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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INDEX

LEGAL GUIDE: BUSINESS IN BRAZIL

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 re-democratisation 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 antidumping 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 became 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 NORONHA ADVOGADOS.

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 of 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 6th 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 new 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

VII. INTRODUCTION TO THE SEVENTH EDITION 2008

It has been 15 years since the first edition of Business in Brazil: Legal Guide was published. During this times Brazil has taken great strides towards increasing the prosperity of its people and has made improvements as a nation despite all the political, social and economic problems it has faced. As a matter of fact, such problems reflect the Brazilian society´s struggle to preserve its heritage and culture whilst improving its way of life under the rule of Law.

The introductions to the past editions of Business in Brazil: Legal Guide provide a good notion of the advances made by the nation:

a) the introduction to the first edition (1992) noted that the country had just undergone its re-democratisation, with the enactment of the 1988 Federal Constitution, thus providing the necessary institutional climate for economic activity;

b) the introduction to the second edition (1996) underlined the enormous transformation to the Country's legal structure, noting the enactment of a new Competition Law, the liberalisation of the Brazilian financial system and the country's inclusion in the major foreign trade issues;

c) the introduction to the third edition (1998) showed the country immersing itself in its privatization programme as well as the enactment of other important laws such as those relating to the protection of Intellectual Property, arbitration and commercial defence;

d) the introduction to the fourth edition (2000) describes the further liberalization of the Brazilian legal environment in many areas such as insurance, taxation, company law, foreign

exchange, competition law, energy law, labour law, consumer protection, social security and banking.

e) due to the short period of time since the previous edition, the introduction to the fifth edition (2001) reflects on the finalisation of this liberalization in various legal areas;

f) finally, the introduction to the sixth edition (2003) reports on a major legal change, the enactment of a new Civil Code, and gives an indication of the legal developments in new or expanding areas of business activities, such as the e-business, entertainment and sports.

It is no wonder that, after these considerable efforts, Brazil is now experiencing a a period of good fortune which benefits not only its people but also those of other nations who have been interacting with and profiting from the current Brazilian business environment.

Even though the ever changing legal environment is a constant phenomenon in a democratic nation, the most important laws for modern Brazilian society had already been established before the 2003 edition of this book and it is due to this that four years have passed since the last edition. Additionally, we have expanded the range of legal matters by covering the topics of Maritime, Aviation and Agrarian Law, so as to satisfy the respective interests in these areas of an ever expanding group of businessmen and governmental agents.

We are confident that this seventh edition of Business in Brazil: Legal Guide will be well received by those who wish to do business in or with Brazil and we are proud that the team at NORONHA ADVOGADOS is capable of following *pari passu* the legal transformation Brazil has undergone through these years and that we can offer this important tool to understand the same.

São Paulo, November, 2007

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, as demonstrated by the Brazilian Institute of Geography and Statistics ("Instituto Brasileiro de Geografia e Estatística" – IBGE) in 2007:

São Paulo	–	11,016,703 inhabitants
Rio de Janeiro	–	6,136,652 inhabitants
Belo Horizonte	–	2,399,920 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. Investments in tourism in the Northeast have also been increasing in a steady pace.

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 189,285,828 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 Law no. 4.131 (the Foreign Capital Law) of 03 September 1962 and the respective subsequent amendments. The referred law is regulated by Decree n. 55.762 of 17 February 1965, as amended.

The law defines foreign capital as "any goods, machines and equipment coming into Brazil with no initial foreign currency expense, for the production of goods or services, as well as financial and monetary funds coming into Brazil to be invested in economic activities, provided that in both cases these assets belong to individuals or legal entities either domiciled or headquartered abroad." (Law n. 4.131/62).

Until March, 2005, the exchange markets in Brazil were (i) the "Commercial Floating Exchange Rate Market" and (ii) "Tourism Floating Exchange Rate Market".

On 04 March, 2005 the National Monetary Council issued Resolution n. 3.265, whereby the "Commercial Floating Exchange Rate Market" and the "Tourism Floating Exchange Rate Market" were merged into a single Exchange Market.

The single Exchange Market encompasses:

(i) transactions involving either the purchase or the sale of foreign currency;

(ii) transactions involving national currency between residents in Brazil and residents abroad; and

(iii) transactions involving other exchange mechanisms, carried out through the intermediation of institutions authorised by

the Central Bank of Brazil to operate in the single Exchange Market.

In addition, Resolution n. 3.265/05 established that any individual or company can purchase and/or sell foreign currency or perform international transfers of Brazilian currency, of any nature, without any limitation in amount, observing the legality of the operation, including its taxation aspects, as long as the economical basis and the respective responsibilities are set out in the documents of the respective transaction.

Accordingly, the Central Bank of Brazil enacted Circular n. 3.280/05, by which it issued the "International Capital and Foreign Exchange Market Regulation" (RMCCI). Additionally, since the enactment of Circular n. 3.280/05, RMCCI has been constantly updated.

Likewise remittances from a foreign country to Brazil, remittances originating from Brazil must be processed through institutions authorised to operate with foreign exchanges under the supervision of the Central Bank.

1.2. The Central Bank of Brazil and the Foreign Capital

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 or out of 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 of such capital, profits, dividends, interest, amortisation, as well as royalties for payment of technical assistance, or by means of any other title which represent the transfer of earnings to a foreign country;

(c) reinvestment of foreign earnings; and

(d) capital increases of companies, effected in accordance with the law in force.

Foreign capital is registered in the currency received in Brazil and, in the case of financial imports and investments in the form of goods, in the currency of the location 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, but only if a previous approval is granted by the Central Bank.

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.

Repatriation of foreign capital invested in Brazil is also permitted at any time up to the limit of the amount registered with the Central Bank, which may request an assessment report prepared in accordance with the prevailing regulation, as well as other information as it may think relevant for the perfect characterization of the operation and assessment of the reasonability of amounts involved.

For foreign investment in a financial institution and institutions authorised by the Central Bank of Brazil, the registration shall need a prior opinion of the Financial System Organization Department (DEORF) of the Central Bank of Brazil.

For new foreign investment in Brazilian companies in Brazilian currency, the registration shall also be made with the Central Bank of Brazil.

1.3. Foreign Direct Investment

1.3.1 Cash Investments

No preliminary official authorisation is required for remittances of funds relating to investments in Brazilian territory. Such funds can be used to subscribe for 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 of Brazil issued the present rules on the registration of foreign investments in Brazil. According to Central Bank of Brazil Circular n. 2.997/00, a 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 of Brazil (SISBACEN). Such RDE-IED number must be indicated in the exchange agreement relating to the foreign direct investment.

The Brazilian company must then register the foreign direct investment before the Central Bank of Brazil through the SISBACEN RDE-IED system within 30 days from the closing of the exchange agreement. In the case of reinvestment of profits, within 30 days from the date the capitalisation of the profits is effected by the Brazilian company.

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.

1.3.2 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 a conversion the Central Bank of Brazil requires the following documents:

(a) "Declaration by Creditor" whereby the foreign creditor confirms and specifically acknowledges the respective 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.

1.3.3 Capital Contribution through the Import of Goods without Exchange Coverage

Capital investments made by importing goods without exchange coverage require registration with the SISBACEN and the Electronic System of Foreign Trade (SISCOMEX). The investments in the form of goods shall be registered with the Central Bank of Brazil within 90 days from the entry of the goods.

1.4. Stock and Securities Market

The markets are regulated by the stock exchanges and a governmental agency, the Securities Commission (CVM), under the Ministry of Finance and the National Monetary Council (CMN), with the 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.

There are three different categories of operations at 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 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 a seller and buyer agree on the value of a purchase and sale of shares to be effected in the future. The seller must deposit the full value 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 is the so-called financial futures.

1.4.1 Foreign Investors in the Stock Exchange in Brazil

The foreign investors (ordinary and qualified) are able to invest in the same products that are available to the resident investor in Brazil.

According to Resolution 2.689/2000 of the National Monetary Council (CMN), the foreign investor is obligated to contract an institution that will work as his legal representative, as his legal representative before taxes authorities, and also as custodian of the investor's securities.

The legal representative is responsible for giving all the register information that is required to the Brazilian authorities. If the representative is neither an individual registered with the Central Bank to operate in the financial markets nor a financial institution, the foreign investor has to contract a financial institution dully authorized by the Central Bank of Brazil, to be co-responsible for the accomplishment of the investor's obligations. Many financial institutions are authorized by the Securities Commission (CVM) and by the Central Bank of Brazil to work custodians for foreign investors, legal representative and legal representative before taxes authorities.

The custodian is responsible for updating the documents and controlling all the assets of the foreign investor in separate bank accounts. The custodian also has to supply any information required by the Brazilian authorities or by the foreign investor.

Additionally, the foreign investor will then choose a stock-broker to represent him and to execute his orders. In Brazil there is no minimum period to keep investments in the Stock Exchange.

It is also important to mention that the foreign capital invested in the country has to be registered by the Central Bank of Brazil, as already described on item 1.2 above.

1.5. Foreign Loans

Loans in any currency are made by remittance from the foreign source to Brazil for conversion into the Brazilian currency – the Real ("Reais", the plural).

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 relating to the transaction with the Registry of Financial Operations (ROF) of the Electronic Declaratory Registry (RDE) of 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 for the international remittance of national currency relating 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 registration of the payment scheme in 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. It is important to note that when the foreign loan comes from a "tax heaven", the withholding tax at source shall be paid in the amount of 25% on the remittance of interest.

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 BNDES – 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 both more and less 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 at ROF issued by the Central Bank of Brazil to any Brazilian commercial bank authorised to operate in foreign exchange.

1.6. "Contaminated Capital"

Despite the procedures mentioned above, there are cases in Brazil in which the foreign capital, either foreign direct investment or foreign credit, due to any reason, has not been registered before the Central Bank of Brazil, even though it is accounted for in the balance records of the respective Brazilian companies. This is the case of the so-called "contaminated capital".

On 28 November 2006, the Provisional Decree n. 315, of 3 August 2006, was converted into Law n. 11.371. Pursuant to its article 5, this law proposed an alternative to clean-up "contaminated capital", taking into consideration the figures duly recorded in the accounting books of the Brazilian company.

The key provision in the Law, later confirmed by the National Monetary Council's Resolution n. 3.447, of 5 March 2007, and by the Central Bank of Brazil's Circular n. 3.344, of 7 March 2007, was, primarily, an attempt to solve the problems associated only with non-registered foreign investments into Brazilian companies, such as the impossibility of repatriating dividends, the re-payment of interests, and the sale of investments.

Nevertheless, these two rules were subsequently amended, respectively, by the National Monetary Council's Resolution n. 3.455, of 30 May 2007, and by the Central Bank of Brazil's Circular n. 3.350, of 8 June 2007. According to these new rules, not only foreign direct investments, but also foreign credits derived from capital inflow made in Brazilian

Reais, which have not been registered with the Central Bank of Brazil, must now be regularized. For this purpose, the accounting records of the Brazilian company shall be equally taken into consideration.

It is important to note that the referred foreign capital, duly accounted for in the Brazilian companies' records, in Brazilian currency, which was not able to be registered with the Central Bank of Brazil, as explained above, shall now be registered in the RDE-IED or in the RDE-ROF by: (i) 30 July 2007, for the existing capital by 31 December 2005; or (ii) last day of the subsequently year of the balance sheet of the transaction, for the capital after 31 December 2005.

Therefore, given this measure, the intention of the financial authority to legalise all the foreign capital brought into Brazil is noted, either as foreign investment or foreign credit, regardless of whether it was not previous registered, as long as the ownership of such capital is accounted for and the respective amounts have been duly accounted for in the Brazilian company, in accordance with the relevant legislation.

1.7. Foreign Capital Restrictions

1.7.1. Introduction

The concept of foreign capital under Brazilian law is defined by Law n. 4.131/62 and its amendments. This legislation together with RMCCI (Circular n. 3.280/05) govern foreign investment and repatriation of profits abroad, giving foreign capital invested in Brazil identical treatment and equal conditions as domestic capital.

Article 170, item IX, of the Brazilian Federal Constitution, amended by Constitutional Amendment n. 6 of 15 August 1995, stipulates that a company will receive privileged treatment provided it is established under Brazilian law 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

Articles 37, 38 and 39 of Law n. 4.131/62, establish that the National Treasury and the official credit entities may only guarantee, by means of a prior Decree, the foreign lending or the financing to companies whose controlling interest are in the hands of non-residents of Brazil. Foreign-owned controlling interests, or even subsidiary companies, will not have access to such credits until their operations begin. And Law n. 4.728 of 14 July 1965, which regulates the capital market, provides that when there is 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.

1.7.2.2. 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 52 of the Transitory Provisions of the Federal Constitution, provides that until some conditions stipulated by the Congress are fulfilled, 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. Article 192 of the Federal Constitution provides that the national financial system will be regulated by legislation determin-

ing the conditions for foreign capital participation in financial institutions through a complementary law approved by Congress, who shall consider the national interests and the international agreements. 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 Circular n. 3.317/06, 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 making up the National Financial System.

1.7.2.3. 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 n. 5.709 of 7 October 1971 and Decree n. 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 the 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 national security authorities.

1.7.3. Other Restrictions

The Brazilian National Congress, in 2002, amended Article 222, §1, of the Federal Constitution, so that although foreigners are supposed to be precluded from owning interests in the written and broadcasting media, foreigners are permitted to hold 25% of the voting capital, while 75% must be directly or indirectly held by Brazilian citizens, Also in accordance with Article 7 of Law n. 8.977 of 06 January 1995, the 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. It is important to mention that foreigners or Brazilians naturalised less than 10 years ago are not permitted to hold more than 30% of the social capital of media and broadcasting corporations (Article 6, Law n. 10.610/02).

The final restriction is related to Nuclear Energy, which is an issue 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 corporate types 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 entity status; in this case 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."

2.2.1.Incorporation

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 to 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"). The name must be composed by a fantasy name or a given name followed by a short indication of the company's main objectives.

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

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

(a) subscription by at least two persons of the entire allotted share capital;

(b) payment 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 authorized by the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários – CVM), of 10% of the amount of subscribed shares;

(d) registration of the Articles of Incorporation with the Commercial Registry (Junta Comercial); and

(e) publication of the Articles of Incorporation in the Official Gazette of the Federal State or State Government and in a widely circulated newspaper, within 30 days after the registration.

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

2.2.2. Capital

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, after the payment of at least ? (three quarters) of the corporate capital:

(a) by resolution of the Shareholders 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 listed S.A. or the closed capital S.A. may have its capital structure organised as an authorised capital S.A. An authorised capital

S.A. may be incorporated with less capital than that set out 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.

2.2.3. Shares

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 the corporate book in accordance with the corresponding legal evidence of such transfer (agreements, succession, etc.). The law also permits the transference of the responsibility for registration of shares to a financial institution.

Generally, shares are freely transferable to third parties without any requirement that preference be given to anybody. 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% of the shares' issue price has been paid. In a Closed S.A. there is no such requirement.

Shares may be ordinary, preference 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 Shareholders Meetings. Preference shares have special rights of financial or political nature. Usually, the preference share confers to its holder financial advantages *vis-a-vis* the ordinary share as a compensation for the lack of the right to vote. Preference shares cannot account for more than 50% of an

S.A.'s outstanding shares. Fruition shares result from amortisation of common or preference 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 preference shareholders, according to Law n. 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").

2.2.4. Shareholders Agreement

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

The obligations set out in a shareholders agreement can be subject of specific performance for their compliance, and the Chairman of the general meeting of shareholders shall not take into account any vote, given by a shareholder under a shareholders agreement, that is inconsistent with the terms of said agreement.

The shareholders under a shareholder agreement shall appoint an individual to be their representative before the company, with powers to provide and receive information from the company, whenever necessary.

To become enforceable before the company and third parties, the shareholders' agreement must be filed at the company's head-offices and registered in the proper corporate book.

Shares subject to a shareholders' agreement cannot be traded on the stock market.

A shareholders Agreement is an extremely useful tool in joint-ventures as it provides the parties the opportunity to set out many covenants and details of their relationship as shareholders of the given joint venture company

2.2.5. Shareholders Meetings

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 made by the publishing of a notice 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 notice through the newspaper can be deemed unnecessary if all shareholders attend to the meeting.

Shareholders' Meetings may be called to order, on first call, only if shareholders representing at least 1/4 (one quarter) 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 (two thirds) 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 (50% 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.

2.2.6. Administration

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 resident 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 relating 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 of Directors. 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 serve as members of the Executive Board.

2.2.7. Audit Council

The S.A. may have an Audit Council, which is created when a Meeting of Shareholders deems it necessary to maintain strict control over the company's management. The Audit Council is elected at a Meeting of the Shareholders and needs to be composed of a minimum of three and a maximum of five members (with an equal number of alternates).

The S.A. shall have a formal Audit Council, which may be active on a permanent or non-permanent basis.

Whenever the Audit Council is organized on a non-permanent basis, it will only become active when the Shareholders, representing at least 10% of the ordinary shares or 5% of the preferred shares, deems it necessary to maintain a strict control over the company's management.

The Audit Council is elected by a Meeting of the Shareholders and needs to be composed of a minimum of three and a maximum of five members (with an equal number of alternates) resident in the Country, with a university degree or persons who have been a member of the Board of Directors, of the Executive Committee or of the Audit Council of the company for at least three years.

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 duties of the Audit Council comprises, amongst other things: (i) to oversee the acts of the directors and officers; (ii) to analyze the management annual report; (iii) to give opinions on the issuance of securities by the company; (iv) to report any misconduct of the company's officers

and directors; and (v) to analyze the company's balance sheet and financial statements.

2.2.7. Financial Statements

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.

2.2.8. Dissolution

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 re-established 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 preference shareholders). The liquidation may be voluntary or imposed by judicial action.

2.3. The Sociedade Limitada: "LTDA"

2.3.1. Incorporation

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 ("sociedade empresária") or non-commercial company ("sociedade simples") and, accordingly, will be registered with the commercial or civil Companies Registries.

2.3.2. Name

The company name of a LTDA must always be followed by the expression "Limitada" (or the abbreviation "LTDA"). The name must be composed by a fantasy name or a given name followed by a short indication of the company's main objectives.

2.3.3. Quotaholders' Liability

The capital of a 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, but this limitation is not absolute with respect to the company's tax, labour and social security dues.

2.3.4.Capital

The capital of a 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;

2.3.5. Administration

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 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.

2.3.6. Amendments to the Articles of Association

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 head-offices; or

(e) admit or exclude quotaholders;

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 of the total company capital to amend the Articles of Association.

2.3.7. Quotaholders Meeting

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 1/5 of the company's total capital can summon the meetings.

Summons of the Quotaholders' Meetings must be made as set forth in the relevant law, unless the Articles of Association provide otherwise. However, prior summoning 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.

2.3.8. Dissolution

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 re-established within 180 days; and (v) by bankruptcy.

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

2.3.9. Supplementary Legal Framework

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 n. 6.406/76, which governs the S.A., will be appli-

cable for the issues not covered by the LTDA specific legal framework or by the Articles of Association.

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

2.4.1.Corporate Registration

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.

2.4.2. Representation of the Foreign Shareholders

Foreign entities or individuals holding shares or quotas in Brazilian companies must maintain an attorney resident in Brazil with powers to receive service of process in legal actions involving its holding of shares or quotas, as well as be enrolled before the Brazilian Internal Revenue Service.

2.4.3. Name

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.

Corporate names are protected in Brazil under Law n. 8.934 of 18 November 1994. This protection is granted automatically in the State where the company's head-offices will be located upon registration of the acts of incorporation with the 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 the protection is intended.

2.5. Incorporation Procedures

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

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 entity status different from those of the holders of its shares or quotas, only after the Articles of Association or By-laws have been registered. However, at this stage, the company cannot operate yet.

After registration of the Articles of Incorporation, the company must be enrolled with the Legal Entities Taxpayers Registry of the Brazilian Internal Revenue Service ("CNPJ"). To become fully operational, companies involved in commercial activities must also register with State and Municipal taxpayers' registries. Companies that only render services need not to register with the State Taxpayers' Registry, except those which render transportation services.

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.

2.6. 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

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 basis, 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 n. 3.000/99. As a gen-

eral rule, individuals resident or domiciled abroad are liable to tax on income and capital gains arising in Brazil in connection with certain circumstances.

3.2.2. Tax Domicile

The tax domicile of the taxpayer is the place where the individual maintains a permanent home. As mentioned above, Brazilian law provided different treatments for resident individuals and non resident individuals.

3.2.3. Individual Taxpayer's Registry (CPF)

The following individuals must be enrolled before the Individual Taxpayer's Registry (CPF):

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 (INSS);

j) individuals who pay income to other persons who are subject to withholding tax at source; and

k) individuals domiciled abroad who own in Brazil assets or rights subject to public registration, to include: real estate; vehicles; ships; planes; shareholdings; bank accounts; and financial investments.

The individual is enrolled only once and a second enrolment is not permitted.

3.2.4. Foreigners Who Transfer Their Domicile to Brazil

The tax treatment of foreigners who transfer their domicile to Brazil varies depending on the type of Visa. There is a legal assumption that foreigners holding permanent visas or temporary visas have transferred their domiciled to Brazil

For holders of a permanent visa income will be taxed as any other resident of Brazil, as of the date of arrival in Brazil.

