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Brazil

LEGAL MEMORANDUM

BRAZIL

The following is a summary of recent legislative, judicial, and administrative changes in Brazil.

I. Legislative and Administrative Rulings

Customs Clearance of Informatics Goods

On July 20, 1989, the Secretary of the Federal Revenue Office and the Secretary of Informatics issued Joint Ordinance No. 823, which permits the customs clearance of foreign informatics goods imported into Brazil by the following persons:

1) residents who have lived abroad for more than three continuous years, and who have settled down permanently in Brazil;

2) residents of Brazil who have lived abroad for at least one year for the purpose of studying or developing professional activities; and

3) foreign members of the diplomatic and consular communities, as well as foreign employees, analysts, and consultants of international institutions of which Brazil is a permanent participant.

The same clearance shall be given to equipment brought into Brazil under certain conditions:

a) by the parent companies of Brazilian companies without exchange coverage, provided the equipment is not intended for commercial purposes;

b) when software enrolled with the Special Informatics Office ("SEI") is sent on behalf of the owner of the registration, without exchange coverage;

c) for Brazilian entities as a result of treaties, agreements or conventions signed by Brazil;

d) for Brazilian schools and research centers, without exchange coverage, provided the equipment is not for commercial purposes (DOU-I, July 21, 1989).

Payment for Foreign Software

On September 13, 1989, the National Monetary Council decided that payment for imported software will be made through the floating rate exchange market. This measure put an end to the discussions between the Central Bank of Brazil and the Special Informatics Office with regard to software imports, which to date had not been regulated. This decision effectively monitors the entry of all computer imports coming into Brazil.

On September 28, 1989, the Minister of Finance issued Ordinance No. 181, establishing that revenue paid to beneficiaries (foreign or domestic domiciliaries) for corresponding copyrights (which enables these beneficiaries to acquire a single copy of software for distribution and marketing in this country, or for use by the acquiror) will be subject to withholding income tax at the rate of twenty percent. Ordinance No. 181 also establishes that the diskette (or whatever medium is used to store the software) will be subject to an import duty and the "Tax on Manufactured Products" ("IPI"). For this purpose, the cost of the medium does not include the value of the software (DOU-I, September 29, 1989).

New Forestry Law

Commercial utilization of forests in Brazil is regulated by the Forestry Code (Law No. 4771 of September 15, 1965). As a result of the recent public campaign for a better environment, the federal administration has proposed, and Congress has approved, an amendment to the Forestry Code. The amendment imposes tougher restrictions on the commercial use of forests in Brazil.

The new law, signed by President Sarney on July 18, 1989, provides, among other things:

1) for an increase in the areas bordering rivers in which commercial exploitation of forests is prohibited. Depending on the width of the river, an area from 30 to 600 meters is now protected;

2) for the registration of commercial sellers of electric saws with the Brazilian Institute for the Environment and Renewable Resources ("IBAMA"); and

3) for the requirement of licensure to carry or use electric saws (DOU-I, July 20, 1989).

Disposal of Federal Property

In yet another attempt to control the federal deficit, President Sarney issued Provisional Measure No. 80[1] on August 18, 1989. The provisional measure authorizes the Executive Branch to 1) donate to the Federal District of Brasilia, all land plots owned by the federal government located therein, 2) invest federal funds in developing companies owned by the Federal District, and 3) sell federal real estate properties used by federal employees.

Both the donation to and the investment in the Federal District, as well as the sale of residential properties to federal employees, are subject to specific rules.

Hiring of Brazilian Nationals by Foreigners

On August 17, 1989, the Ministry of Labor issued Ordinance No. 3256 requiring authorization from the Ministry of Labor for the hiring of Brazilian nationals by foreign companies to work in a foreign country. Such authorization includes consultation with the Secretariat of Labor Relations (a department within the Ministry of Labor). A request must be submitted in the Portuguese language and must include the following elements:

1) evidence of the legal existence of the hiring entity;

2) evidence of Brazilian shareholding participation of at least five percent of the capital stock of the hiring entity;

3) the appointment of a legal representative of the hiring entity in Brazil, with full powers of representation, including the power to receive service of process; and

4) an employment contract in the Portuguese language and subject to the jurisdiction of Brazilian courts.

Any authorization will be valid for a period of three years and may be renewed provided evidence is given that the employee and his/her dependents have had annual vacations in Brazil, with

1. A provisional measure is a type of legislation which, if not approved by Congress within thirty days of its issuance, ceases to exist (DOU-I, August 24, 1989).

travel expenses defrayed by the hiring entity (DOU-I, August 21, 1989).

