems that receive orders through the Internet.

Moreover, pursuant to Instruction n. 380, electronic brokers' Web Sites must contain: (i) details on how to place an order to purchase or sell securities through the Internet; (ii) the prices of the securities, including the 10 (ten) best available prices, as well as the time when such prices were released; (iii) the costs and fees charged for each operation, including fees charged by self-regulatory organisations or by settlement systems and clearing houses; (iv) the procedures to be followed by the electronic broker when placing its client's orders received via the Internet; (v) details concerning the way in which the electronic broker issues an advice of execution to its clients; (vi) details on the security of the Information Technology "IT" systems, including the use of password and electronic signatures; (vii) the amount of time a client may be connected to the trading system without placing orders; and (viii) a direct link to the CVM's Web Site.

In addition, it was established that electronic brokers' Web Sites must inform their clients of, including, but not limited to: (i) the structure and function of the securities markets and their operational risks; and (ii) the power of self-regulatory organisations to cancel trade in view of any breach of the law and regulations.

Furthermore, Instruction n. 380 determines that electronic brokers must periodically audit their IT systems with the objective to certifying their capacity when processing client's orders. All orders, whether executed or not, must be electronically recorded for a period of 5 (five) years. In addition, those brokers must have contingency plans for peak time periods.

A final point to note is that Instruction n. 380 is in accordance with the recommendations of the International Organisation of Securities Commissions "IOSCO". Accordingly, the new rules aim to show to foreign investors that the commitment of the Brazilian regulator is to follow international market trends.

17. FILMING IN BRAZIL

17.1. The Evolution of Brazil's Film Industry

Brazil's cultural diversity has been reflected in its film industry, which began to attract international attention with the cinema novo (new cinema) movement of the mid-1950's. Since that time, Brazilian films, such as Fábio Barreto's "O Quatrilho" (1996), Walter Salles' "Central do Brasil" (Central Station) (1998) and Fernando Meirelles' acclaimed "Cidade de Deus" (2002), have often been recognised for the quality and originality of their production. This recognition has included a number of highly successful short-length movies and documentaries. Since 1996, more than 30 Brazilian documentaries, including Paulo Sacramento's award-winning *The Prisoner of the Iron Bars*, have been shown in movie theatres to a total audience of almost 1 million viewers. The Brazilian film industry has become a frequent participant in many renowned international festivals, including the Cannes Film Festival, the Sundance Film Festival, and the International Film Festival in Berlin.

In the last ten years, the Brazilian government implemented two new tax policies, known as the AudioVisual and Rouanet Laws, which provide financial incentives for film production. In addition, the government has entered into several international agreements and treaties intended to foster international co-operation in the production of films. Aided by these new policies, Brazil has entered into an era known as the "Return of Brazilian Cinema" in which Brazilian Cinema has achieved unparalleled success and domestic and international investment in Brazilian film and video production has grown exponentially.

17.2. Filming Done Directly by a Foreign Production Company

If the amount of production in Brazil is minimal (if, for example, a music video is being filmed), or if for other reasons a foreign production company does not wish to enter into an agreement with a Brazilian production company or establish itself in Brazil, the filming can be done directly by the foreign production company. In such a case, some tax benefits will be unavailable, and the production company is responsible

for meeting all legal requirements (including obtaining work visas and permissions to film) and arranging for logistical support (hotels, equipment, etc.).

17.3. Service Agreement with a Brazilian Production Company

A foreign company can opt to produce a film by engaging the services of a production company in Brazil, this will make it easier to navigate through bureaucratic hurdles and accelerate the production start up, while retaining complete control over the production itself.

17.4. Joint Venture with a Brazilian Production Company

Another option is entering into a joint venture with a Brazilian production company. There is no need to establish a new organisation in order to form a joint venture: the joint venture does not have a legal status separate from its participants; the participants contract rights and obligations individually for the common benefit of the group. A joint venture agreement is a simple contract that clearly defines all of the obligations and rights of the parties.