Holders of a temporary visa 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 on completion of a stay of 183 days, whether consecutive or not, within a 12-month period.

Holders of business visas (90-day visa) are not subject to taxation in Brazil on the basis of their physical presence in the Country, as such type of visa does not include a work permit and the foreigner is not entitle to receive income in Brazil.

3.2.5. Transfer of Residence Abroad

Individuals domiciled or residing in Brazil who leave the country 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, likewise enabling the individuals to request Central Bank authorization to repatriate all assets held in local currency, provided these assets have been properly reported in the annual tax return. 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 following his departure

3.2.5.1. Employees of Foreign Governments and International Organisations

The following individuals are exempt from tax on earned income:

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; and

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 deductions for alimonies, dependants, contributions to the social security and medical expenditures plans of the federal, state, municipal, and Federal District governments, and 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 that are not explained by the income declared. The following forms of income 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.

The following income 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 on the alienation of rights or property which exceed R$ 35,000.00;

g) capital gains on the alienation of stocks negotiated in the Over-the-Counter Market (Mercado de Balcão) which exceed R$ 20,000.00; and

h) 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, depending on their respective income nature as mentioned above.

Any tax due by resident individuals will be calculated by use of the following table, which shall correspond to the sum of the values listed in the 12 monthly tables for the calculation of the withholding tax that were in force during the preceding tax year.

For the year 2007 the prevailing income tax rates are:

Annual Income – R$	*Tax Rate*
0 – 15,764.28	0%
15,764.29 – 31,501.44	15%
Over 31,501.44	27.5%

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.

3.3.1.Income Tax

The principal legislation regulating Income Tax in Brazil is set out in Decree n. 3.000/99 and the Laws nos. 8.981/95, 9.065/95, 9.249/95, 9.430/96, 9.532/97, 9.779/99 and 11.196/05.

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 2007 is 15% with an additional surtax of 10% on taxable profits exceeding R$ 240,000.

Article 219 of the Decree n. 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 246 of Decree n. 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$ 48 million 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 enjoy tax exemptions and reduction;

e) those which during the fiscal year made monthly payments on the basis of estimated profits;

f) those who render continuous and cumulative consultation services relating to credit, marketing, credit management, risk selection, management of accounts payable and receivable, and acquisition of credit rights resulting in either credit sales or the rendering of services ("factoring").

The so-called "real profit" is represented by accounting profit as adjusted for tax purposes, while the "presumed" 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 in item 3.3.1. 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 opt 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 in item 3.3.1 above with the additional surtax payable on monthly profits which exceed R$ 20,000.00. 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 for the determination of the monthly taxable profits depend upon the company's activities. Article 15 of Law n. 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% on transport except cargo services for which the rate is 8 %;

d) 32% for other services except hospitals for which the rate is 8%;

e) 16% for services rendered by legal entities with gross revenue up to R$120,000.00 except for hospitals, transports, and regulated professions; and

f) 8% on development, construction and sale of real estate by real state companies.

Income and expenses are recognised on an accruals basis, and the general rule for the deduction of expenses 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 relief is limited to a maximum of 30% of the profit of each fiscal year. No carryback 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. According to the latest legislation, the return ("DIPJ") should be delivered by the last working day of June.

3.3.5. Social Contribution on Net Profits

In addition to the liability for income tax on profits, as referred above, the operating profit of a company is also liable to social contribution tax ("Contribuição Social sobre o Lucro Líquido – CSLL") on its income and capital gains. This social contribution is not deductible in calculating either corporate income tax or the contribution itself and, gener-

ally, the tax basis for the contribution is the same as that for corporate income tax.

Since 1 January 2003 the CSLL has been levied at the rate of 9%.

In relation to companies which opt for taxation on the basis of the "annual real profit" or "presumed profit basis", the social contribution is payable monthly or quarterly as appropriate, and the basis for the calculation is generally 12% of the operating profit plus any capital gains realized in the base period, except for service providers where the basis for calculation is 32%.

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 this principle, Brazilian tax law was 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.

Pursuant to Law n. 9.249/95 the concept was changed from territoriality to universality ("world-wide income"), thus subjecting profits and income earned abroad to taxation in Brazil as well.

Under Law n. 9.249/95, the following kinds of income are liable to taxation in Brazil:

a) foreign-source operating income;

b) foreign-source non-operating income, including interests, royalties and foreign dividends; and

c) income earned indirectly abroad through branches, subsidiaries and associated/related companies.

3.3.7. Taxation of subsidiary and associated companies

With respect to the taxation of subsidiaries and affiliated companies, Article 25 of Law n. 9.249/95 states:

> *"Article 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…*
>
> *Paragraph 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 shareholding for the determination of real profits.*
>
> *Paragraph 3 – the profits arising abroad from affiliated companies of legal entities domiciled in Brazil will be included in the determination of real profits in accordance with the following:*
>
> *I.- the profits earned by the affiliated will be included in the net profits in the proportion of the shareholding held…."*

In view of the controversy and legal argument that arose from the provisions of Law n. 9.249/95 the legislation was subsequently amended by Law n. 9532/97, Article 1 of which determined 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.

Article 3 of Law n. 9.532/97 further provided 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 n. 1.924 first issued on 7 October 1999, subsequently converted into Law 9959/00, which provided 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 n. 9.532/97.

Finally, the Brazilian tax authorities endeavoured to close any loopholes in the prevailing legislation through the issue of Provisional Measure n. 2.158 of 27 August 2001, which as of September 2007 still remains in force and 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.

It is important to emphasize that the taxation of the overseas profit as provided by Article 74 is under analysis by the Federal Supreme Court ("STF") which, as of September 2007, has not reached a definitive decision in relation to its constitutionality.

The aforementioned provisions however should not apply in relation to the profits arising in a country with which Brazil has signed a double tax treaty. In such scenario said profits will generally only be taxable in Brazil if and when remitted to Brazil.

3.3.8. Withholding Tax on Remittances Abroad

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 Income Tax and Contribution for Intervention in the Economic Domain – CIDE).

In principle, unless specifically exempt under prevailing legislation, all payments from sources located in Brazil to legal or physical persons resident or domiciled abroad are subject to withholding tax in Brazil. Until late 1998, the applicable rate of withholding tax, depending on the nature of the payment, was either 0 or 15%. However, as a consequence of the then prevailing economic crisis affecting Brazil at that time, the Brazilian Government introduced legislation on 29 December 1998 increasing the rate of withholding tax, for certain remittances, to 25%.

Pursuant to Article 10 of Law n. 9.249/95, no tax is deductible at source on the remittance of profits and dividends by a Brazilian company to shareholders domiciled abroad or on the remittance of profits by Brazilian branches or representative offices of foreign companies. No withholding tax is applicable on the return of foreign capital up to the amount of the foreign investment registered before the Central Bank of Brazil. Capital gains, however, from investments in Brazil are subject to tax at source at 15%.

Pursuant to Article 685 of Decree n. 3.000/99 all amounts paid, credited, or remitted, from a source situated in Brazil, to individuals or legal entities 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 rendering of services.

Additionally said Article 685 further provides that, save for certain specific exemptions, the income arising from any operation, in which the beneficiary is resident in a favourable tax jurisdiction will be subject to tax at source at the rate of 25%.

The notion of a "favourable" tax jurisdiction arose in Brazilian transfer pricing legislation and is defined as a jurisdiction which taxes income at a maximum rate less than 20% and/or imposes secrecy on the disclosure of shareholders ("tax havens"). In this regard the Brazilian authorities have thus far determined that the following jurisdictions shall be considered as tax havens: Andorra, Anguilla, Antigua and Barbados, Aruba, Bahamas,

Bahrain, 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, Labuan, Lebanon, Liberia, Liechtenstein, Luxembourg (in relation to 1929 Holding Companies), 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. Lucia, St. Vincent and Grenadines, Seychelles, Tonga, Turks and Caicos Islands, Western Samoa, Singapore, United Arab Emirates, United States Samoa, Vanuatu, and US Virgin Islands.

Since 1st January 2002, the Contribution for Intervention in the Economic Domain ("CIDE") is also due on the amounts paid, credited, delivered, used or remitted, on a monthly basis, to non-resident beneficiaries, for royalties and remuneration in the following types of contracts:

a) licensing and assignment of patents;

b) technical support (in relation to technical assistance and specialized technical services);

c) assignment and licensing of trademarks;

d) software supply (only when occurs the transfer of its technology);

e) technology supply; and

f) contracts for the supply of technical services, administrative assistance and other similar services.

This contribution is levied at rate of 10% over the amounts paid, delivered, credited, used or remitted per month as payments under the types of agreements mentioned above to beneficiaries who are resident

abroad.

Due to its specific tax application, the provisions of treaties to avoid double taxation to which Brazil is a signatory cannot be used to permit any reduction or exemption in relation to this base.

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 (only in relation to Income Tax), are as follows:

(i)	Dividends	Exempt
(ii)	Interest	15%;
(iii)	Royalties	25% (15% Income Tax plus 10% CIDE);
(iv)	Technical Assistance	25% (15% Income Tax plus 10% CIDE);
(v)	Tax Havens	35% (25% Income Tax plus 10% CIDE); and
(vi)	Other Services	25%.

Besides CIDE in relation to payments for royalties and technical assistance, the Brazilian Federal Government has enacted various other forms of CIDE, each with their own specific regulations and rates, as follows:

(i) CIDE to the Telecommunications Technological Development Fund ("FUNTEL");

(ii) CIDE for the Universal Telecommunications Service Fund ("FUST");

(iii) CIDE levied on imports and marketing of oil products, natural gas, petrol, ethylic alcohol fuel, ethylic alcohol ("CIDE-Combustíveis"); and

(iv) CIDE for the Development of the Cinematographic Industry ("CONDECINE").

3.3.9. Social Contribution on Invoicing – COFINS

Complementary Law n. 70 of 30 December 1991 instituted the Social Contribution on Invoicing ("COFINS") to help finance the social security program. Pursuant Article 2 of Law n. 10.833 of 29 December 2003, this tax is levied on a non-cumulative basis at a general rate of 7.6% on the gross revenue from sales of merchandise and the rendering of services.

For those companies that ascertain their profits using the "presumed profit basis", and for some kinds of revenue arising from some specific business activities, this tax is levied on a cumulative basis at a general rate of 3% on the gross revenue from sales of merchandise and the rendering of services.

Since 2004 COFINS is also levied on imports of products, equipment and services from abroad at general rate of 7.6%. In relation to services, COFINS is levied on those rendered by a foreign-base legal entity or individual even if those services are rendered directly in Brazil and for services whose results can be "verified" in the country.

3.3.10. Contribution to the Social Integration Program – PIS

The contribution to the Social Integration Program (PIS) was instituted in 1970. All private commercial undertakings that are classified as such by the income tax regulations are liable for this tax. This contribution is generally charged on a non-cumulative at rate of 1.65% on the gross revenue from sales of merchandise and the rendering of services.

For those companies that ascertain their profits using the "presumed profit basis", and for some kinds of revenue arising from some

specific business activities, this tax is levied on a cumulative basis at a general rate of 0.65% on the gross revenue from sales of merchandise and the rendering of services.

Since 2004 PIS has also been on imports of products, equipment and services from abroad at general rate of 1.65%. In relation to services, PIS is levied on those rendered by a foreign-base legal entity or individual even if those services are rendered directly in Brazil and for services whose results can be "verified" in the country.

3.3.11. Tax on Industrial Products – IPI

Tax on industrial products (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 (Law n. 4.502/64 and Decree-Law n. 34/66).

According to Law n. 9.532/97, products for export can leave the industrial establishment with suspension of the IPI when:

a) acquired by an export trading company, with specific purpose of export; and

b) remitted to customs deposit areas or other places where the customs brokerage takes place.

An industrialised product is considered as being a product resulting from an operation that 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 goods is registered as a credit in the books of the purchaser and, on the sale of the finished product, the amount of tax shown in the invoice is registered as a debit. The balance which results each month is the tax to be paid to the federal authority.

IPI is also levied on the importation of goods and equipment.

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

The tax on operations on the circulation of merchandise and services ("ICMS") is a state tax charged on all products. In the State of São Paulo, the rate is generally 18% of the value of the merchandise or services. When materials are purchased, the ICMS tax is already included in the price. In operations between the South of Brazil and the Southeast, the rate is 12%, and between the North, Northeast, Middle-West regions and the state of Espírito Santo the rate is 7% (Article 52 of State Decree n. 45.490/00). ICMS and IPI calculations are identical.

ICMS is also levied on the importation of goods and equipment.

3.3.13. Import tax – The Common External Tariff – CET

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

The CET tariff applicable to trade between any signatory of Mercosur with third-party countries and 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 n. 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 n. 37/66.

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 Law n. 13.701/03

of 24 December 2003, the tax is generally charged at rate of 5% on the services value. For some activities there are lower rates (2% and 2.5%) and there are special tax regimes for specific services such as legal, accounting, medical etc.

Since January 2004, ISS has also been levied on the purchase of foreign services. Based on that, the Brazilian beneficiary is liable for the payment of this tax. In addition, ISS is also levied on exportation of services when the results occur in Brazil (despite the fact that payment is made by a foreign resident).

3.3.15. Real Estate Transfer Tax and Tax on Inheritances and Donations

The tax is charged in three situations: on an "inter-vivos" transfer of a real state property, inheritances and donations.

In the first case, the tax is named ITBI and it is regulated by municipal law. 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 tax is named ITCMD and the legislative competence is that of the States pursuant to Article 155, paragraph I of the Federal Constitution. This tax is levied on transfer of bank deposits, financial investments, shares (and the like) and real estate. For the year 2007, inheritances up to R$ 71.150,00 and donations up to R$ 35.575,00 are exempt. However, due to specific regulations in relation to its exemptions and taxable basis, it is very important to analyze the assets to be transferred individually. On the above mentioned values, this tax is levied at rate of 4%.

3.3.16. Tax on Urban Property

The Tax on Urban Property (IPTU) is a municipal tax which charges the ownership, control or possession of urban land or buildings, based on the market value of such real estate and it is levied on an annual basis.

Due to the fact that it is a municipal tax, IPTU's applicable rates vary according to each city legislation and the type of real estate involved.

3.3.17. Provisional Contribution over Financial Transaction

The Provisional Contribution over Financial Transactions (CPMF) was introduced by Law n. 9.311 of 24 October 1996 and it is levied on financial transactions within the Brazilian financial system at the rate of 0.38%. As of September 2007 a bill is being debated in the National Congress to extend this "provisional" tax until 2011.

3.4. Double Taxation Treaties Entered Into By Brazil

Brazil has signed double taxation treaties with Argentina, Austria, Belgium, Canada, Chile, China, the Czech and Slovak Republics, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Norway, Philippines, Portugal, South Africa, South Korea, Spain, Sweden and Ukraine.

In April 2005, the German Government terminated the double taxation treaty signed with Brazil, with effect from 1 January 2006.

3.5. Transfer Pricing

Transfer Pricing regulations are adopted worldwide to avoid the transfer of profits that should be taxable in the jurisdiction where a permanent establishment is located to a "friendlier" tax environment.

In Brazil Transfer Pricing regulations were introduced by Law n. 9.430/06 and apply to the import and export of goods and services carried out between "related parties" and between unrelated parties when the overseas party is established in a so-called "tax haven" jurisdiction (these jurisdictions are listed in item 3.3.8 above).

The definition of "related parties" for the purposes of this legislation is provided by Article 23 of Law n. 9.430/96 and includes subsidiaries, associated companies, companies under common control and also situa-

tions where the foreign company has an exclusive agency or distribution agreement with the Brazilian company and vice-versa.

The legislation specifies the conditions under which a Transfer Pricing adjustment must be made and the methods to calculate the same. The result of such calculation shall be added to the Brazilian entity's taxable profits for the period in question. The taxes to be levied on such adjustments are Income Tax ("IRPJ") and the Social Contribution Levied on Net Profits ("CSLL") at top rates of 25% and 9%, respectively.

Article 18 of Law n. 9.430/96 provides that a Transfer Pricing adjustment shall apply when the costs, expenses and duties of the Brazilian company's imports of goods and services from a "related party", during the period in question, is higher than the guide price determined by the use of one of the Transfer Pricing methods.

In the event that more than one of the methods are used, the lowest value shall be used for any Transfer Pricing adjustment.

The Law n. 9.430/96 provides three methods to ascertain a guide price to be set in relation to imports performed by Brazilian companies:

a) comparable Uncontrolled Price Method which is defined as the average price of identical or similar goods, services or rights obtained either in Brazil or abroad in buy/sell transactions using similar payment terms. For this purpose, only buy/sell transactions conducted by non-related parties may be used;

b) resale Price Method which is defined as the average resale price of the resale of imported goods, services or rights less unconditional discounts, taxes on sales, commissions and a profit margin of: (i) 60% calculated based on the resale price and the value added in the country in case of imported goods used in production; or (ii) 20% calculated based on the resale price for all other cases. For this purpose, only prices charged by the company to non related buyers may be used; and

c) cost Plus Profit Method which is defined as the average production cost of identical or similar exported goods or services in the country where the goods were produced, plus the taxes paid in the exporting country and a profit margin of 20% over the total cost plus taxes.

The importer can opt for any one of these three methods in order to ascertain the guide price. In the case of more than one method being used, only the highest value ascertained shall be taken into account and used throughout the assessment, as stated by Article 18, paragraph 4 of Law n. 9.430/96 and article 4 of Normative Instruction SRF n. 243/02.

The guide price ascertained shall be compared to the price used in the import documents. When the guide price is lower than the import price between related parties, the difference shall represent a Transfer Pricing adjustment taxable.

In relation to exports, Brazilian taxpayers are subject to adjustments whenever the average sales price in these operations is lower than 90% of the average sales price in the domestic market in the same period and under the same payment terms ("Safe Harbour").

In case this average price performed between related parties is lower than 90% of the price practiced with non-related parties, the income arising from the exports shall be adjusted. For such adjustments, the Brazilian legislation provides four different methods as follows:

a) export Sales Price Method which is defined as the average of the export sales price charged by the company to other customers or other national exporter of identical or similar property, services or rights during the same tax year using similar payment terms;

b) wholesale Price in Country of Destination Less Profit Method which is defined as the average wholesale price of identical or similar property, services or rights in the country of destination under similar payment terms reduced by the taxes includ-

ed in the price imposed by that country and a profit margin of 15% of the wholesale price.

c) retail Price in Country of Destination Less Profit Method which is defined as the average retail price of identical or similar property, services or rights in the country of destination under similar payment terms reduced by the taxes included in the price imposed by that country and a profit margin of 30% of the retail price.

d) acquisition or Production Cost Plus Taxes and Profit Method which is defined as the average cost of acquisition or production of exported property, services, increased for taxes and duties imposed by Brazil plus a profit margin of 15%, calculated based on the sum of the cost, taxes and duties.

Since the enactment of Transfer Pricing regulations, the Brazilian taxpayers and the Federal Tax Bureau have been challenging each other before the Federal Administrative Court ("Conselho de Contribuintes") which has held several important decisions in favour of the taxpayers to compel the government not to claim amounts without legal grounds, provided, however, that such decisions continue to be challenged by the Federal Tax Bureau in all possible ways.

Nevertheless, up to the present moment, these regulations have not been analyzed either by the Superior Court of Justice or the Federal Supreme Court (respective highest level courts of Brazil's Judicial System), which means that there remain several issues to be settled in order to allow a more balanced application of such regulations in light of the Arm's Length Principle recognized worldwide.

4. INTELLECTUAL PROPERTY

In the past few decades, industrial property, a sub-classification of the more comprehensive term "intellectual property", has been the focus of attention of Brazilian scholars and lawmakers. Laws have been drafted and enacted aiming at the protection of this type of property right in the fields of industry and commerce, as well as in subjects relating to preventing unfair competition.

The first step for the foreign investor wishing to undertake business in Brazil is to obtain appropriate protection for the industrial property rights of its products or services. 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 relating 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 effects.

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.

Besides these, computer programs can also by registered at INPI, even if the protection of the rights relating to these programs do not depend on registration. The intention is to grant more safety to copyright relating to computer programs.

The Brazilian legislation also protects copyright, another sub-classification of intellectual property. However, the protection of artistic, literary and scientific workmanships does not depend on registration, unlike with other industrial property, pursuant to article 18 of Law 9.610/98.

4.1. Patents

A 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 be extended for a period of less than 10 years for inventions and 7 years for utility models from the date the protection is granted by 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 infringe laws or which are against the moral, health and public safety interests of the society.

4.2. Trademarks

Trademarks include every sign which, when connected with products, goods or services, identifies and separates them from others of an identical or similar class. Brazilian law establishes four categories of trademarks eligible for protection: products, services, certifications and collective trademarks. Law n. 9.279, from 14 May 1996, puts 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 in which it has been registered. Trademark use signifies the exclusive right to use the

mark, especially in documents and papers, to distinguish products, 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 adopts a classification of products and services based on the Nice Convention on International Classification: Trademarks are registered according to the products or services classes to which they are related.

On 10, August 2006, INPI enacted a new Normative Act n. 126/06 which established the e-INPI, an Electronic System for Management of Industrial Property. Through this system the INPI users can require services and practice acts by electronic forms, using the internet. Today a module of this system already exists, which is intended for trademarks, called e-MARCAS.