New Mining Rules

Since the mid-seventies, Brazil has experienced several gold and precious gem rushes in its Northern and West Central regions. These rushes are started by *garimpeiros*, individual prospectors who occupy the mining areas following the discovery of an alluvium mine. Most often, after a few years of commercial use of these alluvium deposits, the *garimpeiros* move on to a new area and instigate new mining ventures.

To date, the exploitation of such mines by *garimpeiros* has been regulated by Decree-law No. 227 of February 28, 1967. On July 18, 1989, a new federal law was passed (Law No. 7805) which set forth new rules for mining by *garimpeiros*. This type of mining allows for the immediate exploitation of a mineral deposit without prior prospecting provided such mining is done in accordance with criteria to be established by the National Department of Mineral Production ("DNPM").

Licenses for such activities will depend on prior authorization from environmental agencies and will be granted by the DNPM to Brazilian citizens, or to cooperatives of miners authorized to operate as mining companies. Licenses shall be granted for five-year periods and cover an area not in excess of fifty *hectares* (one *hectare* = 10,000 square meters).

Law No. 7805 also sets forth the obligations of prospectors, and the rules governing the commercial use of areas already occupied by them (DOU-I, July 10, 1989).

New Federal Fiscal/Monetary Legislation, Policies, and Measures

A. Financial Statement Indexation

On July 17, 1989, the Securities Commission released Instruction No. 101, which established the new National Treasury Bond ("BTN") as the monetary unit of financial statements for publicly-held companies. The BTN is a federal bond whose face value is indexed to the Consumer Price Index ("IPC") on a monthly basis. Instruction No. 101 also allows companies to use the Fiscal BTN (the daily adjusted version of the BTN) as a monetary unit for the

same purposes. In this case, an average of the face value of the Fiscal BTN will be used throughout the month (DOU-I, July 20, 1989).

B. Dollar-indexed Federal Bonds

On August 2, 1989, the Minister of Finance signed Ordinance No. 170 which authorizes the issuance of new National Treasury Bonds (BTNs) with the following characteristics:

1) one-year term;

2) interest rate of six percent per annum;

3) six monthly interest payments; and

4) indexed according to the Consumer Price Index (IPC), or to the variation in the value of the United States dollar on the official exchange market in Brazil.

These BTNs can be acquired only by Brazilian investors and are to be issued under Article 5 of Law No. 7777 of June 19, 1989 (DOU-I, August 23, 1989).

On the same day, the Minister of Finance issued Ordinance No. 169, establishing that BTN's are exchangeable for Brazil Investment Bonds. Brazil Investment Bonds are the exit bonds issued by Brazil and acquired by foreign creditor banks under the Brazil Investment Bond Exchange Agreement. These bonds may be exchanged for BTNs which have the following characteristics:

1) duration of up to twenty-five years, and redemption on the same dates as the exit bonds;

2) interest rate of six percent per annum; and

3) six monthly interest payments.

BTNs issued under Ordinance No. 169 can be adjusted according to the variation in the Consumer Price Index (IPC) or the rate of the United States dollar on the official exchange market in Brazil. Also, the interest payments of these federal bonds are not taxable (DOU-I, August 23, 1989).

C. Line of Credit for Export Transactions

By means of Circular No. 1525 of August 14, 1989, the Central Bank of Brazil set forth the rules governing foreign currency credit lines extended by the Central Bank to banking institutions author-

ized to operate in foreign exchange. These credit lines are to be used in export-related transactions involving the acquisition by banks of foreign exchange currency from exporters and, subsequently, its resale to the Central Bank (DOU-I, August 15, 1989).

D. Foreign Exchange Interbank Market

By means of Circular Letter No. 1982 of August 14, 1989, the Department of Foreign Exchange of the Central Bank of Brazil stated that the purchase and sale of foreign exchange in both the interbank market, as well as interdepartmental transactions, may be made by and among any banking institution or by and among branches of the same institution authorized to operate in foreign exchange. Such transactions may be entered into for immediate or future delivery, provided delivery occurs within 360 days and liquidation occurs on a pre-established date. Thus, Circular Letter No. 1982 has established an interbank foreign exchange market in Brazil (DOU-I, August 15, 1989).