17.5. Establishing a Production Company in Brazil

Where a foreign production company intends to film a large-scale production involving a sizable cast and crew or to produce a number of films in Brazil over an extended period of time, it is may be best to establish an independent legal entity in Brazil.

Under Brazilian Civil and Commercial Laws, a number of different legal entities can be formed, without any requirement that the shareholders and/or partners be residents of Brazil (the entity should, however, have a resident director or other representative in Brazil.) These include:

- (a) the unlimited partnership (“Sociedade em Nome Coletivo”);
- (b) the limited partnership (“Sociedade em Comandita Simples”);

- (c) the partnership with ostensive/silent participation (“Sociedade em Conta e Participação”);
- (d) the limited liability company by quotas (“Sociedade por Quotas de Responsabilidade Limitada” (LTDA.));
- (e) the branch of a foreign company (Filial) and
- (f) the corporation (“Sociedade Anônima” (S.A.)).

17.6. Investment in Brazil: Foreign Capital and the Exchange Market

Whether a foreign entity is filming a production in Brazil or investing money in (or providing other assets to a Brazilian production company), capital invested in the project will be governed by Brazilian law.

Foreign capital, defined as either (1) “funds brought into the country to be used in economic activities,” or (2) “any goods, machinery and equipment that enter Brazil . . . and are intended for the production of goods and services,” is governed by Laws 4.131 (the Foreign Capital Law) and 4.390, of 3 September 1962 and 29 August 1964, respectively. Both laws are regulated by Decree 55.762 of 17 February 1965, as amended.

While no preliminary official authorisation is required for remittances of funds into Brazil, the law requires that direct foreign investments be registered with the government by the foreign investor or the Brazilian company within 30 days. Only when registration is complete is the foreign investor permitted to remit profits and dividends abroad or to repatriate foreign capital invested in Brazil.

17.7. Tax System

17.7.1. Federal Taxes

The basic rate of taxation on income or corporate profits (including capital

gains) as adjusted for tax purposes is 15% with an additional surtax of 10% on taxable profits exceeding R\$ 240,000 (approximately US\$ 80,000) per annum.

17.7.2. Relevant State and Municipal Taxes

ICMS is the main state tax. It is imposed on operations related to the circulation of goods, including importation, interstate and intermunicipal transport and communication services. The average rate is 18%.

ISS is a municipal tax levied on the rendering of certain services. The average rate is 5%.

17.7.3. Social Contributions

In addition to taxes, there are a number of monthly contributions employers in Brazil must make: the Contribution to the Social Integration Programme (PIS) (1.65% of net sales); the Social Contribution on Profit (CSSL) (9% of taxable profit); the Social Contribution on Billing (COFINS) (3% of net sales); the Social Security Contribution (INSS) (20% of employer payroll (employee must also contribute an average of 9% his/her salary), and the Provisional Contribution on Financial Transactions (CPMF) (0.38% of most financial transactions).

17.8. Labour Law in Brazil

The Brazilian labour legislation is essentially regulated by Law-Decree 5.452 of 01 May 1943, the “Consolidação das Leis do Trabalho” (CLT).

According to Article 443 of the CLT, employment agreements can be either written or implied, but certain basic employee rights and employer obligations (such as minimum compensation, severance pay, and vacation) are prescribed by law. Once the employee has been hired, the employer is legally required to follow these labour regulations, they cannot be negotiated between the parties. (The Brazilian judiciary has, however, demonstrated a tendency in recent judgements toward accepting more flexibility in the employment relationship.) Note that it is

possible to hire temporary workers, through an employment agency, with no direct employer-employee relation.

17.9. Financial Incentives for Producing Films in Brazil

Two tax initiatives implemented by the Brazilian government have stimulated the development of the country's film industry by creating tax incentives that make investments in film productions more attractive to the private sector. International co-productions allow foreign entities to participate in Brazilian film, television and video projects and to receive the benefits of these tax policies.

