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LEGAL MEMORANDA

EDITOR'S NOTE

"Legal Memoranda" is a regular section of the Review devoted to reports from corresponding law firms throughout the Hemisphere. The reports are compiled by the Review, but their accuracy is represented by the corresponding firms, to which all inquiries should be directed.

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BRAZIL

LEGAL LETTER MARCH 1997

DONATIONS OF ORGANS AND TISSUES

On February 4, 1997, President Henrique Cardoso sanctioned Law No. 9434 authorizing the removal of tissues and human organs for purposes of transplant *post mortem* of all individuals residing in Brazil. As a consequence, all individuals have become potential donors of tissues and organs after their death unless the person has expressly denied the general assumption.

The purpose of Law 9434/97 is to encourage *post mortem* donations of body organs and tissues and to curb the illegal trans-

fer and transplant of human organs.

According to Law 9434/97, the *post mortem* removal and transplant of body organs and tissues will be supervised and directed by the Federal Unified Health System, SUS (*Sistema Único de Saúde*), which will be in charge of registering and controlling transplants.

Donations of organs and tissues by living persons is restricted to double organs or tissues, whenever such removal does not affect body functions.

Any removal of body organs or tissues not in accordance with the provisions of Law 9434/97 will subject the infractor to imprisonment and pecuniary fines (DOU-I, February 5, 1997).

WAIVER OF VISAS BETWEEN PORTUGAL AND BRAZIL

On February 5, 1997, President Cardoso enacted Decree No. 2143 ratifying the Bilateral Agreement entered into by and between the Government of Portugal and Brazil, executed on April 15, 1996 in Brasília. Under such Agreement, visas are no longer required for the transit of citizens between both countries when for scientific, cultural, journalistic, business or tourism purposes, provided that the stays are not longer than ninety days (DOU-I, February 6, 1997).

INVESTMENTS IN PORTUGAL

Capital gains and dividends paid to Brazilian companies by representative offices and branches headquartered in Portugal, and vice versa, are afforded some tax benefits under a double-taxation treaty entered into by and between the Government of Portugal and Brazil in 1971. As determined under such treaty, for example, Brazilian companies headquartered in Portugal would be subject to local (Portugal) income tax.

The Federal Revenue Office of Portugal reduced the income tax assessed at the Madeira Island to zero until the year 2011. As a consequence, dividends, income and capital gains sourced by Brazilian companies headquartered at the Madeira Island are not subject to income tax (either in Brazil or Portugal).

Many Brazilian companies decided to open branches and representative offices in the Madeira Island for tax planning purposes. In order to curb such trend and increase the internal tax collection, the Brazilian Federal Revenue Office issued Declaratory Act No. 6 on January 30, 1997, informing the dividends, income, and capital gains paid to Brazilian companies by their branches or representative offices established in Portugal, including the Madeira Island, should be computed into their taxable profits and be subject to Brazilian Income Tax.

The effectiveness of Declaratory Act No. 697, however, is questionable due to the fact that under the Brazilian Tax Code the international treaties and accords regarding taxation in Brazil prevail over local tax regulations. As a consequence, a new treaty should be entered into between Portugal and Brazil in order to alter the present provisions (DOU-I, February 6, 1997).

GOVERNMENT CLASSIFIED DOCUMENTS

On January 8, 1991, Law No. 8159 regarding the national policy of public and private records was signed by the then President of the Republic, Fernando Collor. Article 23 of Law 8159/91 determines that a Decree would further regulate the categories of secrecy to be observed by government entities in documents produced by such entities. This categorization would determine the availability of government documents vis-à-vis data protection and confidentiality of information.

In light of the above, President Cardoso enacted Decree No. 2134 on January 24, 1997, setting forth the rules for the categorization of and access to government-sensitive documents regarding national security and interests, and the privacy of individuals.

Decree 2134/97 also determines that documents regarding judicial proceedings, the publication of which would violate a person's integrity, honour or image, shall be restricted for a period of 100 years (DOU-I, January 27, 1997).

ILLEGAL CARRYING OF FIREARMS

On February 20, 1997, President Cardoso signed Law No. 9437 which created the National Firearms System (NFS) and es-

established the new conditions for registration of firearms. NFS main scopes are:

- (i) to identify and catalog all guns and their ownership;
- (ii) to register the firearms imported, produced, and sold in Brazil;
- (iii) to register the transfer of ownership, loss, theft, or any other event that would alter the registration data;
- (iv) to identify the modifications in the characteristics or functioning of firearms; and
- (v) to register the apprehension of firearms.

All owners have six months as from February 21, 1997 to register their firearms with the competent authorities. Registration is compulsory. The carrying of firearms is also subject to special authorization of the competent authorities. The holder will have to prove good standing, actual need, and technical and psychological capacity for the carrying of firearms.

As determined by Law 9437/97, whoever owns, possesses, carries, manufactures, sells, leases, receives, transports, transfers (even without pay), borrows or hides firearms without authorization, or not in accordance with legal provisions, will be subject to imprisonment from one to two years and a pecuniary fine.

The same penalty will apply to whoever:

- (i) allows children under 18 years of age or any person with mental problems to hold or possess firearms;
- (ii) uses fake firearms that could mislead third parties; and
- (iii) fires in occupied places.

Law 9437/97 also prohibits the manufacture, sale, marketing, or importation of fake firearms that are somehow similar to real ones. The purpose of Law 9437/97 is to curb violence in Brazil by prohibiting citizens to carry firearms and by easily detecting criminals carrying firearms (DOU-I, February 21, 1997).

TAX INCENTIVES FOR REGIONAL DEVELOPMENT

On February 14, 1997 President Cardoso republished Provisional Measure No. 1562-2 which extended until December 31,

2007 the tax incentives for development of the Amazon and the northeastern regions of Brazil (DOU-I, February 15, 1997).

NEW BILL ON PUBLIC TENDER PROCEDURES

On February 19, 1997, the Ministry of State Reform and Administration submitted for public comment a bill regarding public tender in Brazil. The bill establishes the basic principles and general guidelines regarding tender bids for contract of the Federal Administration, states, and municipalities (DOU-I, February 19, 1997).

DEPOSITARY RECEIPTS

On February 27, 1997, the Central Bank of Brazil issued Resolution No. 2356 and Circular No. 2541 setting forth the rules for investments by individuals, legal entities, and investment funds resident or headquartered in Brazil in depositary receipts transacted on the international market and secured by shares of Brazilian listed companies, as referred to in Annex V to Resolution 1289 of March 20, 1987.

Annex V to Resolution 1289/87 was introduced on July 31, 1991, and permits foreign investments in Brazil securities through American Depositary Receipts (ADR's) and International Depositary Receipts (IDR's).

All offshore remittances of principal and profits, and the repatriation of investments under Resolution 2356/97 and Circular 2741/97 must be registered at the Central Bank of Brazil through its computer system - SISBACEN (DOU-I, February 28, 1997).