E. Centralization of Foreign Currency Remittances

On January 1, 1989, the National Monetary Council, through the Central Bank of Brazil, issued Resolution No. 1564, which provides that all remittances abroad must be made through the Central Bank. The measure, established to protect Brazilian foreign currency reserves, was effective as of June 30, 1989, when the Exchange Department of the Central Bank issued Communiqué No. 1166 regulating the types of financial transfers subject to this exchange centralization.

On August 15, 1989, the Central Bank issued Communiqué No. 1181, excluding the following remittances from the centralization: a) payments of oil import financing exceeding 360 days; and b) commissions payable on Brazilian bonds issued abroad (DOU-I, August 18, 1989).

F. Creditor Bank Funds at the Central Bank

On November 30, 1988, the National Monetary Council, through the Central Bank of Brazil, issued Resolution No. 1540, declaring that up to US$ 4.525 billion of the disbursements under the agreements executed between the international financial community and Brazil would be subject to deposit at the Central Bank

of Brazil, according to the following schedule:

1) Parallel Financing Agreement: US$ 3.3 billion;

2) Commercial Bank Co-financing Agreement: US$ 625 million; and

3) Fresh Money Trade Deposit Facility: US$ 600 million.

On the same day the National Monetary Council also issued Resolution No. 1541, declaring that the amounts corresponding to the payment of principal installments due from January 1, 1987 through December 31, 1993, would also be subject to deposit at the Central Bank of Brazil in accounts to be opened in the name of creditor banks. The resolution applies to principal installments which relate to Credit and Guarantee Agreements (Fresh Money Agreements) executed in 1983 and 1984 and relate to funds covered by the Deposit Facility Agreements (restructuring agreements) for 1983, 1984, 1985, and 1986.

On August 18, 1989, the Exchange Department of the Central Bank of Brazil issued Communiqué No. 1183, stating that the above mentioned deposits at the Central Bank may be, subject to prior approval from the Central Bank, withdrawn for the following purposes:

1) relending of foreign funds;

2) conversion into investment under the auction system; and

3) conversion into investment not subject to the auction system (DOU-I, August 23, 1989).

Congressional Approval of International Treaties

On August 12, 1980, Brazil and several other Latin American countries executed the Montevideo Treaty, creating the Latin American Integration Association ("LAIA"). Congress ratified the Montevideo Treaty on November 16, 1981, through Legislative Decree No. 66, and it was enacted on March 23, 1982, through Executive Decree No. 87054.

In 1988, Brazil and the other parties to the Montevideo Treaty signed additional protocols to commercial agreements executed under the Montevideo Treaty. On August 5, 1988, the Ministry of Foreign Affairs submitted certain draft executive decrees for presidential approval in order to turn these protocols into law.

The Chief of Staff of the Presidency, however, held that the

draft executive decrees should be ratified by Congress before their enactment by the Executive Branch. The effect of this decision is that under the Constitution, international treaties require previous ratification by Congress. The Ministry of Foreign Affairs had communicated to the Presidency that Congressional ratification of international treaties is necessary only when Brazilian law is modified; as this is not the case, no Congressional approval was necessary.

On August 18, 1989, an opinion on this matter was requested of the office of the Counselor-General (an agency within the Presidency). The opinion issued from the office reasoned that since the Montevideo Treaty was duly ratified by Congress, and its contents were an integral part of Brazilian law, the above-mentioned protocols did not modify Brazilian law. Furthermore, it stated that these additional protocols were simply a furtherance of the obligations assumed upon execution of the Montevideo Treaty. Therefore, the Counselor-General's office concluded that the Montevideo Treaty did indeed authorize the signature of additional protocols under its rules, and that, consequently, such protocols did not require Congressional ratification before enactment by the Executive Branch.[2]

Application of Antitrust Laws to Government Entities

In 1987, Petroplastic Indústria de Artefatos de Plásticos Ltda. filed a claim against Petrobrás Química S.A.—Petroquisa at the Administrative Council of Economic Defense ("CADE"). CADE is the federal agency in charge of administering the Brazilian antitrust laws. Petroquisa, which is controlled by the state-owned oil company Petróleo Brasileiro S.A.—Petrobrás, functions as a holding company for the various Petrobrás investments in the petrochemical industry.

Plaintiff, Petroplastic, and defendant, Petroquisa, were shareholders in Petroquímica Triunfo (also a defendant), a company located in the Petrochemical District of the State of Rio Grande do Sul. Petroplastic alleged abuse by Petroquisa of its economic power both as a shareholder in Petroquímica Triunfo, and also as a holder of the various Petrobrás investments in the Petrochemical District of the State of Rio Grande do Sul. Petroquisa, in its de-

2. Case No. 400.000018/89-59, Opinion No. SA-10, dated September 6, 1989 (DOU-I, September 14, 1989).

fense, stated that CADE was not competent to review and verify the administration of a company controlled by the federal government. CADE rebutted by stating that it never intended to inspect Petroquisa, which is subject to the jurisdiction of the Ministry of Mines and Power, and the State Company Budget and Control Office ("SEST"), an agency within the Ministry of Planning.