4.3. Microchip Designs

Recent Law n. 11.484/07 established protection of intellectual property for the design of microchips. With this law, Brazil started to consider microchips and their designs as elements of intellectual property.

The microchip is a microelectronic device that is able to develop many functions. Their components are formed by pieces of semiconductor material.

The designs of these microchips are the representational figures of the position of those elements and connections in an unit.

The protection granted by Law is for the design of the microchips, that is to say, for the description of the single physical structure.

Such protection can be given to an original design as a result of the intellectual effort from its creator, and for the results that are not common to technicians, experts or manufacturers of microchips. This protection is

granted for 10 years, from the date the request for protection is filed at the INPI or from the date of the first exploitation, whichever takes place first.

4.4. Technology Supply and Technical and Scientific Assistance Services

The laws in force have created two categories – (a) Technology Supply and (b) Technical and Scientific Assistance Services – to cover all transfers of know-how and technical and scientific services directed towards the production of consumer goods and the manufacture of industrial equipment.

The INPI controls 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 n. 135/97 and in Law n. 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 the contract terms provided that Brazilian national sovereignty, public order and morality are observed. However, the registration of these contracts is dependent upon meeting several INPI requirements, which are: (a) 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; (b) the specification of the costs and the detailed specification of the remuneration of the technicians per hour; (c) the term for the performance of the services or the evidence that the service has already been performed; and (d) specification of the total cost of the services, even if estimated.

Law n. 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. Besides that, Law n. 11.452/07 establish that CIDE (Contribution of Intervention on Economical Domain), created by Law n. 10.168/00, is not levied on contracts of technology transfer and use license, performed between a legal entity and a foreign company.

4.5. Franchising

The Franchise Law (Law n. 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 an offer, prior 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 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 franchisor's failure to comply with this requirement, the franchisee may argue there has been 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 offer must state whether the franchisee is entitled to exclusivity for a certain territory and under what conditions. It must clearly define the franchisee's 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 offer 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 offer, for preliminary examination prior to entering into any definitive franchise 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.

4.6. Copyright

The expression of human ideas, through artistic, literary and scientific workmanship, is also protected by intellectual property. Such rights are regulated by Law n. 9.610/98, which sets out that to use or explore any workmanship, the author's authorization is essential.

As referred to previously, according to Brazilian legislation, copyright protection does not depend on prior registration.

4.7. Software

According to the Brazilian legislation, Law n. 9.609/98, software is protected by copyright.

Also, according to the Law n. 9.609/98, the software protection does not depend on any prior registration.

In this way, the software registration is part of the software's title as it is evidence of originality and identity of the software.

By that, the software registration assures the author of his exclusive rights of production, use and commercialization of his creation.

The responsibility for the software registration, in Brazil, is given to INPI.

The validity of the rights is for 50 (fifty) years, counting from January 1st of the subsequent year to the "Date of Creation" – which is the time that the software became capable of performing the function for which it was projected

5. INTERNATIONAL TREATIES

5.1. Preamble

International treaties are all formal agreements made by legal entities of public international law with the purpose of being legally enforceable.

To be part of the Brazilian legal system, all international treaties must go through a specific proceeding, as provided by the Brazilian Constitution of 1988. Firstly, international treaties have to be signed by the legal representative of the country, according to article 84 of the Federal Constitution.

Following their signature, need to be approved by the Brazilian National Congress, pursuant to Article 49, I of the Brazilian Constitution. Once treaties are approved by the National Congress they are formally considered as part of Brazilian legal system.

Generally, when treaties are incorporated into Brazilian legal system, they have the status of ordinary law. Notwithstanding, Constitutional Amendment n. 45 of 2004 established that international agreements related to Human Rights should have constitutional status, as long as they are approved in each house of the National Congress in two rounds by 3/5 (three fifths) of the members' votes.

Brazil is a signatory of many major international treaties, including most relevant treaties of the United Nations system, Bretton Woods system and the General Agreement on Tariffs and Trade (GATT), as well as the World Trade Organization treaties. Brazil also plays an important role in the Latin America's regional integration process. It is also a member of ALADI and Mercosur and additionally has signed several bilateral agreements with various Latin American countries.

5.2. United Nations

In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the

United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, United States, in August-October 1944. The Charter was signed on 26 June 1945 by the representatives of the 50 countries, including Brazil.

Brazil has signed and incorporated to its legal system most of the agreements signed within the United Nations, such as the UN Letter itself, the Universal Declaration of Human Rights of 1948 and ratified by Brazil in 10 December 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both signed in 1966, in force since 1976 and ratified by Brazil in 24 January 1992.

5.3. Bretton Woods Agreements

In 1947, delegates from 44 nations gathered at the United Nations Monetary and Financial Conference in Bretton Woods, New Hampshire. They met to discuss the postwar recovery of Europe as well as a number of monetary issues, such as unstable exchange rates and protectionist trade policies.

The delegates at Bretton Woods reached an agreement known as the Bretton Woods Agreement to establish a postwar international monetary system of convertible currencies, fixed exchange rates and free trade. To facilitate these objectives, the agreement created two international institutions: the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (the World Bank).

Brazil participated in the original meetings and it is an original signatory of the agreements.

5.4. General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO)

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. 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.

GATT's objective was the liberalisation of world trade, with the consequent prosperity and development which could result there from. The treaty was originally signed by 23 countries, including Brazil, in 1947 and came into force in January 1948. Over the years, GATT was updated and had its scope broadened by way of amendments resulting from "round" negotiations. Today, there have been 9 GATT rounds, the Uruguay Round negotiations having taken place from 1986 until 1994. The Doha Round is in discussion and has not produced any results in the world trade scene.

By the end of 1994, GATT had been signed by 128 countries and has represented more than 4/5 of the world trade.

The end of the 8th year of 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. 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 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 struc-

ture 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. As of 11 January 2007, 150 countries were WTO members.

5.4.1. Discussions at GATT 1994

(a) Discussions on the Interpretation of Article II: l(b), which charts the concessions made in the round;

(b) Discussions on the Interpretation of Article XVII, which increases the control over commercial public corporations;

(c) Discussions 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) Discussions on the Interpretation of Article XXIV, which establishes rules concerning Customs Union and Free Trade Zones;

(e) Discussions 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) Discussions on the Interpretation of Article XXX, which deals with the non-application of the agreement in relation to bilateral negotiations, which ought to be multilateral.

5.4.2. 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.

5.4.3. 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 Pre-shipment 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

(q) Trade Policy Review Mechanism.

5.4.4.WTO Functions

The objective of the WTO is to facilitate the implementation, administration and operation of the founding 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 administrating Arrangements on the Rules and Proceedings Governing the Settlement of Disputes and on the Trade Policy Review Mechanism.

5.4.5. 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 body 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.

5.4.6. 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 deci-

sion 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. Such statement 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 legal instruments signed concurrently. 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 213 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.

5.5. 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 polices of the Association's economic integration process.

The duties of the Evaluation and Convergence Council include examining and monitoring 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 ALADI'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 and the slow recovery of international trade and the high cost of basic products. Flexibility in the ongoing ALADI negotia-

tions 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.

5.6. MERCOSUR

5.6.1. 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 Mercosur.

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 (MERCOSUR), effective as of 01 January 1995.

Mercosur's main purpose is to provide the co-ordination of macroeconomic and policies amongst its members, as well as to provide 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.

The Treaty of Asuncion of 1991 sets up Mercosur legal basis whilst Ouro Preto Protocol, of 1994 recognizes the legal existence of the block under international law, ascribing it with the authority to negotiate, on its own behalf, agreements with third parties.

5.6.2. Administration

Clause 9 of the Treaty of Asuncion establishes that the administration and resolutions adopted by Mercosur 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 Mercosur 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, whenever 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 n. 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 Mercosur was created by the Protocol of Ouro Preto (Article 31) with the main purpose of maintaining the files of all Mercosur 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 Mercosur and guarantees the legal effect in each signatory country of the decisions reached by the different bodies of Mercosur.

The Council will be presided over by a turnaround plan, in alphabetical order, between the countries members, in a period of six months. It will be made up of the Ministers for foreign relations and the ministers of the Economy. The meeting will take place as many times as necessary or, at least, once a year.

5.6.3. Legislative Procedures

As per Chapter VI of the Protocol of Ouro Preto, the decisions of Mercosur 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 Mercosur;

(b) When all the signatory countries have communicated the incorporation mentioned in item (a) above, the Administrative Secretary of Mercosur 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 Mercosur in each signatory country.

5.6.4. Dispute Resolution

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

On 18 February 2002, the four member countries signed the Protocol of Olivos for a Dispute Settlement Body in Mercosur.

5.6.5. Protection of Competition

The Protocol of Protection of Competition (Decision n. 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 for regulating Mercosur'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 has been waiting for notifications from its parties.

5.6.6. Safeguards

During the Fortaleza Meeting, the signatory countries of Mercosur 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 Assuncion 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.

5.6.7. Dumping and Subsidies

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

5.6.8. Common External Tariff – 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 n. 1.343 of 23 December 1994, which also created the Mercosur Common Nomenclature (NCM), which specifies all products to be traded between the signatory countries.

In Brazil, Resolution CAMEX n. 42 of 26 December 2001, in accordance with Decrees nos. 4.679, of 24 April 2003 and 4.732, of 11 June 2003, and Resolution n. 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 main 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 Mercosur.

5.6.9. Rules of Origin

Mercosur'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 Mercosur on 30 December 1994, and updated with later modifications.

This important issue for Mercosur concerns rules of origin defining the proportion of domestic components (originating in Mercosur) 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 n. 4.106 of 28 January 2002.

5.6.10. International Contracts

Decree n. 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 Mercosur adopted common rules concerning international jurisdiction related to contracts of a civil or commercial nature signed between individuals and legal entities.

5.6.11. Banking

Concerning the banking sector, Mercosur 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 Mercosur 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.

5.6.12. 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 competi-

tiveness by an increase in production costs, Mercosur 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 n. 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 sectorial policies of the Mercosur;

(iv) permanently implement the "Environment Agreement of the Mercosur" (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; and

(x) permanently follow the International Environmental agenda.

5.6.13. Industry

Concerning industry, Mercosur 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.

5.6.14. Agriculture

In order to facilitate the free circulation of combined agriculture and stock raising, as well as agricultural and industrial products, Mercosur Sub Group n. 8 will harmonise the Mercosur 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, Mercosur 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.

5.6.15. Labour

Mercosur 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 Mercosur to sign multilateral agreements on Social Security and to implement a system of technical co-operation in the area of professional education.

5.6.16. Automatic Payment Program

From 01 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.

5.6.17. Accession

Bolivia, Chile, Colombia, Ecuador and Peru currently have associate member status. Venezuela signed a membership agreement on 17 June 2006, but before becoming a full member, its entry has to be ratified by the parliaments of Paraguay and Brazil.

5.6.20. Bilateral Relations

Mercosur, has several agreements with third parties, as follows:

MERCOSUR – Andean Community
Partial Scope Agreement
Framework Agreement for the Creation of a Free Trade Area between the Andean Community and MERCOSUR
Date of Signature: 16 April 1998

Brazil – Colombia, Ecuador, Peru and Venezuela (as Members of the Andean Community)
Economic Complementation Agreement n. 39
Date of Signature: 12 August 1999, Entry into Force: 16 August 1999
Argentina – Colombia, Ecuador, Peru and Venezuela (as Members of the Andean Community)
Economic Complementation Agreement n. 48
Date of Signature: 29 June 2000 | Entry into Force: 01 August 2000

MERCOSUR – Andean Community
Economic Complementation Agreement n. 56
Date of Signature: 06 December 2002

MERCOSUR – Peru
Economic Complementation Agreement n. 58
Date of Signature: 25 August 2003

MERCOSUR – Colombia, Ecuador and Venezuela
Economic Complementation Agreement n. 59
Date of Signature: 16 December 2003 | Entry into Force: Argentina: Note EMSUR C.R. n. 5/05, 01/13/05; Colombia: Dec. n. 141, 01/26/05; Uruguay: Dec. n. 663/85, 11/27/85; Venezuela: Dec. n. 3.340, 12/20/04; Ecuador: Decree n. 2675-A, 18/03/05.

MERCOSUR – Bolivia
Economic Complementation Agreement n. 36
Date of Signature: 17 December1996 | Entry into Force: 02 March 1997
Nineteenth Additional Protocol (en español)
Date of Signature: 23 July 2004

MERCOSUR – Chile
Economic Complementation Agreement n. 35
Date of Signature: 25 June 1996 | Entry into Force: 01 October 1996

MERCOSUR – Egypt
Framework Agreement
Date of Signature: 07 July 2004

MERCOSUR – European Community
Interregional Framework Cooperation Agreement
Date of Signature: 15 December 1995 | Entry into Force: 01 July 1999
Argentina: L. 24.964, 10/03/96; Brazil: Dto. Leg. 10, 07/27/99;
Paraguay: L. 976, 08/12/99; Uruguay: L. 17.053, 12/1/98

MERCOSUR – India
Framework Agreement
Date of Signature: 17 June 2003

MERCOSUR – India
Preferential Trade Agreement
Date of Signature: 25 January 2004

MERCOSUR – Mexico
Economic Complementation Agreement n. 54
Date of Signature: 05 July 2002

MERCOSUR – Mexico
Economic Complementation Agreement n. 55
Date of Signature: 27 September 2002
First Additional Protocol to Appendix IV
Date of Signature: 24 June 2004
First Additional Protocol to Appendix I
Date of Signature: 24 September 2003

MERCOSUR – Southern African Customs Union (SACU)
Preferential Trade Agreement
Date of Signature: 16 December 2004

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 and responsibilities 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.

6.2. Brazilian Environmental Law

The Environmental Law is a joint of rules and principles that intend to maintain the perfect balance in the relationship between man and environment. Therefore, because it is a legal field that has no specific subject and an indivisible object, it is considered a diffuse law.

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

It is also important to clarify that in Brazil, the Union, as much as the States, the Federal District and the municipality, have jurisdiction to legislate about environment matters, according to the articles 21 to 25 and 30 from the Federal Constitution of 1988.

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 infractions, 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 n. 6.938 of 31 August 1981 (amended by Laws nos. 7.804/89, 10.165/00, 11.284/06, and Law n. 9.966/00; regulated by Decrees nos. 97.632/89, 99.274/90 and 5.975/06, by Law n. 8.028/90 and by Law n. 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, aimed at assuring continued social and economic development, the protection of national security, and human rights."

The Environmental Law is a well-developed regulatory framework which emphasis 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 (Federal Constitution in its Article 225, paragraph 3, as well as Law n. 6.938/1981, Article 14) also imposes strict civil 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 or guilt be proven). 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 for any damage caused, regardless of blame or intent (the parties can contractually provide for a right to indemnification).

The Environmental Crimes Law (Law n. 9.605 of 12 February 1998, regulated by Decree n. 3.179/00) provides criminal and administra-

tive punishment for specified acts which cause damage to the environment. The acts include pollution, damage to vegetation 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 n. 7.347/85 (amended by Laws nos. 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.

When relating to deliberation bounded in guidelines and technical rules, criteria and standards relating to environment protection and to the sustainable use of the environmental resources, the competent agency is CONAMA, from the Ministry of the Environment. Until 2007, there was 392 Resolutions published by the agency, related to the most relevant and diverse environmental spheres.

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 Ambient" (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. (www.mma.gov.br/sisnama)

(a) Superior Body (Governing): The Government Council consults with the President of Brazil regarding the preparation of national policy and guidelines relating to the environment;

(b) Consultative and Deliberating Body: The National Council for the Environment ("Conselho Nacional do Meio Ambiente" – CONAMA) is the federal normative agency. CONAMA conducts studies and creates proposals for environmental standards, guidelines and regulations, consulting with the Government Council on environmental policy; (www.mma.gov.br/conama);

(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; (www.mma.gov.br);

(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; (www.ibama.gov.br); and

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

Nowadays, it should be mentioned that the Provisional Measure n. 366/07, that has been approved by the House of Federal Representatives and it is in procedure at the Federal Senate, can modify the jurisdiction of IBAMA and create The Institute Chico Mendes of Biodiversity Conservancy.

The IBAMA will then only monitor and grant environmental licenses and authorizations, while the Institute would administer and monitor the implementation of new Conservation Units, modifying Law n. 9.985/00 which established the National System of Conservation Unities (SNUC – Sistema Nacional de Unidades de Conservação).

6.4. The Environmental Impact Study and Environmental License

An Environmental Impact Study (EIA-RIMA) is required for any project which might significantly impact the environment. (Article 225, paragraph 1, IV, of the Federal Constitution, regulated by Laws nos. 9.985/00, and 11.105/05, and Resolution n. 001/1986 of CONAMA). Such a study may prove beneficial to the business because it will reveal if the proposed location of the project is appropriate before all the investments are made. Also, it is necessary in order to obtain some Environmental Licenses.

Similarly, investments in "clean" technologies not only can improve productivity, but also save money over the long term by preventing environmental damage, avoiding the significant costs associated with remedial action to restore 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), also through a

national institution, National Bank of Economic and Social Development (BNDES – Banco Nacional de Desenvolvimento Econômico e Social) 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.

The Environmental License is another relevant aspect to be considered prior to the installation of an enterprise in Brazil. It is held by Law n. 6.938/81 and Resolution n. 237/1997 of CONAMA, and its purpose is to tie the economic development to environment preservation.

The Environmental License is an administrative proceeding used by the competent environment bodies, SISNAMA and its agencies, federals as much as state and municipals, to permit the situation, installation, enlargement and operation of enterprises and activities that use environment resources, and that can be considered effective or potentially pollutants, or of those that can somehow cause environmental degradation.

There are three stages of the Environmental License:

(i) previous license, that consists in the preliminary stage of planning the enterprise or activity and under which the location will be analyzed and the conception of the enterprise, certifying the environmental viability and establishing the basic requirements to be completed in the next stages;

(ii) installation License, the second stage, controlling projects for pollution as well as will include the analysis and approval of compensatory measures. It specifies the obligation of the

enterpriser as remedies to mitigate the environmental impacts, with the use of the best technology available to prevent pollution being an issue; and

(iii) operation License that will authorize the operation of the enterprise, after it is verified it has fulfilled the prior licenses, and it is conditional on the imminent operation of the business.

It is important to emphasize that the Environmental License can be revoked or suspended, if some irregularity in the information provided to the environment body for its concession is verified, if severe environmental and health risks are detected and, also, if there is any change or innovation in the industrial process unknown to the environmental body. It is also important to be careful on the expiration date of the license´s concession.

The purpose of the Environmental License is to guarantee that the preventive measures adopted at the enterprises are consistent with sustainable development.

However, the companies have been finding difficulty in getting the Environmental Licenses they need. Some of the reasons for this are the delay on the analysis of the proceedings, the high investment costs to meet with the environmental requirements, and also, the complexity of the technical criteria used. All of these arise from the requirements set out in Brazil's wide environmental regulation.

6.5. Clean Development Mechanism (CDM) and Carbon Credits

Countries have been discussing climate change because of their concern with the global warming. Due to this, in 1997, the Kyoto Protocol was signed, which was ratified by Brazil in 2002, with the Legislative Decree n. 144/02, and came into force in 2005. With the Protocol the developed countries are committed to reduce the emission of pollutant

gases in the atmosphere or to engage in emission trading if they maintain or increase emissions of the gases, which can be done elsewhere.

One of these flexible mechanisms is the Clean Development Mechanism (CDM) that permits the participation of developing countries, such as Brazil, in the Protocol.

In Brazil, the CDM may be seen as a source of business, due to the extensive territorial size and because the country has the 07 (seven) environmental necessities: water, energy, biodiversity, wood, mineral, recycling and emission control of pollutants.

Carbon Credits, are certificates issued by regulatory agencies, calculated from the emission or non emission commitments of pollutant gases made by the industries of developed countries. Thereby, the companies that do not reach the established thresholds, negotiate with others that have reached theirs, creating a sales market of Carbon Credit.

Furthermore, the Brazilian National Congress is carrying out two bills of law relating to CDM. The Bill of Law n. 3.552/04 "relates to organization and regulation of the Stock Carbon Market in Rio de Janeiro through the generation of Certified Emission Reductions (CER) in CDM projects", while the other Bill of Law n. 3.902/04 "establishes the National Politics for Climate Change and the jurisdiction of the Inter-ministry Commission for Global Climate Change to study and approve the project activities of CDM, as well as to prepare and advertise the Brazilian Anthropogenic Emission Inventory of Greenhouse Gases, in the sphere of the Kyoto Protocol".

Thereby, it is possible to assert that Brazil is ready to undertake CDM projects and to trade its Carbon Credits.

6.6. CNDA – Certificate of Non Occurrence of Environmental Debt

Also, there is another Bill of Law n. 2.461/03, which is being carried out by the National Congress, on the enforcement of a Certificate of non Occurrence of Environmental Debt.

The bill proposes the requirement of a Certificate for public bids of works in Public Administration, as well as the concession of loans by Official Credit Establishments.

The restraint would impact on individuals or legal entities that due to an environmental legislation violation had received penalties or had their activities suspended , or thereby, had their permit or licenses revoked.

However, we emphasize that although there is no Federal Law yet establishing the necessity of the Certificate of non Occurrence of Environmental Debt, in some Brazilian states there are agencies that already issue the Certificate.