17.9.1. Lei do Audiovisual (AudioVisual Law)

The "AudioVisual Law" (Federal Law 8.685/93, modified by Provisional Law 2.228/01, and further regulations), allows individuals and corporations to invest a portion of their income tax (3%), as deductible expenses, with a limit of 3 million reais per project, in Brazilian film, television or video projects, thus offering the possibility of making a profit with no risk. In other words, individuals and corporations have the option of paying their taxes to Brazil's Ministry of Finance or investing a percentage of these taxes in a film. In order to qualify for investments under the AudioVisual Law, the project must have received prior approval from the Brazilian National Agency of Cinema (ANCINE).

In addition, Article Three of the AudioVisual Law allows foreign film distributors in Brazil to invest up to 70% of any tax due on earnings, profits or other payments in Brazilian film productions (the subsequent production(s) must have received prior approval from ANCINE).

The AudioVisual regulations also provide for a total exemption from the CONDECINE ("Contribuição para o Desenvolvimento do Indústria Cinematográfica" - Contribution for the Development of the Cinematographic Industry). The CONDECINE is a 11% tax on all royalty payments (including copyright) remitted abroad. The exemption applies only if the foreign entity has invested at least 3% of its total investment in Brazilian film projects. In May 2003, this benefit was extended to

cable television companies for international programs produced in Brazil and to international co-productions involving a Brazilian company.

17.9.2. Lei Rouanet (Rouanet Law)

The Rouanet Law (Federal Law 8.313/91 and Decree 1.494/95), gave individuals and corporations – for the first time in Brazil’s history – a tax credit for investments in the cultural field. The law provides for an income tax reduction of up 4% for companies (6% for individuals) that either sponsor or make a donation to a Brazilian film, television or video production. The reduction is based on the total amount provided to the production. The donation or sponsorship must comply with the National Program of Cultural Support and the production must have received prior approval from Cultural Ministry (or ANCINE for short length movies).

In addition, it is also possible for entities to add up to 40% of any donation made to a qualifying Brazilian production, or up to 30% of any sponsorship of a qualifying production, to their operating expenses, thus increasing the entity’s operational expenses deduction.

17.10. International Treaties and Agreements

Brazil has film co-production treaties with Argentina, Canada, France, Germany, Italy, Portugal and Spain. In addition, on November 11, 1989, Brazil, Argentina, Colombia, Cuba, Ecuador, Nicaragua, Panama, Venezuela, Peru, Mexico, the Dominican Republic and the United States signed the Acuerdo Latinoamericano de Coproducción Cinematográfica (the Latin American Agreement on Film Co-production). These treaties establish the terms which, when met, enable international co-productions to qualify for various types of governmental support, assuring that co-produced material is eligible for investor tax credits.

17.11. Legal Requirements for Film Production in Brazil

In order to produce films, videos or television programs in Brazil, certain

legal requirements must be met: work visas must be obtained for any foreign cast or crew members from the Ministry of Labour, permissions to film must be obtained from the proper authority(ies), and provisions must be made to import any required production equipment.

17.11.1. Visas for Foreign Production Crews

Foreign citizens are permitted to engage in paid activities in Brazil provided that a work visa has been issued by the Ministry of Labour. The visa may be temporary or permanent, the duration will depend on the type of visa and on the activities.

Foreign production companies unaffiliated with a Brazilian production company must apply directly to the Ministry of Labour for visas for members of their production crew and cast. Unfortunately, the procedure is bureaucratic and takes some time.

When a foreign production company is either affiliated with a Brazilian production company and/or employs a cast and crew of which 33% are Brazilian, visas for any foreign production crew or cast members can be obtained by the Brazilian company through ANCINE. After the necessary information is provided, ANCINE will provide an authorisation to film in Brazil and will forward all necessary information to the Ministry of Foreign Affairs, which will then authorise the consulate(s) to issue the visas. The consulate will issue temporary work visas, the period of which can be expected to be compatible with the film production schedule.

