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BRAZIL

LEGAL LETTER MARCH 1998

I. MONEY LAUNDERING

On March 3, 1998, President Fernando Henrique Cardoso sanctioned Law No. 9613, defining the crime of money laundering activities by individuals and companies in Brazil and establishing its respective sanctions.

According to Law 9613/98, hiding and dissimulating the nature, origin and location of goods and assets deriving directly or indirectly from criminal activities such as: (i) drug dealing; (ii) terrorism; (iii) smuggling; (iv) extortion through kidnapping; (v) crimes of prevarication; (vi) crimes against the financial system; and (vii) organized crime will be considered to be *money laundering*, and will be subject to criminal and administrative sanctions.

Law 9613/98 determines that the companies engaged in the following activities must maintain a list of clients, activities and transactions involving Brazilian or foreign currency, securities and other values for the period of five years after closing of the account or the end of the transaction:

- (i) the raising, agency and investment of third-party funds;
- (ii) [the] buying and selling of foreign currency or gold; and
- (iii)[the] custody, issue, liquidation, intermediation and negotiation of securities.

Additionally, the following companies, among others, must keep such records:

- (i) stock exchanges and commodity exchanges;
- (ii) insurance companies and insurance brokerage companies;
- (iii) social security entities and pension funds;
- (iv) credit card administration companies;

- (v) consortium management companies;
- (vi) leasing and factoring companies;
- (vii) Brazilian branches or agents of foreign companies engaged in any of the activities listed herein; and
- (viii) jewelry, art objects and paintings dealers.

Law 9613/98 also created the Financial Activities Control Council (*Conselho de Controle de Atividades Financeiras - COAF*), subordinate to the Ministry of Treasury, which will be the governmental authority in charge of surveying and applying the administrative sanctions provided for by that law. The individuals and companies involved in the activities considered to entail money laundering are subject to sanctions that may vary from an official warning to a pecuniary fine up to R\$ 200.00,00; suspension of the professional license of the individuals involved for up to ten years; and confiscation of the goods and/or assets involved in the criminal activity.

The implementation of Law 9613/98 is an important measure to curb the inflow and outflow of funds raised in criminal activities such as drug dealing and crimes against the financial system (DOU-I, March 4, 1998).

II. COMPUTER SOFTWARE

On February 19, 1998, President Cardoso sanctioned Law No. 9609, equating computer software to other intellectual properties protected by currently applicable legislation.

Law 9609/98 established the basic regulations applicable to software license contracts, and also set forth the sanctions applicable in cases of misuse or unauthorized commercial use of software within a period of fifty years, as opposed to the previous regulations, which established such protection for only twenty-five years (DOU-I, February 20, 1998).

Furthermore, President Cardoso sanctioned Law No. 9610, amending the current legislation regarding intellectual property, and providing for a variety of rules with the objective of harmonizing complex and inconsistent intellectual property regulations in Brazil.

The main changes effected pursuant to Law 9610/98 were the reduction of the percentage of succession rights from twenty

percent to five percent. Succession rights are the rights of an author's successors to collect a percentage of revenues earned by any third party on sale of the author's productions, and the manner in which such collection will be made. Additionally, the period of validity of succession rights was increased from sixty to seventy years.

Law 9610/98 did not extinguish the Central Office for Collection and Distribution

Law 9610/98 did not extinguish the Central Office for Collection and Distribution—*Escritório Central de Arrecadação*—ECAD, as expected. ECAD was the entity exclusively in charge of collection of copyrights payments for distribution to the proper beneficiaries. The exclusivity of ECAD for payment of copyrights was judicially challenged, based on the constitutional right of free association, after a charge as to misuse of the funds collected by ECAD managers. Presently, there are other entities performing these activities in the benefit of their affiliates, pursuant to a decision of the Federal Supreme Court on such judicial action (DOU-I, February 20, 1998).

III. MULTIMODAL TRANSPORTATION OF CARGO

On February 19, 1998, President Cardoso sanctioned law No. 9611, governing the multimodal transportation of cargo. Multimodal transportation is defined as transportation that utilizes two or more means of transportation from departure until destination, and is executed under the sole responsibility of the Multimodal Transportation operator, as set out in just one agreement.

Law 9611/98 sets forth the basic regulations regarding the responsibilities of each party under this type of agreement and the taxation responsibilities of the contracted party (DOU-I, February 20, 1998).

IV. FOREIGN LOANS

On February 26, 1998, the Central Bank of Brazil published Circular 2807, establishing a minimum period of 24 months for amortization of the foreign loans contracted under Law 4131 of September 3, 1962—Direct Foreign Loans—as amended, and

Central bank resolution 63 of August 21, 1964—Foreign Loans (DOU-I, February 27, 1998).

V. ENVIRONMENT

On February 12, 1998, President Cardoso sanctioned Law No. 9605, with the objective of imputing criminal liability to the party that has polluted or degraded the environment. This new law provides for the protection of the environment under a very comprehensive approach, so that location and public assets with historical, cultural, archaeological and artistic value are also protected. This new law superseded all previous criminal sanctions scattered throughout various environmental protection laws, such as the Forest Code, the Hunting Code, the Fishing Code, and others.

Accordingly, individuals who in any way contribute to the preparation of the crimes established in Law 9605/98 will incur the penalties stated thereby, proportionately to their culpability in the matter. Any director, officer, council member or technical body member, auditor, manager or attorney in fact for a legal entity that is aware of the criminal conduct of another but does not stop it, when feasible, will also be subject to the penalties stated in Law 9605/98.

The legal entities may be considered responsible in the civil, criminal and administrative spheres, should the infraction be committed by decision of their legal or contractual representative, or their management committee in the interest and benefit of said entities.

Law 9605/98 imputes to individuals penalties entailing loss of freedom—imprisonment or confinement—as well as penalties that restrict rights, expressly permitting that the latter replace the former. The first assumption is that the violation is a culpable crime or a penalty entailing loss of freedom for less than four years. The second, which will remain at the discretion of the courts, is contingent on the subjective conditions of the agent and the characteristics of the damaging act, which may indicate that replacement of imprisonment with restricted rights will suffice for conviction and prevention of the crime. The penalties for restrictions on rights include the rendering of services to the community; temporary interdiction of rights; partial or total suspension of activities; a fine and home detention.

The sanctions specifically applicable to legal entities are a pecuniary fine, restriction of rights, and the imposition of service rendering to the community. For legal entities, the fines restricted rights comprise partial or total suspension of activities, temporary interdiction of the establishment, work or activity, and the prohibition to execute contacts with the government or to obtain subsidies, subventions or donations from public authorities. It is expressly set forth that activities will be suspended when they do not comply with legal provisions or regulations related to environmental protection, while the penalty of interdiction will be applied when the establishment, work or activity had been operating without the appropriate authorization, that is, without the preliminary installation permits and operating licenses set out in environmental law, or when such businesses are not operating in compliance with the licenses obtained or, furthermore, when their operations violate legal or regulatory provisions.

The value of the fines provided for in Law 9605/98 may vary from a minimum of approximately US\$ 50.00 to a maximum of approximately US \$50 million (DOU-I, February 13, 1998).

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