6.7. Amazonian Law

Finally, the creation of an Amazonian Law is also under discussion. Its mainstay would be the Treaty for Amazon Cooperation that intends to promote collective actions for a harmonic development of the Amazon Basin.

Debate on this matter has increased in Brazil, because the Amazon includes up to 60% of Brazilian's territory and nine countries. The unoccupied Amazon border line reaches 10.930 km, facilitating drug trafficking and contraband.

The creation of this new Law is directed to benefit the population of the Amazon region and is aimed at implementing alternative methods of production based on science and technology, as well as preserving the natural resources of the Amazon region.

7. COMPETITION LAW

7.1. Background

In the recent past 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 out – Article 148 of the Federal Constitution.

Article 148 of the 1946 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 with the object of dominating the domestic market, eliminating competition or arbitrarily increasing profits. The premise behind the constitutional provision was on the liberal economic principle that free availability 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 n. 4.137 of 10 September 1962, which followed the guidelines and the legislation of the American antitrust system as adapted to the Brazilian legal system.

Law n. 4.137/62 created the Administrative Council for Economic Defence – CADE, an administrative agency with autonomy and inde-

pendence 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 aimed at the domination of markets, the elimination of competition and the arbitrary increase in profits.

Several new laws were enacted, among which was Law n. 8.137/90. This penal law, which is still in effect with a few changes, provided for crimes against the Tax System and Economic Order with penalties, including fines and imprisonment. Crimes punishable by 2 to 5 years incarceration include the abuse of a market position by dominating the market, or by totally or partially eliminating competition, price fixing or discrimination, tieing arrangements and exclusivity of advertising to the detriment of competition. And Law n. 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 n. 8.884/94

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

Most importantly, the new law elevated CADE to the independent federal agency ("autarquia federal") it was envisioned to be in earlier leg-

islation, with the authority throughout all of Brazil to enforce the provisions of Law n. 8.884/94. Moreover, it determined that certain acts and agreements considered potentially 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 Secretariat of Economic Protection of the Ministry of Finance – SEAE in these endeavours.

Law n. 8.884/94 provides CADE with for reaching 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 Brazilian Territory.

CADE will authorise 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 the 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 n. 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 n. 8.884/94 lists four "effects" that can be a violation of the economic order. These are: (a) to limit, defraud or harm in any manner free competition and free enterprise; (b) to control or otherwise dominate a relevant market of goods or services; (c) to arbitrarily increase profits; and (d) 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 mentioned above and which are expressly described in Articles 173 and 174 of the 1988 Federal Constitution.

It is important to note that under the strict liability provisions of Law n. 8.884/94 the parties need not have the intent or guilt 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 four 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 n. 8.884/94 provides that any act or agreement that has the effect of limiting or restraining competition or 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% (twenty percent) of the relevant market, or has recorded gross revenue in its latest balance sheet about R$ 400 million, must also be submitted to CADE review

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 SDE any change in the control of publicly held companies or registrations of consolidations of companies.

Mergers must be notified to SDE within 15 days from the first biding agreement set by the parties. Failure to abide by the deadline will subject violators to a fine between UFIR 60,000 (about R$ 63,846) and UFIR 6,000,000 (about R$ 6,384,600). The SDE will then promptly submit one copy to CADE and one to SEAE. SEAE will issue a technical report within 30 days to 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 decision within 30 days. Failure by CADE to arrive at a decision within the 30 day period will cause the merger to be automatically approved. CADE approval becomes retroactive to the date of the merger, however, all of these time periods imposed on CADE or the other antitrust 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 n. 15/98

To regularise the formalities and the procedures for the application for authorisation of the acts prescribed in Article 54, CADE enacted Resolution n. 15 of 19 August 1998. Under Resolution n. 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 n. 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 analysis procedure, and a 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.

It is important to point out that Resolution n. 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 1st January 2001 a fee of R$ 45,000.00 will be charged for filing the notifications.

With regard to reporting requirements, CADE Resolution n. 18 of 25 November 1998 provides that any interested party may consult CADE on the legitimacy of conduct or hypothetical acts or contracts that might be anticompetitive or result in 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 n. 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 cir-

cumstances. Performance commitments shall provide for volume or quality objectives to be obtained within predetermined terms.

SDE will monitor compliance. 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 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, 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 knowledge 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 SDE or CADE may adopt preventive measures whenever there are good reasons 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 proceedings ineffective. Such measures shall result in the order prompt cessation of the acts causing damage, and the resumption of the previous situation, as well as the imposition of a daily fine.

CADE, or 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 acknowledgement of guilt by the Defendant. 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.

SDE is provided with ample investigative 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 discovery phase and has the right to call a maximum of 3 witnesses. Upon conclusion of the discovery phase, 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 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 CADE's decision is made both the Attorney General and the defendant may offer final arguments.

CADE's decision in an administrative act 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 ongoing. SDE shall monitor compliance with the CADE's decision and any total or partial non-compliance shall be reported to CADE's Chairman who shall then request the Attorney General to have the decision enforced by the courts.

7.5. Enforcement

CADE's 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 voluntary compliance up to the date of actual compliance. In those executions for the collection of fines and enforcing compliance with obligations, 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's decision shall be carried out by all means including intervention in the company if necessary. The Courts shall order intervention when required to ensure specific performance and shall appoint a receiver for that purpose. 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 costs shall be borne by the defendant company. Managers may also be removed 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 orders. Probably the most controversial case involving CADE was an order to a spin-off division in a proposed joint venture between Rhodia S.A. and Sinasa S.A. in the polyester and acrylic fibers market, and an order to partially demerge an acquisition by the Grupo Gerdau in the plain-steel market.

Another case with considerable impact was the acquisition of the entire share capital of Chocolates Garoto S/A by Nestlé do Brasil S/A, which may lead to a concentration of 58.4% in the chocolate market. After intense discussions, the Brazilian antitrust authority decided the operation was not possible, taking into account the harm to competition and in order to ensure the welfare of the consumer. The case is not over yet.

These cases are indicative of the more active antitrust stance that the agency has assumed now that it has become independent.

7.6. Possible Changes in the Law

Competition law regulates monopolies, duopolies, oligopolies and cartels. Common aspects of enactments aimed at preventing anti-competitive activities include restrictions on abuse of a dominant position, predatory pricing, price-fixing and tie-in arrangements. Merger regulation is another common aspect of legislation aimed at limiting anti-competitive concentration of market power. The regulation of these matters is about to be changed in Brazil.

Bill n. 5.877/05, in process at the Chamber of Deputies, modifies Law 8.884/94, and brings important structural alterations to the Brazilian anti-trust system, with the redefinition of the function of its main agencies and the new composition of CADE. In the new structure, SDE will no longer exist, but the Department of Protection and Defense of the Consumer remains under the Ministry of Justice. SEAE, in general terms, besides issuing technical opinions on acts of concentration, will center its activities in promoting competition, the study of the competition aspects of new bills, as well as the competition within specific sectors in the economy, through its own initiative or when requested by the Treasury Department.

CADE, in turn, will be made up of the General Supervisor (with the function of investigating companies under suspicion of abusive practices and instructing the processes under analysis), the Department of Economic Studies and the Administrative Court, responsible for the judgment on the mergers.

Besides its re-structuring, intended to provide a faster analysis of the processes, the new Brazilian anti-trust system will also change its philosophy of performance, following the worldwide trend of focusing its inquiries and combating cartels and other infractions to the economic order.

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. In recent years, however, several modifications in the Federal Constitution and minor laws imported some successful initiatives from common law, making Brazilian law system more heterogeneous.

8.1. Brazilian Judiciary Structure

The Brazilian Judiciary Structure is organized by the Federal Constitution into two different branches of Lower Courts, as follows:

(i) State Courts; and

(ii) Federal Courts.

The Federal Courts are divided into "ordinary" or "specialized matters". The specialized federal Courts can also be divided into: Labour, Military and Electoral Courts, as follows:

8.1.1. Federal Labour Courts

The Labour Courts have the power to conciliate and judge individual and collective disputes between employees and employers as well as other disagreements arising from service relationships. Individuals disputes are those that relate to questions concerning the interests of individuals, brought before the courts by the employees themselves against their employers, even when the work is not remunerated, since their professional activity is in dispute. Collective disputes are those that involve the wider interests of a given category of workers and are brought by the

respective trade unions in, for example, cases involving strikes. There is a special chapter in this guide in relation to the Brazilian labour rules (Chapter 12).

In general, the Federal Constitution grants the right to appeal a decision at least once before a Court of Appeal of superior hierarchy, which is known as an "ordinary appeal". There are also "extraordinary appeals" to the jurisdiction of the superior courts, as it will be explained below.

The ordinary appeals of the Labour Court are conducted before the Regional Labour Courts ("Tribunal Regional do Trabalho"). There are currently 24 Regional Labour Courts in Brazil.

8.1.2. Federal Electoral Courts

The Electoral Courts are the body with jurisdiction over elections and the process of creation and registration of political parties. It has administrative, civil and criminal jurisdiction. The Federal Constitution states that ordinary appeals from the decisions of the electoral Courts shall be processed before the Regional Electoral Court of Appeal ("Tribunal Regional Eleitoral"). There is a Regional Electoral Court in the capital of each state and in the Federal District.

8.1.3. Federal Military Courts

The Military Courts have jurisdiction over military crimes. Its ordinary appeals are processed by the Superior Military Court ("Superior Tribunal Militar"), which is composed of 15 members, appointed by the President after approval by the Senate (10 agents from the Army, 3 lawyers and two military judges or representatives of the Military Prosecution Service).

Also called the Superior Court, the jurisdiction of the Superior Military Court is ordinary, being able to re-judge the cause, without any restriction on appeals.

8.1.4.Ordinary Federal Courts

The Ordinary Federal Courts, which are divided into criminal and civil courts, have jurisdiction to hear a number of matters specified in the Constitution, including:

(i) cases to which the federal government, a federal governmental agency or a federal public company is a party;

(ii) cases between a foreign country and a person residing in Brazil;

(iii) crimes against the organisation of labour and, in the cases determined by law, the financial system and the economic and financial order;

(iv) crimes committed aboard ships or airplanes;

(v) immigration matters; and

(vi) disputes over the rights of Indians.

All the appeals from the Ordinary Federal Courts are conducted before the Federal Regional Court ("Tribunal Regional Federal"), which is composed of a minimum of seven judges (1/5 of lawyers and representatives of the Prosecution Service and 4/5 of career judges from the Ordinary Federal Lower Court). There is a Federal Regional Court in the capital of each state and in the Federal District.

8.1.5.State Courts

The matters that are not included in the jurisdiction either of the Federal Courts, are conducted before the State Courts, which can, in principle, be divided into criminal and civil courts.

[1]http://www.cnj.gov.br

In certain states, where judicial caseloads are exceptionally high, state legislatures have created specialised civil courts 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 public notaries and registrations made in Public Registers;

(d) Courts for Minor, which have jurisdiction over minors; and

(e) Courts of Recovery and Bankruptcy, which have jurisdiction over the cases involving the recovery and bankruptcy and recovery of enterprises.

There are also specialised state criminal courts, which includes:

(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 public jury;

(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.

The appeals of the lower Court State Courts are processed by the State Court of Appeals ("Tribunais de Justiça Estaduais") of each state or of the Federal District.

8.1.6 Special Courts

It must be mentioned that Federal Law n. 9.099/95 created Special Courts called "Juizados Especiais" for the State Courts, with jurisdiction over civil small claims under a more simplified proceeding foreseen in law.

In the cases of small claims, the Plaintiff can choose either to go to a Special Court or to use the general proceedings of the Civil Procedure Code.

The same law created criminal courts for minor offences, establishing also special proceedings, more simplified in relation to the Brazilian Criminal Procedure Code.

According to the said law, ordinary appeals from sentences are not submitted to the State Court of Appeals, but are processed directly by the Special Courts referred to and judged by a body composed of three different judges of the same hierarchy.

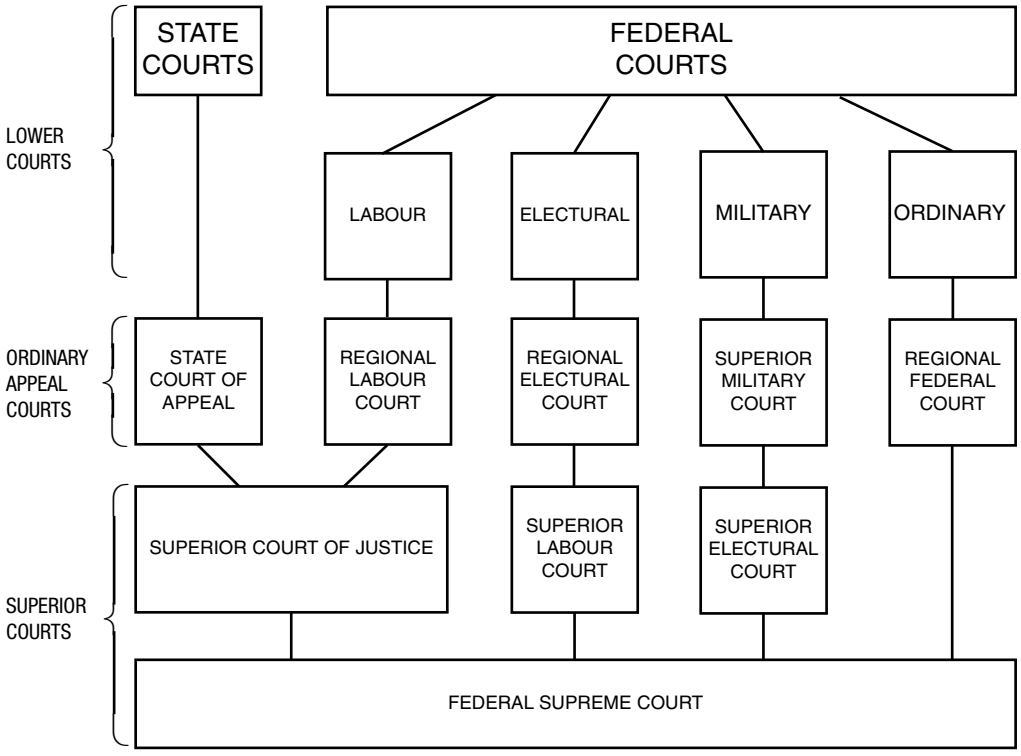
After the creation of the Special Courts called "Juizado Especial" in the State Courts, Federal Law n. 10.259/01 established the creation of civil and criminal courts in the Ordinary Federal Courts, following the procedures of Federal Law n. 9.099/95.

8.1.7 Other Tasks of the Ordinary Courts of Appeal

It is important to mention that all the ordinary Courts of Appeals referred to, in addition to having the jurisdiction to process appeals, have original jurisdiction over a number of matters specified in the Federal Constitution and minor laws (e.g. claims involving certain public authorities).

8.1.8 The Superior Courts

After an appeal is processed by an ordinary Court, it is still possible to again argue the matter in certain cases before the Superior Courts, which can be the following:



(i) Superior Labour Court ("Tribunal Superior do Trabalho");

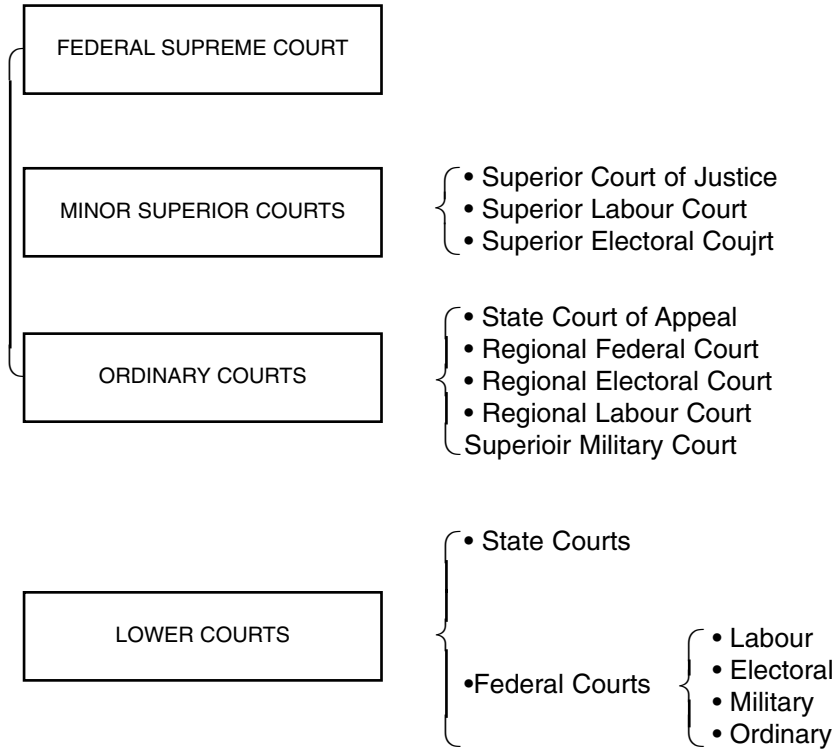
(ii) Superior Electoral Court ("Tribunal Superior Eleitoral");

(iii) Superior Court of Justice ("Superior Tribunal de Justiça"); and

(iv) Federal Supreme Court ("Supremo Tribunal Federal").

The jurisdiction of each of these extraordinary courts is also defined in the Federal Constitution according to the nature of the matter under consideration, as the following chart demonstrates:

The Superior Labour Court is composed of 27 judges, appointed by the President after the approval by the Senate (1/5 of lawyer, 1/5 of representatives of the Federal Prosecution Service, 3/5 from career judges of the Regional Labour Courts). Basically, the Superior Labour Court has jurisdiction to judge extraordinary appeals against decisions from the



Regional Labour Courts which: (i) violate federal law (ii) violate the Federal Constitution; and/or (iii) violates jurisprudential uniformity.

The Superior Electoral Court is composed of a minimum of 7 members (some of which are elected: three judges from the Federal Supreme Court, two judges from the Superior Court of Justice, one judge from the Regional Federal Court, two lawyers appointed by the President with the approval of the Senate). The members of the Superior Electoral Court have a term of office of two years, with only one further term permitted.

In general, the Superior Electoral Court has jurisdiction over extraordinary appeals against decisions from the Regional Electoral Courts which: (i) violate the Federal Constitution; (ii) violate jurisprudential uniformity; (iii) consider the ineligibility or issue of certificates from the federal or state elections; (iv) annuls certificates or judge the validity of elective mandates; and/or (v) denies *habeas corpus*, writ of mandamus, *habeas data* or writ of injunction.

The Superior Court of Justice is composed of a minimum of 33 Judges, appointed by the President after approval by the Senate (1/3 of judges from the Regional Federal Court of Appeal, 1/3 of the State Court of Appeals, 1/3 between lawyers and representatives of the public prosecution service). It is the court of extraordinary appeal for matters relating to violation of federal law, uniformity of jurisprudence and also it hears appeals in other specific cases, foreseen in the Federal Constitution, including litigation between a country or international organisation against a person who resides in Brazil.

Furthermore, any decision from any ordinary or extraordinary court can be subjected to the control of the Federal Supreme Court, which is the final court of extraordinary appeals, as follows:

Access to an appeal before the Federal Supreme Court is very difficult, as they only analyse the cases connected with violation of the Federal Constitution and uniformity of jurisprudence, that involve collective interests, and therefore, it is a necessary prerequisite that the matter is in the public interest (i.e.: relevant to society).

The Federal Supreme Court is composed of 11 Judges, appointed by the President after approval by the Senate (any native Brazilian older than 35 and younger than 55 years old, not necessarily with a degree in Law, but with a renowned knowledge in Law). On this subject, it is important to clarify that although the president has the right to choose the judges, the Federal Supreme Court, throughout its entire history, has had a mixed composition with lawyers, representatives of the Public Prosecution Service and politicians making in up.

According to the latest reforms to the Brazilian legal system, the Federal Supreme Court can issue a certain kind of precedent able to bind, not only the Judiciary branch for further decisions, but also the public administration. Such biding precedents, called "súmulas vinculantes", have force of law and show how the Brazilian legal system, Roman in origin, is getting more eclectic with the importation of initiatives from the common law system.

Such *stare decisis*, however, can only be created by the Federal Supreme Court with the aim of giving validity to the interpretation or

effectiveness of a determined law, which may result in the unreasonable multiplication of identical suits.

It is important to point out that, in the cases in original jurisdiction of the "ordinary" courts, the extraordinary courts may judge ordinary appeals. Thus, the fact an extraordinary court is involved does not necessarily mean that such court cannot be responsible for judging appeals of as ordinary nature.

Also, in very specific cases, foreseen in the Federal Constitution, the Extraordinary Courts can also judge cases with original jurisdiction. For example, the process of validation of judgments of foreign court in Brazil is in the original jurisdiction of the Superior Court of Justice. Also, the legal proceedings against the President of Brazil, for criminal offences or litigation between Brazil and another country are in the original jurisdiction of the Federal Supreme Court.

8.2. National Council of Courts

As per the determination of the Constitutional Amendment n. 45, of December 2004, the National Council of Courts was created, which is composed of 15 members, elected for a term of office of 2 years, with only one re-election being permitted (one judge from the Federal Supreme Court: one judge from the Superior Court of Justice, one judge from the Superior Labour Court, one judge from the State Court of Appeal, one judge from the Regional Federal Court of Appeals, one federal judge, one judge of the Regional Labour Court, one labour judge, one member of the Federal Public Prosecution Service, one member of the State Public Prosecution Service, two lawyers and two citizens).