17.11.2. Permission to Film

As noted above, when a foreign production company is associated with a Brazilian film company (or employs a cast and crew of which 33% are Brazilian), ANCINE provides both visas and an authorisation to film in Brazil. Unaffiliated foreign production companies must not only apply to the Ministry of Labour for visas, they must separately apply to ANCINE for an authorisation to film in Brazil.

17.11.3. Temporary Importation of Production Equipment

While production equipment (cameras, lights, etc.) can be rented or purchased in Brazil, Brazilian law also authorises the temporary importation of foreign equipment for a limited period.

18. MISCELLANEOUS

18.1. Public Bids

Public bidding in Brazil has a long and distinguished history. In 1592, the Philippine Ordinance proclaimed that no public works could be awarded without first holding a bid to determine the best technique and price. During the First Empire, at the beginning of the 19th century, Law 29 of August 1828 provided that a tender must be made to the private sector to ascertain which enterprise has the best offer for public works. Law 4.401 of 10 November 1964 established the first norms for public bidding as indicative of the procedural format for procurement of goods and services.

Decree-Law n. 2.300 of 21 November 1986 became the principal legal document regulating federal public bidding and contracts. The 1988 Federal Constitution provided for the extension of Decree-Law 2.300/86 to the state and municipal levels.

The enactment of Federal Law 8.666 of 22 June 1993 (“Public Bid and Contracts Law”) was a landmark in four centuries of Brazilian procurement legislation and a considerable political institutional advance. Soon amended by Law 8.883 of 08 June 1994, a further bill was issued on 19 February 1997 purporting to substitute Law 8.666/93, without doing so however. Law 8.666/93 was finally amended through Law 9.648 of 27 May 1998.

18.1.1. International Competitive Bidding

International competitive bidding is the formal bidding procedure whereby Brazilian and foreign companies bid for government procurement. Law 8.666/ 93, as amended by Law 9.648/98, determines that the Central Bank of Brazil and the Ministry of Finance are responsible for formulating its rules. Article 37 of the 1988 Federal Constitution provides that the principles of legality, impersonality, morality, equality, publicity, administrative probity, conformity to

bid notice requirements, amongst others, are to govern the bidding procedure comporment generally.

Foreign companies, i.e., those not operating in Brazil, are allowed to participate in the competitive bidding process under the same conditions as Brazilian companies and also in certain instances in association with Brazilian companies. A foreign company involved in the bidding process must demonstrate that its activities conform with the rules of its own country. It must also demonstrate that its status as a technical, manufacturing or commercial company meets the technical and financial capacity and other conditions established in the official bid notice publication.

Generally, documentary proof must be submitted evidencing legal, technical, economic and financial eligibility, as well as good standing with the relevant tax authorities. Such proof must be submitted in the original, certified by a notary office, the bidding agency or be officially published. Waiver of such requirement is possible in cases of, inter alia, invitation to bid and contest bidding. Further to maintaining a legal representative in Brazil with express powers to receive services of process and answer in both administrative and judicially, under Article 32 of Law 8.666/93 foreign companies must meet these same requirements ‘as fully as possible’ by submitting equivalent documentation, translated by a sworn public translator and certified at a Brazilian consulate with jurisdiction.

Regarding specific compliance factors, as between associated or consortia companies, the parties to the bidding process must: evidence an association agreement, executed by means of a private instrument or public deed; indicate the head company of the association, which shall meet the conditions to the bid invitation; and present evidence of the following: (i) legal capacity; (ii) technical capacity; (iii) financial standing; (iv) tax situation. In the case of a foreign company not operating in Brazil, the same must evidence its association with a Brazilian company. No associated company can participate in the same bidding individually or with other non-associated companies. In an association between Brazilian and foreign companies, the leadership shall always be vested in the Brazilian company (Article 33 of Law 8.666/93).