On August 17, 1989, while the case was still being examined by CADE, the President used his executive powers over the federal administration to requisition the case to the office of the Counselor-General for its review.

On June 28, 1989, this office issued Opinion No. SR-97, affirming the holding that state-controlled companies are in fact subject to administrative procedures and investigations at CADE. However, the Counselor-General stated that "the elements available to me suggest that CADE intends, far beyond the strict limits of its jurisdiction, to evaluate the federal government policy for the petrochemical sector."

Opinion No. SR-97 held that, pursuant to the Brazilian Constitution, the Chief of the Executive Branch may request and decide on any matters in the federal administration. This power enables the President to inspect and correct wrongful acts of the administration. Accordingly, the lack of express legal provisions allowing the Chief of the Executive Branch to requisition any matter being either discussed, reviewed or investigated by the Executive Branch, especially within CADE, cannot be cited as a reason for denying the President and the Minister of Justice access to a case submitted to CADE.

The Counselor-General's office concluded that CADE will be notified to refrain from analyzing, investigating, and reviewing the governmental policy for the petrochemical sector if a request is made to the Minister of Justice. Attached to Opinion No. SR-97 is Opinion No. CR/RN 12/89. The latter holds that the Chief of the Executive Branch is indeed entitled to requisition and can decide on any matter within the Executive Branch. Following the issuance of Opinion SR-97, the claims of Petroplastic against Petroquisa were dismissed by CADE, and the case was closed.[3]

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3. Case No. 27000.005732/87-77, Opinion No. SR-97, dated June 28, 1989 (DOU-I, August 21, 1989).

Import Financing Hedge

Resolution No. 432 of June 23, 1977 allows the Central Bank to permit Brazilian borrowers of foreign currency to deposit the domestic currency equivalent to their debts with the Central Bank, thereby hedging against devaluation of the Brazilian currency.

On October 6, 1989, by means of Resolution No. 1646, the Central Bank of Brazil extended the possibility of making hedging deposits to Brazilian borrowers of import financings under Resolution No. 432. The purpose was to avoid a sudden halt in Brazilian imports, due to increasing devaluations of the Brazilian currency, which have reached the rate of forty percent per month (DOU-I, October 10, 1989).

Hedge Deposits for Exporters

Under Resolution No. 1662 of November 16, 1989, issued by the Central Bank of Brazil, exporters may open foreign currency bank accounts authorized to deal in foreign exchange. These bank accounts allow exporters to hedge against exchange devaluations caused by the runaway Brazilian inflation.

In November 20, 1989, the Tax System Coordination Office issued Declaratory Act No. 23, determining that the exchange variation income from such deposits would be considered monetary correction income for purposes of determining the taxpayer's real profits, i.e. taxable income. The Act also establishes that such income will not have tax withheld immediately but only at year-end, if the taxpayer is an entity subject to taxation on its real profits (as defined above) and if the deposit is redeemed in accordance with certain special provisions (DOU-I, November 17, 1989).

Legislative Bill on Agrarian Law Courts

On September 26, 1989, the Minister of Justice issued Ordinance No. 544, which presented the draft bill proposing the creation of a new division of state courts to deal with agrarian law matters. The Minister of Justice established that there be a period of fifteen days from the publication of Ordinance No. 544 for interested parties to submit suggestions to the draft. The thirty-five article draft bill is divided into four parts: 1) Preliminary Provisions; 2) Jurisdiction of the Agrarian Courts; 3) Procedural Rules for

Agrarian Cases (apart from the rules provided for in the Code of Civil Procedure); and 4) Final Provisions.

The draft bill was prepared with the view toward emphasizing two matters of jurisdiction: 1) the exclusive jurisdiction of the federal government to legislate on procedural matters and issues related to public registry offices; and 2) the concurrent jurisdiction of both the federal government and the states to legislate regarding production and consumption, forests, hunting, fishing, and the environment. In accordance with the proposal, the members of the Lower Agrarian Courts will be designated by the respective State Courts of Appeals and have jurisdiction to resolve agrarian conflicts within their judiciary organization. According to the draft, agrarian issues are characterized as disputes or litigation involving land title and possession, and the performance of agrarian and business activities with agrarian goods (DOU-I, September 28, 1989).