Such autonomous body is responsible for the supervision of the Brazilian Judiciary Body, monitoring the aptitude and probity of the judges, receiving complaints in relation to the members and bodies of the Judiciary and preparing half-yearly and yearly statistics to indicate the performance of the Judiciary and for the study of the measures to be taken in order to achieve more efficient access to the Courts.

In a general, the Brazilian judiciary enjoys a good reputation for impartiality and freedom from corruption.

8.3. Legislative Changes Seeking Improved Judicial Agility and Security in the Brazilian Judiciary System

The statistics report prepared by the National Justice Counsel (an independent body that audits judicial activity)[1], on the judicial numbers for 2005, indicates that the crisis in the Judicial Branch is primarily due to the increase in new cases without, on the other hand, a proportional growth in the judicial structure. By way of example, in 2005, in the federal judiciary, in general, there were only 0.819 judges per 100,000 people. At the appellate level, where resources are generally more abundant, there was an average of 2,829.34 new cases in 2005 for each appellate judge, who already had an average backlog of 13,893.64 cases.

Such situation evidence demonstrates the need to seek a swift solution that will allow the Judiciary Branch to provide effective access to the courts, as guaranteed by the Constitution. To this effect, since 1990, a series of reforms to the Civil Procedure Code, dated 1973, were instituted in Brazil, seeking to provide a swifter resolution to judicial disputes. In 2005, this objective was actually promoted to the level of constitutional guarantee. Thus, in order to speed these changes up, given that the previous project of a new Civil Code took over twenty-five years to be approved, instead of discussing the adoption of an entirely new procedural code, the legislators chose to apply changes through the passage of several independent laws, with the most important of these having become effective in the past couple of years.

Specifically, we are referring to Federal laws nos. 11.187/05, 11.232/05, 11.276/06, 11.277/06, 11.280/06, 11.341/06, 11.382/06, 11.418/06, 11.419/06, 11.441/07 and a few legislation proposals that are currently pending approval. Briefly, it can be said that this group of laws has the purpose, among others, of creating greater jurisprudential uniformity; attaching increased value to certain precedents from the Federal Supreme Court; restricting appeals and decisions contrary to the rationale previously established by the Federal Supreme Court; making electronic filing possible; eliminating frivolous proceedings; and facilitating the

[1] http://www.cnj.gov.br

means of enforcement. Note that such changes are significant to the point that Brazilian jurists are now required to adopt intense legal update methods to keep up with the law.

Out of the above-described changes, three principal ones merit special emphasis:

(i) the above mentioned change that established the binding precedent ("súmula vinculante"), constitutionally prescribed by the Constitutional Amendment n. 45 and regulated by the recent federal Law n. 11.417/06, which deals with decisions that also bind public administration, will foreclose many actions and appeals;

(ii) the change that establishes the general decisions from the Superior Courts ("súmula impeditiva de recurso") permitting the trial court to refuse submission of an appeal to the appellate court, prescribed by the Civil Procedure Code through the changes introduced by Law n. 11.276/06, shall reduce the number of appeals relating to matters that have already been subject of judicial rulings by the appellate courts; and

(iii) the change that establishes the legal provision making on line attachments possible through Law n. 11.382/06, allows the court to immediately freeze the banking accounts of the judgment debtor, including corporate debtors, in order to satisfy a judgment that was not paid voluntarily. This change eliminates the need for several judicial proceedings for enforcement, several of which currently are not concluded due to the inability to locate the judgment debtor's assets.

As it can be seen, such changes promote greater swiftness for judicial proceedings through the use of simplicity, agility and democratization, which will certainly result in the greater credibility of the Brazilian Judiciary. At any rate, these important changes positively demonstrate that the Brazilian legislator is looking to advance effective access to the courts, so that judicial decisions are issued in a consistent and swift manner;

rights that are, in fact, guaranteed by the Brazilian Federal Constitution and are an inherent part of the Democratic process.

8.4. The Arbitration Law

On 23 September 1996, Law n. 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 through recourse to the judiciary.

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

The Arbitration Law provides that parties to a contract may refer disputes concerning 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 Arbitration 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.

Since the enactment of the Arbitration Law, Brazilian business has been gradually accepting arbitration as a means of terminating disputes rather than submitting all questions to the Judiciary.

In cases of foreign arbitration, Brazilian sovereignty cannot be violated and the foreign arbitration decision must be ratified by the Superior Court of Justice to be valid and enforceable in the Brazilian territory.

9. THE BRAZILIAN FINANCIAL SYSTEM

9.1. Banking Law

Law n. 4.595 of 31 December 1964, also known as the Brazilian Banking Law, and its amendments, were 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 n. 4.595/64, replaced and abolished the former Council of the Superintendence of Currency 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 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, as well as exchange operations and swaps, fixing limits, fees, terms and other conditions.

Law n. 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 n. 9.069/95, is composed of:

(a) the Minister of the Economy, who is its Chairman;

(b) the Minister of Planning and Budget; and

(c) the Chairman of the Central Bank of Brazil.

The National Monetary Council is assisted by seven 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 infrastructure; public debt; and monetary and exchange policies.

9.3. The Central Bank of Brazil

The Central Bank of Brazil has as its objective the performance and the enforcement of 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 relating to 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 rediscounting 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:

(i) to communicate, on behalf of the Federal Government, with foreign and international financial institutions;

(ii) to promote, as an agent of the Federal Government, co-operation in domestic or foreign loan transactions, as well as being able to undertake such transactions itself;

(iii) 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;

(iv) to effect the purchase and sale of securities of private and public joint stock companies and State companies;

(v) to issue its own bills, in accordance with conditions established by the National Monetary Council;

(vi) to regulate the performance of cheque and other paper clearance services;

(vii) 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

(viii) 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 n. 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 ("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. "Banco do Brasil S.A." (Bank of Brazil)

Before the enacting of Law n. 4.595/64, the Bank of Brazil used to function as the Central Bank besides operating as a private bank.

The Bank of Brazil 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 Bank of Brazil 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 from the collection of federal revenue taxes and from 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 surety ship, 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 on

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) finance the purchase and installation of small and medium-sized rural properties, pursuant to the pertinent legislation;

(i) finance industrial and rural activities; and

(j) 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 n. 4.595/64 as a public financial institution whose primary objective is the execution of Federal Government Investment Policies. BNDES has two subsidiaries: the BNDESPAR, 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 n. 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 for executing the Federal Government Investment Policy.

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

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

9.7. Private Financial Institutions

In general, private financial institutions may only be constituted as 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) transfer of loans obtained abroad;

(e) execution of guarantees;

(f) distribution and placement of any issue of securities and bonds;

(g) operating in the Stock and Commodities Exchange;

(h) issue and/or registration of shares or obligations;

(i) participation in exchange operations;

(j) opening and maintaining accounts; and

(k) participation in gold operations.

In the event of any kind of participation of a foreign financial institution in the capital of a private financial institution, it is necessary, according to Circular n. 3317/06, to complete an application to the Central Bank of Brazil providing the following information: (i) the amount of foreign participation; (ii) the importance of such participation for the Brazilian economy; (iii) the description of the operations practiced by the foreign institution; (iv) the importance of such participation for the foreign institution; (v) the rating of the foreign institution and its economic group; (vi) the indication of any other financial institution, in the event of any bond with the foreign financial institution; (vii) the indication of the supervisory agency of the foreign institution abroad; and (viii) any additional information that may be requested by the Central Bank of Brazil.

9.8. General Rules Concerning Financial Institutions

Article 18 of Law n. 4.595/64 establishes that financial institutions shall only operate in Brazil upon 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 (iv) 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 demonstrate 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, Resolution n. 2.692/00 and Resolution n. 3.334/05.

9.9. Multiple Banks

According to National Monetary Council's Resolution n. 2.099/94, multiple banks are private or public financial institutions constituted as stock companies, which shall have at least two of the following business line, 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; and

(e) leasing.

9.10. Commercial Banks

Commercial banks are private or public financial institutions constituted as stock companies, which 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, in taking deposits for the Employee's Dismissal Fund ("Fundo de Garantia por Tempo de Serviço" – FGTS), and in exchange operations duly authorised by the Central Bank of Brazil. Those banks are regulated by National Monetary Council's Resolution n. 3265/05.

9.11. Investment Banks

According to National Monetary Council's Resolution n. 2.624/99, investment banks are private financial institutions constituted as 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

According to National Monetary Council's Resolution n. 394/76, development bank is a non-federal public financial institution constituted as a 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; and

(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

Credit, financing and investment companies were originally regulated in 1959 as financial institutions constituted as stock companies, which have as their purpose the provision of finance for the acquisition of goods and services, as well as for the working capital (Central Bank of Brazil's Resolution n. 1.092/86).

They are required to include in their name the term "credit, financing and investment" ("crédito, financiamento e investimento").

9.14. Real Estate Credit Companies

According to National Monetary Council's Resolution n. 2.735/00, a real estate credit company is a financial institution constituted as stock company 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

According to Central Bank of Brazil's Resolution n. 3.442/07 and amendments, credit cooperatives are financial institutions constituted as legal entities, with non-profit purpose, which consist of a group of individuals who engage in a certain profession or other common activities, with the objective of sharing credits and/or providing services with benefits for the associates.

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

9.16. Leasing Companies

The leasing companies must be incorporated as "S.A." companies, and shall be subject, whenever applicable, to the same conditions set forth for the financial institutions, as per Law n. 4.595, from 31.12.1964, and subsequent amendments enacted by the National Monetary Council. Additionally, the leasing companies shall carry on their names the term "Leasing" ("*Arrendamento Mercantil*") – Central Bank of Brazil's Resolution n. 2.309/93 and amendments.

The principal objective of a leasing company, which shall be taxed as per Laws nos. 6.099/74 and 7.132/83, 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. In the end of the leasing contract, the lessee has three options: (i) to buy the movable asset; (ii) to renew the leasing contract; or (iii) to return the movable asset to its lessor.

9.17. Stock Brokerage Companies

According to Laws nos. 4.728/65 and 6.385/76, and National Monetary Council's Resolution n. 1.120/86 and amendments, stock brokerage companies, which shall be constituted either as 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, for 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, the company must be admitted as a member of a stock exchange and have 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

According to National Monetary Council's Resolution n. 1.770/90 Exchange brokerage companies was to be constituted as legal entity, 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 the negotiation of the respective bills of exchange (the 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.

It is important to notice that in 2006 with the National Monetary Council's Resolution n. 3.356, exchange brokerage companies were allowed to operate in exchange operations for themselves.

9.19. Securities Distribution Companies

According to National Monetary Council's Resolution n. 1.653/89, securities distribution company, whose name must contain the term "secu-

rities distribution" ("distribuidora de títulos e valores mobiliários") shall be constituted either as a 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, for 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; and

(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

According to Law n. 6.404/76 and National Monetary Council's Resolutions nos. 2.122/94 and 3.425/06, complemented by CVM

Instruction n. 455/07, mortgage companies shall be constituted as "S.A" companies and must contain the term "mortgage company" ("companhia hipotecária") in their names.

Mortgage companies have the following objectives:

(a) to provide finance for the acquisition, production, reorganisation or trade of residential or commercial real properties and urban lots;

(b) to purchase, sell, refinance and manage mortgaged credit of their own or of third parties;

(c) to manage real property investment funds, provided that the necessary authorisation is obtained from the Securities Commission;

(d) to transfer resources for the financing of the production or acquisition of residential or commercial real properties;

(e) to provide loans and finance for mortgage credit with other objectives as described in item (a) above; and

(f) to manage investment funds (CVM Instruction n. 455/07).

According to the law in force, mortgage companies can 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

According to Article 18 of Law n. 4.595/64, for foreign financial institutions to be able to operate in Brazil, they shall obtain a previous authorisation.

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.

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, in accordance with Complementary Law n. 192.[2] 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, or in cases an authorisation deriving from international treaty are issued.

Nowadays, in order to incorporate a foreign financial institution in Brazil, firstly it is necessary to complete an application form to be submitted to the Central Bank of Brazil's analysis (Circular n. 3.317/06). The Central Bank's recommendation and all the additional information requested by the National Monetary Consul's "Communiqué" n. 10.844/03, modified by Circular n. 3.317/06, will be submitted for the deliberation of the National Monetary Council and then to the final decision of the President of the Republic of Brazil, who shall, in turn, issue an "Executive Decree" (Article 52 of the Transitory Provisions of the Constitution).

It is important to note that besides all information requested for Brazilian financial institutions, in order to grant an authorisation for its constitution, the foreign financial institution shall provide to the Central Bank of Brazil two copies of the legal document that indicates the nomination of the legal representative of the foreign institution with respective translations duly notarized.

9.22. "Money Laundering"

On 03 March 1998, the Federal Government approved Law n. 9.613, which regulates "money laundering" crimes and creates, under the

[2]This wording was brought by Constitutional Amendment n. 40, issued in June 2003.

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 unlawful activities and to discipline and impose administrative penalties.

The purpose of this law is to combat crimes relating to "money laundering" (such 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; companies that distribute money, goods, services or their respective discounts by lottery and such like; companies that promote the purchase and/or sale of real state; individuals or companies that deal with luxury and very expensive merchandise; branches or representative offices of a foreign institution that operates with any of the above-mentioned; and any company or institution that depends on authorisation of any financial, exchange, securities or insurance markets' government entities .

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 the 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 within 24 hours;

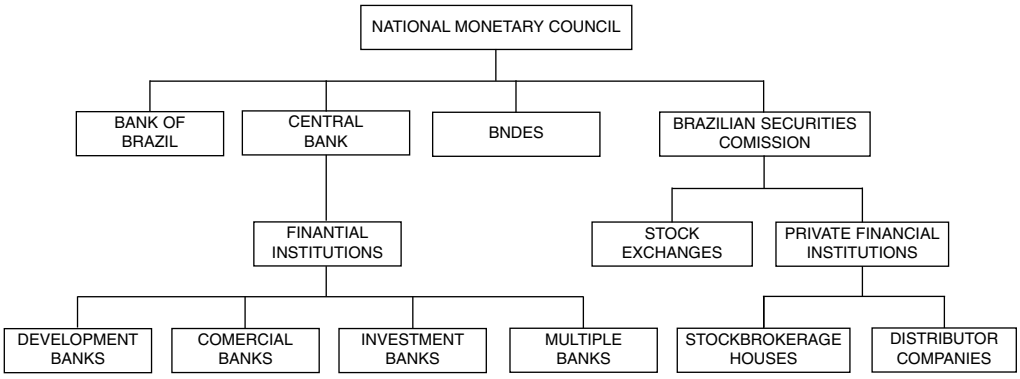
(b) fines ranging from one percent to two hundred percent of the value of the operation or the derived profit, or a fine of up to R$ 200,000.00 (fines are levied for negligence in correcting cited deficiencies within a designated period or failure to fulfil the requirement to identify the clients and 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 relating 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 conversion 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); (iii) reinsurers; (iv) companies duly authorised to operate with private insurances; and (v) admitted insurance brokers.

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

The National Institute of Reinsurance (IRB-Re) is a private and public joint stock company. It was granted a monopoly in the reinsurance market when it was created in 1939. Nevertheless, in August 1996, Constitutional Amendment provided for the lifting of IRB's reinsurance monopoly. Therefore, Complementary Law n. 126 of 15 January 2007, finally extinguished the Brazilian monopoly on reinsurance after more than ten years since the initial steps were taken for opening of the market.

The new law grants considerable regulatory power to CNSP and to SUSEP to determine the new framework/regulation of the market and

to supervise it. Furthermore, the Complementary Law n. 126 provided us with most of what the reinsurance market is expected to be. The Provisions of Complementary Law n. 126/07 are:

(a) all of the original regulatory and monitoring attributions initially vested to the IRB are now transferred to CNSP and SUSEP.

(b) reinsurance (defined as the assignment of risks from one assignor to a reinsurer) and retrocession (defined as the assignment of reinsurance risks from reinsurers to other reinsurers or insurance companies established in Brazil) may take place with the following kinds of reinsurers:

(i) a "local reinsurer", defined as being a reinsurance company constituted and organised in Brazil as a company by shares, with the sole purpose of operating with reinsurance and retrocession;

(ii) an "admitted reinsurer", defined as being a company headquartered overseas; with a representative office in Brazil; complying with the applicable rules and registered with SUSEP for operating with reinsurance and retrocession as an "admitted reinsurer"; or

(iii) an "occasional reinsurer", defined as being a company headquartered overseas (provided that they are not located in jurisdictions with income tax at a rate lower than 20% or in jurisdictions imposing secrecy as to the identity of their shareholders); with a representative office in Brazil; complying with the applicable rules and registered with SUSEP for operating with reinsurance and retrocession as an "occasional reinsurer". The maximum limit possible to be assigned to

occasional reinsurers is to be determined by the executive branch of the government.

(c) IRB is a local reinsurer. The Brazilian government may offer to acquire the participation of preferential shareholders of IRB (holding approximately forty percent of the capital of IRB) provided that such shareholders use the totality of the resulting proceeds to acquire shares of other reinsurers located in Brazil.

(d) Local reinsurers are subject, "mutatis mutandi", to the rules applicable to local insurance companies.

(e) For reinsurers to be authorized as "admitted reinsurers" or "occasional reinsurer", requirements to be met include:

(i) they must be duly authorised, in accordance with the rules applicable within their home jurisdiction, to underwrite domestic and international reinsurance in the sectors they intend to operate in Brazil and they should have commenced those operations more than five years prior to their application in Brazil;

(ii) their financial and economic capacity must not be lower than the minimum requirement to be established by CNSP/SUSEP;

(iii) they shall maintain, at least, the minimum rating to be established by CNSP/SUSEP relative to their capacity to pay risk on claims, such rating to be granted by rating agencies; and

(iv) they shall maintain an attorney-in-fact resident in Brazil with powers to receive service of process and notifications in Brazil.

(f) Additionally, "admitted reinsurers" must, amongst other things, comply with the following requirements:

(i) maintain, as collaterals to their operations in Brazil, a minimum deposit in an amount to be yet specified, in a bank account in foreign currency (linked to SUSEP) with a bank authorised to deal with exchanges in Brazil; and

(ii) provide SUSEP with copies of their balance sheets and financial statements periodically.

(g) Reinsurance relating to life and private pension shall be exclusively carried out through local reinsurers.

(h) For a transitional period of three years, from 16 January 2007, "local (authorised) reinsurers" will have preference over foreign reinsurers offering the same conditions in relation to sixty percent of the total reinsurance being offered by an insurance company in relation to risks in Brazil. After the initial period of three years, the preferential treatment will be lowered to forty percent of reinsurance amounts transacted in Brazil.

(i) Insurance, reinsurance and/ or retrocession may be contracted in foreign currency in Brazil, subject to the rules enacted by the National Monetary Council ("NMC") and by CNSP.

(j) NMC shall regulate bank accounts maintained in foreign currency to be kept by local insurance and reinsurance companies, by foreign reinsurers registered with SUSEP and by insurance brokers.

(k) Mandatory insurance, as well as non-mandatory insurance contracted by individuals resident in Brazil, or by legal enti-

ties located in Brazil, insuring risks located in Brazil, must be contracted in Brazil.

(l) Contracting insurance abroad by Brazilian residents or legal entities headquartered in Brazil are only authorized in the following situations:

(i) when the insurance in question is not available in Brazil and not contrary to the Brazilian legislation;

(ii) when the insurance in question covers risks located abroad for individuals, provided that the insurance is valid only during the period of their stay abroad;

(iii) when the insurance in question is the object of an international agreement ratified by the Brazilian Congress;

(iv) when the insurance was legally contracted prior to 16 January 2007 (enactment of Complementary Law n. 126); and

(v) when the insurance covers the risk located overseas of legal entities located in Brazil.

In the meantime, even though the specific regulation to be issued by both CNSP and SUSEP was expected to be enacted in the middle of 2007, at the time of this edition, the regulatory bodies have decided to put the referred regulation to the test, by means of a public hearing, in the attempt to obtain the opinion, suggestions and critics of experts and the market in general, in order to obtain a "customised" regulation for the Brazilian reinsurance market.

11. REGULATORY ASPECTS OF THE PETROLEUM INDUSTRY

11.1. The Petroleum Monopoly in Brazil

As they relate to an energy source, the activities of the Petroleum Industry have significant importance to the Brazilian economy, since it enables investments and permit a stable interaction between the State and private initiative.

From the 1990's, relaxations to the economic rules of the country made possible the deregulation of certain sectors and the beginning of the process of denationalization.

Under this model, the responsibility for the execution of the services that were, up to that time, the monopoly of the State exercised only by the PETROBRÁS – Petróleo Brasileiro S/A, company constituted in 1953 with the objective of performing the activities of the sector of petroleum in Brazil in the name of the Federal Government, was transferred to private enterprise under the watch of regulating industries.

In this context of the relaxation on the monopoly exploitation, development and production of hydrocarbons, on 09 November 1995, the Constitutional Amendment n. 9 was enacted, permitting the Federal Government to let state or private companies be involved, under the regime of free competition, in activities relating to petroleum and natural gas; therefore the Federal Government no longer acts as the exclusive producer and no longer takes all the risks and profits.