For bid award purposes, under Article 42 of Law 8.666/93 foreign bids amounts shall include an amount equivalent to the taxes payable by Brazilian bidders on the transaction. Under Article 3 of Law 8.666/93, a preference is applied in favour of Brazilian in the case of a tie bid on goods and services produced or rendered by Brazilian domestic capital companies, produced in Brazil or otherwise produced or rendered by Brazilian companies. Note that, significantly, as of 15 August 1995, by Amendment Number 6 to the 1988 Constitution, which revoked legislative provisions restricting foreign capital, a Brazilian company constituted under Brazilian laws with headquarters and administration in the Country can operate upon Brazilian authorisation and concession, thus allowing for direct foreign investor participation.

Regarding the bidding particulars as provided by the Public Bid and Contracts Law, a formal request for quotation is made regarding appropriate qualification within 3 days of the scheduled bid receipt date. The invitation to bid calls for at least 3 interested parties, must occur at designated place and be valid for other potential bidders should they make their intended participation known at least 24 hours before placement of the bids. The bidding contest itself calls for the bidders to submit their supporting materials towards the decision after which the winner is pronounced, according to the terms officially published at least 45 days beforehand. And should an auction take place, the sale of assets no longer of use to the Administration or products legally seized are sold to the highest bidder.

Under the Public Bid and Contracts Law, bids may be waived in case of war, turmoil, emergency or public calamity; whenever the bid cannot be repeated without prejudice to the Public Administration; whenever the bids are placed at a price clearly exceeding that of the domestic market or inconsistent with the official prices as established; for acquisition by domestic public entities of goods or services rendered by bodies or agencies of the Public Administration especially created for that purpose; or for national security reasons, established by Decree of the President of the Republic after a hearing of the National Defence Council. Bids are considered “inapplicable” if competitive conditions are absent, such as when material, equipment or items can only be supplied by the manufacturer/

producer of an exclusive commercial agent or company or in the case of the contracting of specialised technical services.

18.1.1.1. Import Procedures Related to International Competitive Bidding

The Department of Foreign Commerce (“Departamento de Comércio Exterior” -DECEX) is the Brazilian agency responsible for regulating import and export, inclusive of governmental, and issuing import and export licenses. Its import investigation department verifies the need for import in the case a Brazilian company offers the same equipment and payment conditions. In said investigation, the foreign company that wins the bid must present to DECEX, either previously or together with its import license application, a report containing certain information, such as:

- (a) the date the award was approved by the competent authority;
- (b) the date of its publication;
- (c) the list of the other qualified bidders;
- (d) the prices of all the bid proposals; and
- (e) a declaration on behalf of the company stating compliance with the rules related to the bid.

(Communique CACEX “Carteira de Comércio Exterior” n. 204/88). It is worth noting that this Communique was revoked by DECEX Administrative Directive n. 8 of 13 May 1991. However, due to the lack of new rules being drafted in this respect, the above is still applied by DECEX.

Lastly, after its investigation, DECEX will either approve or deny the import request. Should such request be approved, DECEX will authorise issuance of the import license.

18.1.2. Electronic Procurement

Electronic procurement is also emerging as a means of connecting government buyers to suppliers. The Unified System of Registration of Suppliers (SICAF) is an on-line data bank created by the Ministry of Planning, Budget and Administration to de-bureaucratise and simplify the registration of suppliers to the Federal Government.

The primary purpose of SICAF is to register and partially qualify natural and legal persons to participate in public bids held by entities at levels of the Public Administration. The benefits of SICAF to suppliers include the following:

- (a) sole registration within the Federal Public Administration nation-wide;
- (b) de-bureaucratising the registration and partial qualification process;
- (c) reduction of the amount of documents to be presented for each bid;
and
- (d) reduction in the costs of maintaining the registration of the company before the entities of the Federal Government.