Consequently, on 06 August 1997, Federal Law n. 9.478 was enacted, known as the "Oil Law", with the objective of regulating the national energy policy and activities relating to the petroleum industry.

11.2. The Oil Law – Law n. 9.478/97

Law n. 9478/97 regulates the national energy policy and activities related to the monopoly of petroleum and for this the National Board of Energetic Policy (CNPE) and the National Agency of the Petroleum, Natural gas and Biofuel (ANP) were established.

The National Energy Policy is guided by the principles and objectives that structure the legal system for the utilization of the energy sources, which are: (i) to preserve the national interest; (ii) to promote development, extend the labour market and value the energy resources; (iii) to protect the interests of the consumer as to the price, quality and offering of the products; (iv) to protect the environment and promote the conservation of energy; (v) to guarantee the supply of derivatives from petroleum in all of the national territory; (vi) to increase, economically, the utilization of the natural gas; (vii) to identify how electric energy may be supplied to diverse regions of the Country; (viii) to utilize alternative sources of energy, by means of the economic utilization of the raw material available and of the applicable technologies; (ix) to promote free competition; (x) to attract investment in the production of energy; and (xi) to extend the competitiveness of the Country in the international market.

Activities relating to the monopoly of petroleum, according to the said Law, consist of the activities of research, carving up of deposits, production, importing, exportation, refining, improvement, handling, processing, transport, transference, storage, stock, resale and commercialization of petroleum, its basic derivatives and products, natural and condensed gas, as well as the distribution, resale and commercialization of gas ethylic alcohol, the construction and operation of installations and the equipment relating to the exercises of these activities.

However, the activities mentioned above may be practiced by means of concession or authorization by companies or joint ventures incorporated under Brazilian laws, with headquarters and administration in the Country, preceded by biddings promoted by the National Agency of the Petroleum, Natural gas and Biofuel – ANP.

ANP, under a special regime and linked to the Department of Mines and Energy, was established by the Law 9.478/97 with the purpose of promoting the regulation, the contracting and the inspection of the economic activities of the Industry of Petroleum Industry, as well as Natural Gas and its derivatives.

Consequently, it is incumbent on ANP, as the Supervising and Regulating body, to deal with concessions relating to exploitation, development and production, elaborate the notices with an invitation to bid and proceed with the biddings, with the purpose of evaluating the technical and financial capacities of future concessionaires, entering into the respective contracts and inspecting their execution and the Governmental involvement in relation to the referred concessions.

Moreover, besides regulating the activities of the concession, ANP has the responsibility of guaranteeing the supply of the national petroleum market, as well as preventing and restraining conduct violating legislation, and dealing with the contracts and authorizations. ANP's regimental structures are regulated by the Decree n. 2455/98.

The National Board of Energy Policy – CNPE, is a body assisting the President of the Republic, created by the law n. 9.478/97, which deals with formulation of policies and energy directives, with its structure and functioning regulated by Decree n. 3.520/00.

11.3. The Joint Ventures in the Petroleum Industry

The appearance of new players in the exploitation, development and production of hydrocarbons, offered by the Constitutional Amendment n. 09/95 and consequent relaxation of the monopoly led to new contractual instruments being entered into in the petroleum and natural gas industry.

Joint ventures have emerged as an important commercial strategy. The specific legislation of the sector foresees the formation of consortiums in the national oil-producing industry.

Law n. 9.478/1997, in its Article 38, permits the involvement of joint ventures in the concessions and sets certain requirements that must

be included in the invitation to bid, which are: the parties' undertaking to form the joint venture, and an indication of the lead player that will take responsibility for the joint venture and conduct of the operation.

Individually, the joint venture companies are obliged to present the documents required by the invitation in order to evaluate the technical, economic and financial qualifications of the joint venture.

The concession granted to the winning joint venture is conditional on registration of the applicable agreement, so that the only rights granted are those of exploitation, development and production of hydrocarbons, after the formalization of the joint venture.

Article 63 of the Oil Law, authorizes PETROBRÁS and its subsidiaries to form consortiums with national or foreign companies, aimed at expanding activities, uniting technologies and extending investments applied to the oil-producing industry.

In this respect, PETROBRÁS continues to be the only concessionaire, conferring to the others only the right to a percentage of the profits.

11.4. Governmental Financial Interest in Exploitation of the Petroleum

Article 45 of Law n. 9478/97 deals with the applicable governmental financial interest in the exploitation, development and production relating to petroleum and natural gas. They are: payment of signature bonus, royalties, special percentages and percentages for occupying a particular area.

The criteria for the calculation and collection of the sums due to the government by the concessionaires of those activities are regulated by the Decree n. 2.705/98 and should be set out in the notice with the invitation to bid and in the contract of concession or authorization.

11.5. Alternative sources of fuel – The Biofuel

In the recent years, rising petroleum prices, as well as its scarcity, has led the world to seek alternative sources of energy. In this context alcohol has emerged as one of the main alternative sources.

Alcohol is capable of reducing two significant problems: the greenhouse effect and the scarcity of petroleum.

Brazil has a key role in the production of renewable fuels thanks to a perfect combination of climate, territorial size and plenty of water. However, the government must, in the coming years, encourage investment in technology, science and infrastructure to guarantee an efficient production of alcohol.

It is important to mention, finally, that Clause XII, of Article 1 of the Law n. 9.478/97 establishes as an objective of the National Energy Policy, the development, on an environmental, social, and economic basis, of the part of biofuels in the national energy matrix.

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 discrimination in employment on the basis of sex, age, colour or marital status.

The primary labour legislation enforcing these rights is Decree-Law n. 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 relationships.

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 information about the employer, as

well as about the employee, for instance: name, position, wages, date of hiring, and responsible Union for the category).

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 minimum wage in Brazil as of 01st April 2007 is R$ 380,00 reais (approximately $ 190 US dollars) per month. The minimum wage can vary depending on the professional category of the employee.

12.3.2. Working Hours

The Federal 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 be paid holidays (vacation) "with remuneration at least one third higher than the normal salary", which is a constitutional right granted to all employees. 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". This amount must be paid every year by 20 December.

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 as a contribution to the 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$ 2,894.28 of an employee's monthly salary; any part of the salary received that exceeds such amount is not subject to the contribution.

12.4. Labour Agreement Termination

Labour agreements may be ended for a number of reasons – termination by the employer with or without cause, rescission by the employee, expiration of the term of the employment agreement, death of one of the parties, extinction of the employer or by mutual consent.

Brazilian Labour legislation also stipulates that the termination of labour contracts in excess of one year must be ratified by the relevant Trade Union or Labour Agency ("Delegacia Regional do Trabalho – DRT"), pursuant to Article 477 of the CLT.

The Trade Union, after analyzing the payments being effected, notes the termination of the labour contract in the employee's work and social security booklet ("Carteira de Trabalho e Previdência Social" – CTPS). If the rescission payments are not made within the stipulated time-frame the employee will be entitled to one month's salary as compensation.

Pursuant to this matter, article 447 provides for two different situations: a) when the employee works during the period of the prior notice – the payments must be done immediately after the termination of the labour contract, thus, after the period following the prior notice; b) when the employee does not work after the prior notice has been given, the law determines that the payments shall be performed within ten days after the notice (by the employer or employee). If the employee resigns, the employ-

er may require him to work for one month. In this case, the payment must be done in accordance with item "*a*" above. Notwithstanding, if the employer waives this right, the payment must be performed within 10 days as of the date of the employee's notice.

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

12.4.1. Prior Notice

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

The law provides that if the employer does not provide at least 30 days prior notice, the employee must be paid his or her salary in an amount corresponding to the period of the required notice. If 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 (Employee Dismissal Fund). 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; with a remuneration which is at least one third higher than the normal salary, and a "pro rata" share of the 13^{th} salary corresponding to the actual period the employee worked that year. In the above mentioned scenario the employee will be entitled to withdraw the amounts deposited with FGTS and to receive unemployment insurance.

Additionally, there may be additional obligations of the employer arising under any Collective Labour Agreement ("ACT") entered into with the employee's trade union. Such Agreements can create additional rights but cannot restrict rights otherwise legally assured. Each professional category in each region has a different ACT.

Thus, it is important to note that employees have a period of one month stability before the execution of ACT. If an employee is dismissed during this period, the employer will have to pay the severance package considering the new values established on the ACT.

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.

If the employee resigns, in which the employee unilaterally submits his/her resignation, which may or may not be accepted by the employer; he/she is required to work for one month. If the employee refuses to work during this period, he must pay the employer the amount equivalent to one month of his salary as indemnification. It is also possible for the employer to waive this right.

In the above scenario, the employee will not receive the 40% penalty over the Employee Dismissal Fund (FGTS) and will not have the right to withdraw the amounts deposited in his/her FGTS account or to receive unemployment insurance.

It is important to note that the employee will be able to withdraw the deposits of the FGTS account plus interest after 3 years from the termination of the employment contract if during this period he/she is not formally hired as an employee.

Where an employee is dismissed 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 total amount deposited at the FGTS account and cannot withdraw the balance of the FGTS account. Brazilian law has established the cases in which it is possible to terminate a labour relationship with just cause.

If an employee who has employment stability is dismissed without just cause, the employer shall also pay, in addition to all these rights, all salaries and rights relating to the whole stability period and, depending on the individual case, the Court may order that the employee be reemployed.

12.5. General Labour Procedural Considerations

Prior to the Constitutional Amendment n. 24/99, Labour Courts were presided over by panels of judges at all levels, including the Courts of first instance. These Courts were comprised of panels of conciliation and judgment, the regional labour Courts, and the Superior Labour Court.

Nowadays, however, pursuant to this Constitutional Amendment, Courts of first instance are presided over by only one judge and no longer by a panel of judges. Apart from this, they have jurisdiction over collective and individual labour disputes. Individual disputes are those that relate to questions concerning the interests of individuals, brought before the Courts by the employees in questions arising from an individual's professional activity.

On the other hand, collective disputes are those that involve wider interests of a given category of workers and are brought by the respective trade unions in, for example, cases involving strikes. These (collective) disputes may be resolved by arbitration, if the parties agree to submitting them to Arbitration Court, or in the Labour Courts.

Articles 625-A to 625-H of CLT prescribe that employers and trade unions may create Prior Settlement Committees ("Comissões de Conciliação Prévia"). These committees must try to settle disagreements between employees and employers in order to avoid litigation concerning disputes arising from the employment relationship. Although the aforementioned legal dispositions do not impose the creation of these committees, there are authors and judicial decisions stating that this creation is an obligation and that lawsuits may not be brought without a prior attempt to reach a settlement agreement before these committees.

On the other hand, jurisprudence universally accepts that after the filing of a claim before a committee by an employee, there is no penalty for employers who do not make themselves present at the hearing before the committees or do no not reply to the claim.

12.6. Brazilian Labour Law for Hiring Employees to Work Abroad

Law n. 7.064/82 was originally created to regulate the hiring, in Brazil, of employees to work abroad, as well as the transfer of these employees for the rendering services in another country in the field of engineering services and related activities.

Since then, there has been some controversy in legal circles in Brazil as to whether this law should be applied only for engineering activities or whether it applies to all cases whereby an individual is hired in Brazil to work abroad or is transferred from Brazil to another country.

Notwithstanding, the Brazilian authorities consider "prima facie" that Law n. 7.064/82 should be applied to all cases where an employee is hired in Brazil to work abroad.

In this sense, article 2 of the above mentioned law foresees three scenarios in which it should be applied: I) if the employee whose employment contract was executed in Brazil is transferred abroad; II) if an employee maintains his employment contract with a Brazilian company and is assigned to work abroad; III) if an employee is hired by a Brazilian company to work abroad.

Moreover, law n. 7.064/82 provides that the most favourable law shall be applied to the employment contract of employees hired in Brazil to work abroad or employees who were transferred from Brazil to another country.

In order to apply the most favourable law, each right must be analyzed separately (v.g. holidays, advanced notice, etc.) and the employee must be entitled to receive the best between both Brazilian and foreign legislation.

Law n. 7.064/82 also provides that the employer is responsible for the transfer expenses, social security contributions, contributions to the FGTS, annual paid vacations in Brazil (after a period of two years) including her family, the expenses to repatriate the employee to Brazil upon the termination of the respective employment contract and for providing medical and social assistance to the employee.

Additionally, Law n. 7.064/82 establishes that the advantages granted to the employee by reason of his relocation may be terminated upon his return to Brazil.

Finally, the Law stipulates that an authorization from the Ministry of Labour, via its Immigration Department, must be obtained prior to the hiring of any Brazilian workers in Brazil by foreign companies. Such authorization will only be granted if:

a) the foreign company holds at least 5% of a Brazilian company;

b) the foreign company must guarantee all rights foreseen under Brazilian Labour legislation;

c) all expenses related to the relocation must be fully paid by the employer;

d) the period abroad shall not exceed 3 (three) years, except when annual vacation in Brazil is provided;

e) the employer must repatriate the employee under the termination of the employment contract or under exceptional circumstances regarding his health and grave family crises;

f) the foreign employer must have a legal representative in Brazil with the powers to receive services of process in Brazil; and

g) foreign and Brazilian companies shall be jointly responsible for compliance with the obligations under the employment contract.

The Administrative Ruling n. 21/2006, from the Ministry of Labour and Employment, determines that the abovementioned authorization must be filed in Portuguese, together with appropriate documents proving the legal existence of the foreign employer; that the foreign company holds a participation of five percent in a Brazilian company; that a representative in Brazil has been appointed; and an individual employment contract in Portuguese, observing Law n. 7.064 of 1982.

Documents in a foreign language must be translated into Portuguese by a sworn translator in Brazil.

Moreover, in the event the employee remains abroad for more than three years, or in cases of renewal of the employment contract, the employer will have to request an extension of the authorization, submitting various documents demonstrating that the Law has been observed.

13. CONSUMER PROTECTION LEGISLATION

13.1. General Considerations

The Federal Constitution sets out 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 n. 8.078 of 11 September 1990, as regulated by Decree n. 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 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, consumers are entitled to:

(i) life and health protection, regarding consumer relations;

(ii) acknowledgement on products and services;

(iii) protection against misleading or abusive advertisements;

(iv) contractual guarantees;

(v) compensation on damages;

(vi) access to justice;

(vii) facilitated defence of their rights; and

(viii) 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 products or services 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 unincorporated organization, which perform 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 a consumer on the other.

13.2. Principal Aspects 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 note:

(a) *Reversal of the burden of proof* – by 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* – 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* – 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* – 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* – 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.

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

(e) Institute of Weights and Measures (IPEM).

Finally, 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 out 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 subject to more legislation than sport. There are the "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 position. 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 fuelled 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 n. 3.199, was enacted. Law n. 3.199 was a 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 n. 6.251, was enacted, but did little to change the system that had been imposed by Law n. 3.199.

In 1976, Law n. 6.354 was enacted. This new Law governed the labour relations of professional football players. This legislation covered a number of important subjects, including:

(i) the concepts of employer and employee, within the context of the game as they effect football;

(ii) 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;

(iii) the age limit at which a professional athlete may sign a contract;

(iv) the weekly and daily working hours; the annual holiday period;

(v) the conditions to assign and/or transfer an athlete and the athlete's rights when there is a transfer; and

(vi) the "passe", a legal bond which connected an athlete to a club even after the termination of the labour contract.

Law n. 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 n. 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 Brazilian legislation. Because of their importance, the Constitutional articles relating to sports are summarised below:

(i) Art. 5, XVII, establishes freedom of association for lawful purposes[3];

(ii) 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 Articles of Association;

[3] 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).

(iii) Art. 5, XXVIII, ensures the protection of the human image and voice in sports activities;

(iv) Art. 24, IX, establishes that the Federal Governmental, the States and the Federal District share legislative authority over sports;

(v) 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;

(vi) Art. 217, paragraph 1, establishes that the Judicial Power will consider actions related to sports discipline and competitions only after exhaustion of appeals to the sports courts, as regulated by law;

(vii) 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

(viii) Art. 217, paragraph 3, establishes that the state must encourage leisure for the social good.

14.4. Subsequent Legislation: Law "Zico", Law "Pelé" and 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 n. 8.672, known as Law "Zico", was enacted. In 1998, Law "Zico" was

revoked by Law n. 9.615, popularly called Law "Pelé".

From the time of its enactment until the present date, Law "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 n. 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 n. 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 n. 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 Brazilian cultural heritage and social interests.

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

(i) 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);

(ii) 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);

(iii) if a member of the management of a professional league, federation or club unduly 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

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

Although the value of a penalty clause can be negotiated between the contracting parties, Law n. 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:

(i) 10% after the first year;

(ii) 20% after the second year;

(iii) 40% after the third year; and

(iv) 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 n. 10.672 limited to a period of one year or less: (i) the term of a power-of-attorney relating to a professional athlete's contract, or (ii) the term of 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 n. 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 other words, the athlete will be able to enter into a contract with a new club only if the proposal made is (financially) better 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 recover 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:

(i) 15 times the annual scholarship value effectively paid if the non-professional athlete is between 16 and 17 years of age;

(ii) 20 times the annual scholarship value effectively paid if the non-professional athlete is between 17 and 18 years of age;

(iii) 30 times the annual scholarship value effectively paid if the non-professional athlete is between 18 and 19 years of age; and

(iv) 40 times the annual scholarship value effectively paid if the non-professional athlete is between 19 and 20 years of age.

Law n. 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 n. 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.

After the significant Amendment to the Law "Pelé" of 2003, through Law n. 10.672 of 15 May, only a few modifications or innovations were made. The main innovations are: Decree n. 5.139 of 12 July 2004 which establishes about application of financial resources according to Article 9 and Article 56, IV of the Law "Pelé" and also Law n. 11.118 of 19 May 2005 which adds paragraphs to the Article 10 of Law "Pelé".

Regarding Decree n. 5.139/04 that regulates the Article 9 (annual destination of total net income of one of the Federal Sports Lottery to the Brazilian Olympic Committee -COB and to the Brazilian Para-Olympic Committee – CPB and the destination of net income of two Lotteries in years of Olympics and Paralympics Games) and Article 56, IV of Law "Pelé", the main changes are the following: the application of the financial resources to the COB and that the CPB should obey the principles of the Brazilian Federal Constitution. The resources will be managed by the Committees or by the incorporated entities through bid proceedings. According to Decree 5.139/04, these financial resources will be applied in supporting, development and maintenance sports programs and projects, human resources, technical preparation, subsistence and transportation of the athletes and participation in sports events.

In addition, the Article 56, IV, of Law "Pelé" that establishes the transfer of 2% of the financial resources collected from the Federal Lotteries

and other sources of Lotteries. In its turn, Decree 5.139/04 explains that 10% of these resources should be invested in high school sports and 5% in college sports.

The other amendment to the Law "Pelé" was in Law n. 11.118/05, which establishes that, the financial resources received by the beneficiaries would be considered as own income and they must pay their income tax until the following consecutive month of this payment delivery. In general, the law has the intention of promoting, supporting and developing sports practice programs.

14.5. Fan's Statute

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

Under Law n. 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 be published 60 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 Council 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.

14.6. Athletics Scholarships – Law n. 10.891/04

In order to encourage the sports practice and the development of Brazilian athletes, the Brazilian government passed Law n. 10.891 of 09 July 2004, which creates Athletics Scholarships.

These scholarships are designated for the athletes participating in the Olympics or Paralympics. The athletes should have a minimum age of 14 years for the National Athlete's Scholarship and minimum of 12 and no more than 16 years old to be able to receive a Student Athletics' Scholarship. In this case, they will have to be registered in either a public or a private school.

In the Student's category, the athletes who are highlighted, according to the legal parameters, will receive the scholarship. The parameters are: to receive first, second or third place in the individual competitions or being selected amongst the best 24 athletes in group competitions.

In the National Athlete's category, the athlete should finish in first, second or third place or be in first, second or third place in the national ranking of that discipline.

In the International Athlete's category, the athlete that is part of the national team in that modality, representing the country in South American, Pan American, Parapan American, or Worldwide competitions and who comes in first, second or third place, will receive the scholarship.

And finally, in the Olympic or Para-Olympics' category, the athlete should be part of a Brazilian delegation in the Olympics or Paralympics Games. The scholarship will be given for a period of one

year, and if the athlete gets medals in the Olympics or Paralympics Games, it will be extended.

To receive the Athlete's Scholarship, the athletes cannot have any source of sponsorship; neither receives any pecuniary amount for a payment of any kind. They should be in a full time sport activity routine and bound to a sports practice entity.

In this manner, Brazilian Sports Law seeks to favour the young athletes' access to competitions, supporting practice of sport through scholarships, creating educational and athlete-development programs.

14.7. National Commission of Prevention of Violence and Security in Sports Events – Decree n. 4.960/04

Another innovation brought is Brazilian legislation is the Decree n. 4.960 of 19 January 2004 which creates the National Commission for the Prevention of Violence and Security at Sports Events – CONSEGUE, to improve security in sports practices environments, and also to focus on promoting the modernization of the promotion of sports events in general in Brazil. With that objective, and according with the Law n. 10.671/03, the Fan's Statute, this Commission seeks to create a national policy of prevention of violence and security at sports events, using partnerships and conventions with several public and private organizations.

14.8. Tax Benefits – Law 11.438/06

In order to support the individuals and legal entities in sponsoring or donating money to sports and para-sports projects, the Brazilian Government enacted, on 26 December 2006, Law n. 11.438, which establishes certain benefits and incentives for individuals and legal entities promoting and supporting sports activities and projects up to the year 2015.

15. COMMERCIAL DEFENCE IN BRAZIL

15.1. Introduction

Commercial defences – antidumping, safeguard and countervailing measures – are important for hindering illicit commercial practices 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 in developed countries, their traditional users, but now also being 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 its international markets.

Even in the ambit of the WTO's Dispute Resolution System the most common trade conflict 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, dealing with antidumping rules aimed at preventing national producers from suffering losses from importing at dumping prices; the Agreement on Subsidies and Countervailing Measures, dealing with the legal instruments available to compensate subsidies that are directly or indirectly granted and, lastly, the Agreement on Safeguards, which is aimed at temporarily increasing the protection of a domestic industry.

In Brazil, Decree n. 1.355 of 30 December 1994, determined the adoption of the agreements signed by the end of the Uruguay Round by the Brazilian Legal System. 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 n. 1.751 of 19

December 1995, provides the rules for the application of countervailing measures, and finally, Decree n. 1.488 of 11 May 1995, deals with 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 are part of the Ministry of Development, Industry and Foreign Trade – MDIC.

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 are involved in the application of definitive measures, depending on the sector involved.

By means of Decree n. 4.732 of 10 June 2003, CAMEX received further powers. The Decree foresees a compulsory previous consultation with CAMEX regarding any foreign trade matter.

Specifically concerning commercial defence measures, CAMEX has the competence to impose antidumping and countervailing measures, that are either provisional or definitive, as well as safeguards.

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 and for the imposition of antidumping and countervailing duties, both provisional and definitive, as well as 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, otherwise it will not be accepted. For antidumping investigations, Circular SECEX n. 21/95 should be adopted as a model and, in case of countervailing measures, Circular SECEX n. 20/95 is the model foreseen.

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 for subsidies, after the petition is accepted and before the investigation is launched, the government whose products could become the object of the investigation is invited to take part in a consultation. This consultation is aimed at clarifying the situation of the possible existence of a subsidy, its levels and effects, and also to seek a mutually satisfactory solution.

Decree n. 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 n. 1.751/95, regarding investigations on actionable subsidies, besides proof of the subsidy existing itself, evidence on the injury suffered should also be presented, according to Decree 1.751/95.

The period to verify the existence of dumping or a 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 made 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 additional 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 the 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 prepared based on the best information available.

The only compulsory hearing is the one referred to in Article 33 of Decree n. 1.602/95 and in Article 43 of Decree n. 1.751/95, when the interested parties will be informed of the essential facts under judgement, which form the basis for the Final Determination.

However, the proof that a dumping margin or illegal subsidies exist at a value superior to *de minimis* (2%), and the verification that a signifi-

cant injury simultaneously occurred in the local industry is not enough. It is essential that such practices be the fundamental cause of the injury so the causal link must be demonstrated.

The antidumping and countervailing duties, either provisional or definitive, 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 rate, 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 imposition of the definitive measure 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 it is detected that the duty is higher than the amount necessary to neutralise the injury to the domestic injury, or that its imposition is no longer justified, the due restitution will be determined.

Moreover, there is also the possibility that the duties will be suspended for one year. Such suspension can be extended for one more year, if there are changes in the market, as long as these are no injuries and, in this case, the right to respond should be granted to the domestic industry.

15.3. The Administrative Procedure of Safeguard Measures

Safeguard measures are aimed 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, with the purpose of increasing the competitiveness of the domestic industry 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 in imports, taking into account

objective and quantity factors, listed in Article 7 of Decree n. 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 such as 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 undertaking for adjustment 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 the measure will be revoked if it is not executed.

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 prepared by SECEX (Circular SECEX n. 19 of 2 April 1996), presented with sufficient evidence, such as demonstrations of increase in imports, the 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 to the undertaking of the adjustment for the domestic industry.

It is DECOM's responsibility to examine the origin of the petitions for initiating investigation, and, in case it finds enough evidence to determine preliminarily the existence of serious loss or threat of loss due to the increase in imports, the initiation 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 on initiation of the investigation.

After the investigation begins, the interested parties have 30 days to request, in writing, hearings, where they will be given the opportuni-

ty to present 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 prior consultations with any government with substantial interest as an exporting country of the product in question. On this occasion, the available information will be examined in order to arrive at a conclusion regarding 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 with the WTO.

It is important to note that a provisional 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 where a delay could cause injury that would be difficult to repair. The WTO's Committee on Safeguards will be notified before the provisional 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 provisional safeguard measure will have effect for up to 200 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 provisional measure was applied will be taken into account in calculating the relevant total period of effect.

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

The application of safeguard measures observes the principle of non selectivity by which the measures will be imposed on the imported product without taking into account its origin. However, with respect to

developing countries, Chapter X, Article 12 of Decree n. 1.488/95 foresees special treatment.

Article 9 of Decree n. 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 shall initially be 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 by means of an investigation by SECEX which will determine whether the application is still necessary to prevent or repair the serious loss or serious threat of loss, and whether the undertaking of adjustment 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 any 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 providing for progressive liberalisation during the new application period.

When applying safeguard measures or extending the term of effectiveness, the Brazilian Government will try to maintain equilibrium in tariff concessions and other obligations taken on by GATT 1994.

Governments of the countries with a substantial interest as exporters of the product in question will also have the right to respond regarding the case and to request compensation 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.

16. E-BUSINESS

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 Civil Code and its Introductory Law, the Consumer Protection Code, the Commercial Code, Intellectual Property legislation, and Copyright legislation. This general legislation gives to contracts validity (including electronic contracts) and as a result, electronic business transactions are widely undertaken in Brazil.

16.1. The Validity of Electronic Contracts

Regarding the validity of contracts (including electronic contracts) Article 104 of the Brazilian Civil Code establishes that the validity of a legal act requires a part with capacity, a legal objective 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 to have been 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 the parties present, as determined by the 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 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 the parties present.

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 suppliers of goods/services are 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

There has been much discussion on online privacy. 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 with such authentication being based on the "United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Signatures".

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 address.

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 for 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" address. 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 for the respective trademark owner ("cyber squatting") is becoming, unfortunately, a very common practice.

This practice is increasing in Brazil due to the criteria 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. 01 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" criteria is inefficient as to the protection of consumer relations and well-known trademark holder's intellectual property rights, especially due to the lack of an 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 Brazil's National Monetary Council, established the rules regarding the opening of new cur-

rent 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 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 if something was the 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 clearings 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 of 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 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), Fernando Meirelles' acclaimed "Cidade de Deus" (2002), Breno Silveira's "2 Filhos de Francisco" (2005) and Cao Hamburger's " O ano que meus pais sairam de férias" (2006), 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.

The Brazilian film industry has become a frequent participant in many renowned international festivals, including the Oscars, Cannes Film Festival, the Sundance Film Festival, and the International Film Festival in Berlin.

For more than fifteen years Brazil has implemented two 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.

In 2001 the National Movie Agency – ANCINE – was created, the official body to development, regulation and inspection of the cinematographic and videophonografic industries, whose objective is to develop the production, the distribution and the exhibition of cinematographic and videophonografic works in diverse segments of market, so as to promote the auto-sustainability of the national industry.

The producer needs to be properly registered before ANCINE in order to produce a film in Brazil.

17.2. Production of Cinematographic and Videographic Foreign Work in Brazil

The filming, record, collection of images, with or without sound, for partial or integral production and for the adaptation of foreign audiovisual work in the national territory, is regulated by Normative Instruction n. 32/2004 from ANCINE that establishes that these acts should be done under the responsibility of Brazilian producing company recorded at ANCINE, granted by a contractual instrument signed with the foreign production company or whoever is lawfully responsible for the operation.

Thus, the foreign producer in order to be authorized to produce the audiovisual work in Brazil needs to work in partnership with a Brazilian producing company properly registered in ANCINE.

Regarding the productions of foreign audiovisual works that are strictly journalistic-news they should be communicated to the foreign representatives of the Ministry of Foreign Affairs, which will be the responsible for giving the pertinent authorizations.

ANCINE is responsible for the control and inspection of the foreign productions made in Brazilian territory.

17.3. 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 may be best to establish an independent legal entity in Brazil.[4]

17.4. Registration at ANCINE

The production company established in Brazil must be properly registered in ANCINE in order to be able to film and record, as already mentioned.

We note that such application may be done by the internet and, subsequently, ratified by the presentation of documents before ANCINE.

17.5. 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), the foreign capital invested in the project will be governed by Brazilian law. On foreign investments in film production and/or other activities in Brazil please refer Chapter 1 of this Legal Guide.

17.6. Tax System

The information related to the federal, state and municipal taxes and to social contributions may be found in Chapter 3 of this legal guide.

17.7. 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.

17.7.1. "Lei do Audiovisual" (Audiovisual Law)

The Audiovisual Law (Federal Law n. 8.685/93 and modifications) allows individuals and corporations to invest a portion of their income tax, as deductible expenses, in Brazilian independently produced cinematographic audiovisual work, through the acquisition of representative quotas of commercialization rights over the referred works, 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).

Such deduction is limited to 3%, for individuals, and to 1%, for legal entities.

Additionally, the contributors may deduct the income tax due on the amounts for the sponsorship for the production of cinematographic works that are independently produced, if the projects have been approved previously by the ANCINE. The income tax deduction is limited to 4%, for legal entities, and 6%, for individuals.

In addition, Article 3 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), limited to R$3 million.

We emphasize that the deductions through the purchase of quotas and through the sponsorship of the visual works are limited to R$ 4 million at any one time.

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). CONDECINE is an 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.

17.7.2. "Lei Rouanet" (Rouanet Law)

The Rouanet Law (Federal Law 8.313/91 and Decree 1.494/95), gave individuals and corporations a tax credit for investments in the cultural area. 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.

17.8. International Treaties and Agreements

Brazil has film co-production treaties with Argentina, Canada, Chile, Colombia, France, Germany, Italy, Portugal, Spain e Venezuela. 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 Coproduction).

Furthermore, the Iberian-American cinematographic integration agreement and the Agreement for the Creation of the Latin-American common market of cinematography were signed.

These treaties establish terms which, enable international co-productions to qualify for various types of governmental support, and allow co-produced material to be eligible for investor tax credits.

17.9. 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.

17.9.1. 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, and 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 affiliated with a Brazilian production company the 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 give authorization to film in Brazil and will forward all necessary information to the Ministry of Foreign Affairs, which will authorize the consulate(s) to issue the visas. The consulate will issue temporary work visas, the period of which can be expected to be compatible to the film production schedule.

17.9. 2. Permission to Film

As noted above, when a foreign production company is associated with a Brazilian film company, ANCINE provides both visas and an authorization to film in Brazil.

17.9.3. Temporary Importation of Production Equipment

While production equipment (cameras, lights, etc.) can be rented or purchased in Brazil, Brazilian law also authorizes the importation of foreign equipment for a limited period.

18. MARITIME LAW

18.1. Introduction

Brazil and Maritime Law have been interrelated since the country was discovered in 22 April 1500 and had in the sea as its only means of communication with the world.

During the colonial period in Brazil, the legislation in force, owing to the bonds with Portugal, was the Portuguese Crown Ruling, the "*Ordenações Filipinas*". These were in force until Brazilian independence, following which, it was important for the country to regulate commercial issues. Therefore, in 1850, the Commercial Code was enacted.

With the advent of Law n. 10.406 of 10 January 2002 (current Civil Code), the Commercial Code was revoked except for the Chapter on Maritime Law which remains in force.

Thus, the Commercial Code deals with the following matters on Maritime Law:

a) vessels, their owners, joint owners;

b) freight, including the bill of lading and passengers;

c) maritime contracts;

d) maritime insurance;

e) shipwrecking and salvage;

f) damage caused by collision;

g) abandonment; and

h) damage in general.

18.2. Conventions

Along with the evolution of internal legislation, many International Treaties about Maritime Traffic, Maritime Pollution, Conventions relating to the Law of the Sea and Maritime Law have been ratified by Brazil. Some of them were signed, in relation to the International Maritime Organization (IMO), and International Labour Organization (ILO).

Among those treaties, the following should be mentioned:

a) The Brussels Convention of 1910 concerning the unification of certain rules of law relating to Collision between vessels enacted by Decree 10.773/14;

b) The Brussels Convention of 1926 referring to preferred credits and mortgage, converted into Decree 351/35;

c) The Brussels Convention of 1924 referring to some of the rules concerning Limitation of the liability of owners of sea-going vessels;

d) The Civil Liability Convention in Brussels, 1969, concerning civil liability for damage and pollution caused by oil at sea; and

e) The United Nations Convention on Laws of the Sea of 1982, enacted by Decree 1530 of 1995.

In turn, it should also be emphasized that Brazil is not a signatory to many important international treaties, as follows:

a) Hague Rules drafted by International Law Association – ILA and signed in 1921, a modified form of the Hague-Visby Rules;

b) Hague-Visby Rules of 1979;

c) the unification of certain rules of law relating to bills of landing, signed at Brussels in 1924 and later another version in 1968; and

d) the unification of certain rules relating to the Arrest of seagoing ships signed at The Brussels Convention of 1952.

18.3. Types of Navigation

In Brazil, maritime traffic, including its limits, is regulated by means of Law n. 9.537/97 and Decree n. 2.596/98, which provide the following classification:

1. Open Sea: Navigation through maritime waters which can be divided up as follows:

   (a) Long Course navigation: Navigation between Brazilian and Foreign Ports;

   (b) Coastal Trade navigation: Navigation between Ports, by means of Maritime transportation or the Coastal Trade navigation and internal waterway; and

   (c) Pilot navigation: Navigation for purposes of logistic support to boats and installations in national territorial waters, in relation to activities and exploitation of minerals and hydrocarbons.

2. Internal Navigation: Navigation on internal waterways, such as rivers, lakes, canal, ponds, bays, coves, inlets and maritime areas considered sheltered; and

3. Internal Port Navigation: Navigation at ports and water terminals, for assistance in vessels and port installation.

18.4. Maritime Court

The Maritime Court is an independent body which is part of the Executive Power. It has jurisdiction in all national territory. This Court assists the Judicial Branch acting as an Administrative Court, in matters relating to navigation. Although its decisions do not have jurisdictional force, the Maritime Court may impose penalties on people who caused accidents.

18.5. National Agency of Water Transportation – ANTAQ

The National Agency of Water Transportation – ANTAQ is a public legal entity associated with the Ministry of Transportation. It is based in the Federal District with power for setting up branches all over Brazil.

It is an independent regulatory agency responsible for the regulation, tariff control, study and development of Brazilian waterway transportation.

ANTAQ is qualified to proceed under Merchant Navy's direction on matters relating to national defense, security of navigation and safeguarding of human beings at the sea. ANTAQ is also in charge of regulating, supervising and managing activities developed by Port Administrations, in order to protect the public interest.

18.6. Brazilian Navy

The Brazilian Navy is a part of the Ministry of Defense, responsible for activities, including the defense of Brazilian territorial sea.

It is important to note that the navy consists of officers, establishments, ships and weapons of war which are for the protection of the nation.

18.7. Maritime Transportations and Economic Data

Taking economic aspects into account, 95% of all the Brazilian foreign commerce is transported through the sea. Therefore, maritime transportation is vital to the development and sovereignty of Brazil. Our capacity to build vessels and have our own fleet is considered a strategic need, mainly due to the country's geographic position. Furthermore, Brazil has got 42,000 km of navigable rivers, 8,000 km of coastline and 65% of the country's population living in an almost 100-kilometre strip from the sea.

18.8. Brazilian´s Fleet

In relation to our fleet, according to ANTAQ, there are 28 registered companies with authorization to perform maritime navigation, being either Long Course navigation or Coastal Shipping navigation. Out of these 28, 17 involve Coastal Shipping navigation, as well as Long Course navigation, whereas 11 only operate through Coastal Shipping navigation.

18.9. Ports

The Brazilian port system has considerably improved in the last few years. Currently, Brazil has, approximately, 45 ports. The most important one is the Port of Santos, in the State of São Paulo, which has 11 kilometers of quay, and it is predicted it will triple its capacity by 2022.

Pursuant to Law n. 8.630 of 1993 also called the "Law of Port Modernisation", Brazilian ports have been reorganized in order to make them more competitive and modern in relation to the international market.

Furthermore, it is important to mention other legislations that contributed in a direct or subsidiary way to make the ports more efficient, as follows:

(a) Bidding Law – Law nos. 8.666/93 and 8.883/94;

(b) Concession of Law – Law nos. 8987/95 and 9074/95;

(c) Delegation Law – Law n. 9277/96;

(d) Privatization Law – Law n. 9491/97 and Provisional Measure n. 1594/97;

(e) Defense and Competition Law – Law n. 8884/94; and

(f) Consumer Defense Code, Law n. 8078/90.

19. AGRARIAN LAW

19.1. The Brazilian Agribusiness

The agricultural sector has greatly expanded since the 1990´s, with successive records in production and exportation, all of this stimulated by production of commodities such as soy, paper, cellulose, ethanol, coffee, beef, pork and chicken, generating millions of jobs and growing the Brazilian economy.

The green revolution and the continued efforts to modernize production changed the face of Brazilian agribusiness, making it competitive internationally, with extraordinary results for the rural economy and the country as a whole.

Brazilian agribusiness, historically plays an important role in wealth decentralization, by leading economic development towards the countryside and generating revenues and opportunities to population historically forgotten by the State.

According to the figures of Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística – IBGE), agribusiness is responsible for 33% of the Gross Domestic Product (R$ 540 billions in 2006), for 42% of the total exportation (around US$ 50 billion) and for 37% of employment force in Brazil (17,7 million workers).

Based on these numbers, it is clear that the great performance of Brazilian agribusiness in recent years has opened up numerous opportunities for Brazilian and foreign investors. Basic knowledge on this legal environment is extremely important to ensure safer business plans.

19.2. Concept

Agrarian Law appears as a set of laws and administrative rules that regulate all activities that arise from agricultural production, and seeks to

protect the natural resources, develop production and secure the welfare of the rural community. These are closely linked to a number of other areas of Law, such as commercial, rural credit, insurance, tax, environmental, labor, among others.

This legal area can also be described as Rural law, or Agriculture law and, modernly, Agribusiness Law.

19.3. Legislation and Sources

The Federal Constitution, in its Article 22, subsection I, establishes jurisdiction, in Agrarian Law matters, exclusively to the Federal Union, which differs from other Nations that give the jurisdiction to their States and Municipalities.

Following the Federal Constitution, the main law governing rural activities is the Land Statute, Law n. 4.504, of 3 November 1964.

It must be emphasized that there are six legal principles that provide the basis of the Agrarian Law: a) Principle of Social Function of Property; b) Principle of Environmental Preservation; c) Principle of the Reformulation of Rural Structure; d) Principle of the Economic and Social Progress; d) Principle of the Social Justice and of Increase in Productivity; and, e) Principle of the Prevailing of the Collective Interest over the Individual Interest.

Further, it must be mentioned that, Bill of Law n. 325, of 11 December 2006, presently being passed by the Federal Senate, establishes the Rural Producer Statute.

19.4. Representative Entities and Agencies

In Brazil, There are several representative entities and agencies of the Agrarian sector and related fields. We shall consider only the most important ones here.

19.4.1. Ministry of Agriculture and Food (Ministério da Agricultura, Pecuária e Abastecimento)

The Ministry of Agriculture and Food (www.agricultura.gov.br) has the mission to promote the sustainable development and the competitiveness of agribusiness for the benefit of Brazilian society.

There are Federal Police Stations for Agriculture and entities tied to the Ministry that also execute the policies relating to agribusiness, but the Brazilian Company for Agribusiness Research (Empresa Brasileira de Pesquisa Agropecuária – EMBRAPA) is the best known in this area.

The Brazilian Company of Agribusiness Research (www.embrapa.br) was created in 26 April 1973, and is an entity tied to the Ministry of Agriculture and Food.. Its purpose is to provide solutions for the sustainable development of the rural area, focusing on agribusiness, through the generation, adaptation and transference of knowledge and technologies, for the benefit of several areas of Brazilian society.

19.4.2. Ministry of Agrarian Development ("Ministério do Desenvolvimento Agrário" – MDA)

The structure of the Ministry of Agrarian Development (www.mda.gov.br) is regulated by Decree n. 5.033, of 5 April 2004, and its main objective is to create opportunities for the rural population, through the development of activities connected to the land. The Ministry has jurisdiction over the following subjects: agrarian reform; promoting sustainable development in the rural areas; and identification, recognition, delimitation, landmark and registration of the land occupied by the remainder of "Quilombo" communities (a Brazilian hinterland settlement).

Its main agency is the National Institute of Colonization and Agrarian Reform – INCRA (www.incra.gov.br), created by Decree-law n. 1.110, of 9 July 1970, whose structure was approved by Decree n. 5.735, of 27 March 2006, (modified by Decree n. 5.928, of 13 October 2006). Nowadays, INCRA is the governmental agency responsible for implementing and managing agrarian policies, including the promotion of agrarian reform in Brazil.

The mission of this institution is to implement the agrarian reform policy and to perform the national agrarian system, contributing to sustainable rural development.