Suppliers interested in supplying goods or services to the Federal Government should register with the General System of Services -SISG. Registration is valid for 1 year and proof of registration is provided by publication of the act in the Federal Official Gazette.

The Federal Government on-line buying system - ComprasNet - was developed and is managed by the Secretariat of Logistics and General Services. Parties may obtain on-line information concerning all bids anywhere within the Federal Government including the following:

- (a) Bids - consultation on-line of all items that make up the bid and quantities;

- (b) New Bid Notices - download of all bid notices in progress;
- (c) Preferential Lists - of information concerning bids by material/service or location;
- (d) Classified Lists - guides for buying options;
- (e) Consult Supplier List Data - follow-up on the status of suppliers registered with SICAF;
- (f) Download of Lines of Material and Service Supply - complete copies obtained on-line.

A CompraNet web site also contains information on the suppliers registered with the System of General Services -SIASG.

Through the Secretariat of Logistics and General Services policies relating to the administration of material, works and services of the Federal Government are formulated, promoted and implemented. Included in these activities are directives on public bidding and administrative contracts with the Federal Government.

18.2. Immigration

18.2.1. Convenience Policy

The permanent visa is one of the types of entry visas foreseen in the Law of Aliens. (Law 6.815 of 19 August 1980).

According to Article 16 of this Law, a foreigner who wishes to reside in Brazil may obtain the permanent visa. However, such an application will be closely scrutinised by the immigration authorities to determine whether such immigration is desirable for the Country.

Under the “convenience policy”, the authorities will consider whether the

immigration will bring in specialised manpower, as defined by National Development Policy, whether it will provide the Country with an increase in productivity or with the transfer of new technologies, as well as whether it will stimulate investment in specific areas.

The primary purpose of this convenience policy is to protect the national labour force and to restrict immigration to only those foreigners who can contribute to the Country's development.

Brazilian immigration authorities implement this policy by filtering the applications for permanent visas and selecting only those of foreigners who, by their expertise, will contribute to the development of the Country, and at the same time, will not deprive a Brazilian worker of employment.

Brazilian authorities favour applications related to intercompany management transfers, but any company in Brazil may offer employment to an alien applying for residence in the Country, provided the link between the Brazilian company and the foreign company (the employee's company) can be confirmed.

The personal qualifications of the alien applying for the permanent visa must be closely related to one or more of the objectives of the Brazilian company intending to bring in the manpower.

The permanent visa can only be obtained, except in very special cases, at the Brazilian Consulate in the jurisdiction where the foreigner has resided for at least 1 year before visa application.

18.2.2. Resolution n. 28

The National Immigration Council, in the performance of its legal duties, promulgated Resolution n. 28 of 25 November 1998 regulating the granting of resident visas to foreigners intending to settle in Brazil, and promoting the investment of financial resources in activities contributing to Brazilian national development.

The laws governing the investment of foreign capital are designed to increase productivity levels, technology transfer, and distribution of resources to specific economic areas and create new employment.

The initial minimum investment for the granting of a resident visa must be the equivalent in the national currency (reais) of US\$ 200,000.00, invested in a new enterprise or in an existing active company.

Extraordinarily, the National Immigration Council may authorise the granting of resident visas to foreigners whose investment project creates at least 10 new employment positions or is of a socially relevant interest, although the initial minimum investment may be less than US\$ 200,000.00.

The resident visa will be conditional upon the actual initiation of the proposed enterprise. The project should be presented in detail, specifying its employment-generating capability, manpower utilisation and schedule fulfilment.

18.2.3. Ministerial Order n. 132

According to Article 3 of Ministerial Order n. 132, of 21 March 2002, the foreigner will have a term of ninety (90) days, counted from his admission into the country, to provide proof to with the Immigration Co-ordination General of his enrolment with the PIS/PASEP and with the CPF/MF (Federal Taxpayers Register), as well as with the Professional Class Board, in the case of a regulated activity.

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