19.4.3. Confederation of Agriculture of Brazil ("Confederação da Agricultura e Pecuária do Brasil" – CNA)

The Confederation of Agriculture of Brazil (www.cna.org.br), recognized by Decree n. 53.516, of 31 January 1964, is constituted by the economic groups of agriculture, cattle, rural extractives, fishing, Indian culture and the agribusiness field,

The Confederation studies and seeks solutions on matters relating to rural activities, as well as coordinates and promotes the development, the defense and the protection of the economic groups referred to in the paragraph above.

19.5. Purchasing Rural Properties

The Brazilian Civil Code foresees that no business involving real estate rights can be performed without a public deed, except if established otherwise by special law. Notwithstanding, the transference of the ownership of real estate property will only be considered as perfected after the registration of the deed before the Land Registry with jurisdiction over the location of the property. Rural properties are also subject to these requirements.

However, when the rural property is to be acquired by a foreign person or entity, special legal provisions must be respected regarding limitations to the area of the land and its use. The Federal Constitution in Article 190 imposed restrictions on foreigners, natural person or legal entity, having ownership or possession of a rural property located in Brazil.

The purchasing restrictions mentioned above are also referred to in Law n. 5.709, of 07 October 1971. Moreover, Article 23 of the Law n. 8.629, of 23 February 1993, extends the restrictions to the leasing of rural properties to foreigners.

19.6. Taxes applied over Agricultural Activities

In Brazil, several taxes can attach to agricultural activities, such as: the Rural Land Tax (Imposto sobre Propriedade Territorial Rural – ITR); Rural Social Security Contribution; Income Tax (Natural Person or Legal Entity); Value-Added Tax on Sales and Services (Imposto sobre Circulação de Mercadorias e Serviços – ICMS); Social Contribution on Net Profits (Contribuição Social sobre o Lucro Líquido – CSLL); Social Contribution for Finance of Social Security (Contribuição Social para Financiamento da Seguridade Social – COFINS); Contribution to the Social Integration Program (Contribuição para o Programa de Integração Social – PIS); Contribution to the Formation of the Public Employee Assets (Contribuição de Formação do Patrimônio do Servidor Público – PASEP; and, Contribution of Rural Union and National Service of Rural Apprenticeship.

19.7. Agrarian Contracts

In the agriculture field, as well as in other economic sectors, several business contracts are often entered into between rural producers, rural landlords, financial institutions, industries, and others. The legal support for these business relationships can be found in Commercial, Civil, Banking and others legislations, but the Land Statute, Law n. 4.504, of 30 November 1964, and the Decree n. 59.566, of 14 November 1966, deals with agrarian contracts in a more extensive fashion.

19.8. Rural Credit

Law n. 8.171, of 17 January 1991, that establishes Agricultural Policy, deals with the main objectives of Rural Credit. Rural Credit guarantees the financial aid necessary for Rural Producers during the stages of rural production: a) financing expenses with production for one or more periods; b) investment – with the purpose of financing the formation of fixed assets, or semi-fixed, that will last for several harvests; c) commer-

cialization – with the purpose of financing the necessary elements after the harvest, which involves warehousing, transportation, taxation, among others; and, d) industrialization – for transforming the raw-material into rural products.

19.9. Rural Credit Instrument

The Credit Instruments in agribusiness represent credits which result from a loan, or from a purchase and sale on account, transacted between rural producers, between these and rural cooperatives, or by one of these and a third party. In all cases, at least one of the parties involved must be a rural producer or a rural cooperative, and in some of the cases both parties must be.

There are several kinds of Credit Instruments, such as: Rural Bond, Rural Credit Bill; Rural Promissory Note; Rural Duplicate; Note of Rural Product; Note of Rural Product with Financial Liquidation; Certificate of Agribusiness Deposit and Agribusiness Warrant; Certificate of Agribusiness Credit Rights, Agribusiness Credit Note; Certificate of Agribusiness Receivables; and Agribusiness Commercial Note.

A major objective of the Rural Credit Instruments is to facilitate the transference and circulation of the credits with a future due date, and a common characteristic is that the Instruments can be transferred by endorsement.

The specific legislation for Credit Instrument matter includes Decree-law n. 167, of 14 February 1967, Law n. 8.929, of 22 August 1984, Law n. 10.200, of 14 February 2001 and Law n. 11.076, of 30 December 2004.

The public offer of these credit instruments must be registered at the Securities Commission (Comissão de Valores Mobiliários – CVM) (www.cvm.gov.br) and the transactions must be operated at the Commodities and Futures Exchange of São Paulo ("Bolsa de Mercadorias e Futuros" – BM&F) (www.bmf.com.br).

19.10. Rural Insurance

Rural Insurance is an important instrument of agriculture policy, in view of the protection provided to the Rural Producer, especially relating to the risks resulting from the climate. The major objective of the Rural Insurance is to offer cover, which assists the producer, its production, its family, the generation of guarantees to its financer, investor, business partners, and all the people interested in decreasing the risks of rural activities.

Rural Insurance is characterized by the involvement of the producers and private insurance companies, and can cover agricultural, cattle activities, assets of rural producers, products, commercialization of the credit products and, also, the life insurance of the producers.

19.11. Relationship between Agrarian Law and Environmental Law

Agrarian Law is directly connected to Environmental Law, because the essential elements of Agrarian Law are the activities developed by the man on the land, that is, activities strictly relating to nature and to the environment. Due to this, rural activities are, in nature, aggressive to the environment and constant attention is needed for the preservation of the ciliar bushes throughout the river systems, the protection of the springs, and reasonable use of the water, observation of the rules on land use and to the products cultivated.

The intimate relationship of these two fields of Law can be verified when observing one of the Principles that guide Agrarian Law, which is Environmental Preservation, and the intention to conciliate economic exploitation with the conservation of natural resources.

19.12. Labour Law in the Rural Field

Convention n. 14 of 1975, of the International Labour Organization, defines a Rural worker as an individual who works in the rural area, agriculture or handcraft tasks or on similar or connected services.

There are several working relationships in rural activity, but only the individual and the collective Rural Labour are regulated by labour legislation, such as in Law n. 5.889, of 08 June 1973.

20. AVIATION LAW

20.1. Aviation

It is well-known that Brazil is a country with a tradition in the aviation. The most famous Brazilian in this area was Alberto Santos-Dumont, who, in 1906 flew his plane 14 Bis, in Paris. This exploit gave him the reputation as the "Father of Aviation". Without going into historical controversies, it is important to remember that 14 Bis was the first plane to take off, fly, and land without the use of catapults, high winds, launch rails, or other external assistance.

In keeping with this tradition, in 1969, the Brazilian aeronautical and avionics company – EMBRAER, was founded. The initial objective was to produce small planes by assembly lines. The company is now one of biggest aeronautical companies in the world, producing state-of-art executive and commercial airplanes.

Nowadays in Brazil 2,498 aerodromes are in operation. Out of these 1,759 are private and 793 public. Furthermore, there are now more than 30 international airports in Brazil.

The Brazilian air fleet consists of more than 15,000 civil airplanes, according to the Brazilian Air Registry – RAB.

20.2. Regulation of Aviation Law

Aviation Law is responsible for the regulation, organization and delimitation of the air navigation system in Brazil. Aviation Law deals with national and international aspects of military and civil aviation, air freight, transport of passengers and airplanes.

Airplanes can be military or civilian. The military ones belong to the Brazilian Air Force – FAB that has the principal objective of guaranteeing security in the national air space. All other airplanes are civilian, independently of whether they are private or public property.

The Brazilian Constitution sets forth, in Article 22, subsection I, that Federal Union has the exclusive competence to legislate on aviation matters. Law n. 7.565, of 19 December 1986, the Brazilian Aeronautical Code, is the most important law in this field. There are many other resolutions, norms, rules or procedures, in the midst of which we should highlight Law n. 7.183, of 05 April, 1984, known as the ´´Aeronautic Law´´, which regulates airplanes.

Moreover, there is a strong relationship between these Laws and regulations and the international conventions on flight. The principal international conventions on aircrafts, flights and air transport, of which Brazil is a signatory country, are: The Warsaw Convention (on air transport), The Chicago Convention (on civil aviation), the Geneva Convention (on the law of airplanes), the Tokyo Convention (on infractions inside airplanes) and the Montréal Convention (on air transport).

It is important to remember that the Montréal Convention, created the International Organization of Aviation – OACI, as an agency of United Nations, with the objective of developing the international civil aviation, promoting security on flights, helping the development of airways, airports, as well as assisting in air travel and creating models and recommending methods.

In Brazil, the Ministry of Defense is responsible for coordinating civil aviation, including the coordination of the airport infrastructure company, which is INFRAERO, one of the largest in the world.

Law n. 11.182, of 27 December 2005, created the National Agency of Civil Aviation – ANAC, an agency linked to the Ministry of Defense, with authority over civil aviation matters. This agency has administrative independence, financial autonomy.

20.3. The Delimitation of Air Space and its Regulation

Air space overlaps national territory, including territorial or jurisdictional waters. According to the national law, Brazil has the supreme right to regulate the air space over its national territory. Using this prerogative, Brazil established that all airplanes coming from abroad need to first land

at and can only take off from an international airport, whatever the nationality of the airplane.

20.4. Aircraft Ownership Registry and Air Travel Conditions

The ownership of an aircraft is acquired by construction or by contract (purchase, donation, inheritance, and other means) and all Brazilian civil airplanes must be registered at the National Agency of Civil Aviation – ANAC, through the National Brazilian Registry – RAB, which will provide the nationality and license badge that will identify the airplane. Moreover, it is essential to have a certificate for air travel to be authorized to fly in Brazil, as this certificate indicates that the aircraft is in good order to fly in the air space with security.

20.5. Taxes of the Aeronautical Sector

National air space and airport areas are public assets and it is for this reason Federal Government is competent to regulate their use.

The most important taxes in the sector are:

a) tax to issue the certificate of air travel;

b) tax to homologate airplanes to instrumental flight;

c) taxes for maintenance inspections;

d) airport taxes to INFRAERO; and,

e) taxes for aeronautical communication.

20.6. Aircrafts Contracts

Airplanes can be owned by individuals or legal entities. We list below some of the contracts that involve aircrafts:

a) Aircraft Rental: the owner transfers to the tenant the use of the aircraft, for a determined period of time;

b) Charter: one of the parties carries out one or more preset trips, during a determined time, in consideration of a payment;

c) Leasing agreement: it is similar to a rental of an aircraft, but in this contract an option to purchase the good or for the renewal of the contract can be included, in favour of the lessee;

d) Mortgage: Brazilian law ensures that an aircraft can be mortgaged to guarantee the debts of its owner; and,

e) Chattel Mortgage: another kind of guarantee by which the ownership or the possession of the aircraft is transferred to the creditor until the credit relationship is liquidated.

20.7. Air Carrier Contract

The carrier, for a cash consideration, transports people or things from one place to another.

In case the contract relates to the transportation of people, the transporter is obliged to: deliver the respective individual ticket or collective ticket; transport the passenger with safety to the destination; refund him if the transportation has been cancelled; board the passenger at the latest four hours after the agreed schedule or refund the price of the ticket; pay all costs of passengers in case of interruption or delay in a journey; and be responsible for the loss and the damage arising from the non-performance of the service.

With regards to contracts of cargo transportation, is important to note that the loads must be carried with the respective air bill, in which all the information relating to the object should be specified, such as the

origin and destination, name and address of the sender and of the transporter, the nature of the load and the weight, quantity and value, among others. The transportation by the carrier starts with the receiving of products to be carried by the transporter and persists during the whole period that the same are under its responsibility.

The transporter's responsibility for damages is regulated by the rules of Brazilian Aeronautical Code and by agreements or international conventions on the subject. Thus, any attempt to discharge or restrict this responsibility will be invalid.

For example, in Brazil the transporter is responsible for the damages resulting from the death or injury of the passenger, caused by crash during the transportation, on board the airplane or during the shipping or unloading. Also, it is responsible for the damages caused by the delay of the transportation and for the damages to the luggage, including all the personal objects of the passengers.

20.8. Insurance of Aircraft

The Brazilian Aeronautical Code determines that all aircrafts, including those that are not operated or used, must have the civil liability insurance. Moreover, the aircraft can be insured against any damage, through specific contracts with insurance companies.

20.9. The Concession for the Rendering of Air Services

Air services can be private or public. Private services are those rendered without remuneration, to the benefit of the operator or the owner of the aircraft. In their turn, public services are those that are available to all citizens, and are regulated and supervised by the Government. So, the services of transporting passengers, cargo or mail,, sightseeing and all other that imply remuneration to the service provider are public services.

Before rendering public air service the companies must apply for an authorization or a concession. Nowadays, the Defense Ministry is competent to regulate the exploration of public air services.

Authorization is the administrative act that permits: the exercise of an activity; the practice of a legal act or the use of a public asset. The authorization permit these activities, but it does not oblige the authorized person to do it.

Concession is a temporary or precarious transfer of an activity from a public authority to another person (that can be an individual or a legal entity), to be exploited at its own responsibility and risk, but to the benefit of all citizens. Even if the service is rendered by a private party, it remains public in nature and, because of that, the organization and the regulation are undertaken by the Government.

Concessions can be granted to companies: with headquarters in Brazil; in which at least 4/5 (four fifths) of the capital with voting rights belong to Brazilians citizens; and whose management is exclusively under the charge of Brazilians. The concession is obtained through a bidding process.

21. PUBLIC BIDS

21.1. Legal Framework

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 n. 29 of August 1828 provided that a tender must be made to the private sector to ascertain the best offer for public works. Law n. 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 text regulating federal public bidding and contracts. The 1988 Federal Constitution provided for the extension of Decree-Law n. 2.300/86 to the state and municipal levels.

The enactment of Federal Law n. 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 after it was amended by Law n. 8.883 of 08 June 1994, a further bill was issued on 19 February 1997 purporting to substitute Law n. 8.666/93, without doing so however. Law n. 8.666/93 was finally amended once more through Law n. 9.648 of 27 May 1998.

21.2. International Competitive Bidding

International competitive bidding is the formal bidding procedure whereby Brazilian and foreign companies bid for government procurement. Law n. 8.666/93, as amended, 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 behaviour 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 necessary technical and financial requirements, as well as the 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 through original documents, certified by a notary, the bidding agency, or be officially published. A waiver of such requirements 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 service of process, under Article 32 of Law n. 8.666/93 foreign companies must also meet the 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, the parties to the bidding process must: evidence an association agreement, executed by means of a private instrument or public deed; indicate the leader 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; and (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 n. 8.666/93).

For bid award purposes, under Article 42 of Law n. 8.666/93 foreign bid amounts shall include an amount equivalent to the taxes payable by Brazilian bidders on the transaction. Under Article 3 of Law n. 8.666/93, a preference is applied in favour of the Brazilian bidder in the case of a bid on goods and services produced or rendered by Brazilian domestic companies, produced in Brazil or otherwise produced or rendered by Brazilian companies. It should be noted that, significantly, as of 15 August 1995, by Amendment n. 06 to the Federal Constitution, which revoked legislative provisions restricting foreign capital, a Brazilian company incorporated under Brazilian laws with headquarters and administration in the country can operate upon Brazilian authorisation and concession, thus allowing for direct foreign investor participation.

For the bidding particulars that need to be provided under Public Bid and Contracts Law, a formal request for quotation is made in relation appropriate qualification within 3 days of the scheduled bid receipt date. The invitation to bid calls for at least three interested parties, must be at a designated place and be valid for other potential bidders provided they make their intended participation known at least 24 hours before placement of the bids.. Should an auction take place, the sale of assets no longer used by the Administration or products legally seized are sold to the highest bidder.

Under the Public Bid and Contracts Law, bids may be waived in cases of war, turmoil, emergency or other public calamity; whenever the bids are placed at a price clearly exceeding that of the domestic market or inconsistent with the official established prices; 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.

21.2.1. 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, including those transactions of governmental interest, as well as for issuing import and export licenses.

In case of international bidding, the imports can be done using the normal rules for importation (by the bidding company) or using the Drawback – a special rule for importation in which the payment of taxes is suspended. Both rules are set out under SECEX Administrative Rule n. 35, of 24 November 2006, and its amendments.

Drawback as set out in item "D" annex of the mentioned Administrative Rule, is used whenever the import involves raw material, intermediary products and components for manufacturing, and in Brazil, for machines and equipment to supply the international market.

Furthermore, such types of imports will have to be carried against payment in convertible currency, proceeding from financing granted by international financial institutions, of which Brazil participates, or by foreign governmental entity, or still, by the Brazilian Development of Economic and Social Bank – BNDES, in accordance with Article 5 of Law n. 8.032/1990, amended by Law n. 10.184/2001.

In this case, for the concession of the related benefits, the following documents must be presented to DECEX:

(a) Copy of the notice with invitation to the international bid;

(b) Copy of the proposal or the contract for supply, in Portuguese, or by sworn translation;

(c) Technical catalogues and/or specifications and details of the material to be imported;

(d) Declaration of the company bidder certifying that the compa-

ny won the bidding and that the Regime of Drawback was considered in the formation of the price presented in the proposal; and

(e) Copy of the financing contract (sworn translation).

After the presentation of the relevant documents, DECEX will either approve or deny the import request through drawback.

21.3. 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-regulate and simplify the registration of suppliers.

The primary purpose of SICAF is to register individuals and legal entities to participate in public bids held by agencies at all 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-regulating the registration and qualification process;

(c) reduction in 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 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; and

(f) Download of Lines of Material and Service Supply – complete copies obtained on-line.

A ComprasNet web site also contains information on the suppliers registered with the System of General Services – SIASG.

Policies relating to the administration of material, works and services of the Federal Government are formulated, promoted and implemented, through the Secretariat of Logistics and General Services. Included in these activities are directives on public bidding and administrative contracts with the Federal Government.

22. IMMIGRATION

22.1. Legal Framework

The legal framework for the foreigner's entry and stay in Brazil are provided for Law n. 6815, of 19 August 1980, regulated by Decree n. 86.715, of 10 December 1981 and several resolutions issued by the Brazilian immigration authorities.

An entrance visa in Brazil is defined as a consular authorization registered in the passport of foreigners and which allows them to enter and remain in Brazil, if immigration law requirements are met. Brazilian law provides for the granting of several types of Visas, depending on the nature of the trip. In this regard, the most important types of Visas for foreigners doing businesses in Brazil are the (i) Temporary Visa and (ii) the Permanent Visa.

According to Law n. 6.815, the Ministry of Labour is the governmental body in charge of granting the necessary authorisation for foreign individuals to work in Brazil (including the Permanent Visa for a company's administrators; and the Temporary Visa for foreign employees), without which, visas cannot be granted by the Ministry of Foreign Affairs.

22.2. Permanent Visa

According to Article 16 of Law n. 6.815, 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 immigrant will bring in specialised manpower, as defined by National Development Policy, whether he will provide the Country with an increase in productivity or with the transfer of new technologies, as well as whether such immigration 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, through 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 inter-company management transfers, but any company in Brazil may offer employment to a foreigner 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 and skills of the foreigner 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.

According to the National Council of Immigration's Normative Resolution n. 74, of 09 February 2007, to apply for a permanent visa for a company's director or administrator, the foreign partner of the Brazilian company must have (i) made a minimum foreign equity investment in the amount of US$ 200,000.00 (two hundred thousand US dollars), or (ii) a foreign equity investment equal or superior to US$ 50,000.00 (fifty thousand US dollars), plus the promise of generating at least 10 new jobs during the first two years as from the appointment of the foreigner as an executive of the Brazilian company.

Foreign individuals intending to come to Brazil to invest in production activities may also apply for a permanent visa. The issue of this type of visa is conditional on the proof of an investment, in a foreign currency, of a sum equal or superior to US$ 50.000 (fifty thousand US dollars), and the investment may be made in a new company or in an already existing one.

Exceptionally, even if the total investment is less than US$ 50,000 (fifty thousand American dollars), the National Immigration Council may grant a permanent visa to a foreigner with an investment project which will

create at least 10 new jobs. In this case, a business project containing a plan to employ Brazilian workers for a two-year period must be prepared.

22.3. Temporary Visa for foreign employees

According to Article 13 of Law n. 6.815, a temporary visa may be granted to foreigners who whish to work in Brazil under a labour agreement with a Brazilian company. The granting of this type of visa is also subject to the prior issue of a work permit by the Brazilian Ministry of Labour, which will be responsible for examining and deciding upon the need for foreign manpower for the development of the proposed activities and whether the foreigner indicated for the position in the Brazilian company has any special abilities that cannot be fulfilled by Brazilian manpower.

Under the terms of the prevailing regulations, the candidate for the Temporary Visa for work in Brazil needs to present proof of his professional qualification and experience compatible with the activity to be exercised in Brazil through the submission of diplomas, certificates and declarations, at least demonstrating:

I – two- years of experience in a medium level profession, with a school term of minimum nine years;

II – one-year experience in a superior level profession, including the period from the conclusion of the respective graduation course;

III – conclusion of a masters course or superior degree; or

IV – three-years experience in exercising a profession, of artistic or cultural nature that does not receive formal education.

The Brazilian company interested in hiring the foreign employee must observe the ratio of 2 Brazilian employees for each foreign hired.

The same ratio will also apply in relation to the total pay-roll of the Brazilian Company.

The term of the Temporary Visa for foreign employees is established in the labour agreement and cannot exceed two years. Subject to the prior approval of the Brazilian Ministry of Labour such term can be extended for an additional period of two years.