Securities Market

A. Securities Commission Regulations

On October 26, 1989, the President of the Securities Commission released the following instructions:

1) Instruction No. 104 setting forth rules for the futures market, forward market, and options market;

2) Instruction No. 105 on brokerage companies' own securities portfolios;

3) Instruction No. 106 on securities dealerships' own securities portfolios; and

4) Instruction No. 107 dealing with banking institutions' duty to inform.

Instruction No. 104 provides that transactions involving securities carried out on the futures, forward, and options markets will be guaranteed by a deposit with the stock exchanges or special liquidation and custody system. These deposits shall be comprised of a) the shares traded, in the case of a transaction on the forward market and b) a cash deposit equivalent to at least one of the following amounts:

a) in the case of a put option, twice the option price or fifteen percent of the exercise price, whichever is the greater;

b) in the case of a call option, twice the option price or fifteen percent of the price at sight; and

c) in the case of futures or forward transactions, thirty percent of the amount of the investment or value of the contracts.

Any such deposits will be updated daily. Failure to do so by the following day will result in the termination of the investment by the exchange.

Instruction No. 104 also provides that the stock exchanges shall establish limits per share for transactions in the futures, forward and option markets, based upon the number of shares outstanding in the market.

It also sets forth the rules for the launching of a series of options, as well as the independent audit of the futures, option and forward markets for purposes of verifying due compliance with the new rules.

Instruction No. 105 sets forth the rules by which brokerage companies operating on the stock exchanges and the over-the-counter markets, may own and manage their own securities portfolios. The institutions must appoint one of their directors or managing partners to the Securities Commission and the stock exchange with which the institution is affiliated to be responsible for the operations. Prior to Instruction No. 105, brokerage companies could own and manage their own portfolios but there were no specific rules such as the ones now laid down by the Securities Commission.

Any such portfolio may not exceed fifty percent of the working capital of the firms, determined in accordance with the Accounting Plan for Financial Institutions. Investments are limited to no more than five percent of the firm's working capital per issuer. In the event that the firm manages third party portfolios, transactions between the firm's and the client's portfolios are only allowed if expressly authorized by clients.

Instruction No. 106 establishes the rules allowing securities dealerships which operate on the stock exchanges and on the over-the-counter markets to own and manage their own securities portfolios. The dealerships must indicate to both the Securities Commission and the stock exchange with which the institution affiliates which one of their directors or managing partners will be responsible for these operations. The rules of Instruction No. 106 follow

the pattern of those established by Instruction No. 105 for brokerage firms.

Instruction No. 107 sets forth that multiservice banks investment banks and securities dealerships must perform the following duties: 1) directly supply stock exchanges with credit information regarding their clients pursuant to regulations of the Securities Commission; 2) inform the broker for each transaction of the code used for the final party in each exchange transaction; 3) provide the Securities Commission, upon request, with the name and transactions of the party to any exchange transaction; and 4) provide the Securities Commission, upon request, with a copy of the monthly trial balance sheets, financial statements, and opinions and reports of the independent auditors (DOU-I, November 11, 1989).

B. Commodities Exchanges

Commodities and futures exchanges are recent developments in Brazil and until recently there were very few rules covering them. The National Monetary Council regulates these exchanges by using its power to set forth rules applicable to the financial system.

On October 6, 1989, by means of Resolution No. 1645, issued by the Central Bank of Brazil, the National Monetary Council decided that, in an effort to prevent and correct abnormal situations in the commodities and futures market, the commodities and futures exchanges should establish rules to avoid or correct manipulation, fraud, or unfair market practices. If such events should occur, the Central Bank of Brazil and the Securities Commission (when securities are involved) are to be notified.

For such purposes, Resolution No. 1645 provides that the commodities and futures exchanges should directly monitor their members, by examining their books, records, or other documents, if necessary, and make their findings available to the Central Bank of Brazil and the Securities Commission.

The Central Bank of Brazil and the Securities Commission may, from now on, intervene in commodities and futures exchanges to ensure the proper functioning of the market and the exchanges. The members of these exchanges are further obliged to provide the information required by the Central Bank of Brazil, the Securities Commission or other entities authorized by law, even if such information is confidential (DOU-I, October 10, 1989).

C. New Insider Trading Law

On December 7, 1989, President Sarney signed into law Legislative Bill No. 1318/88, which regulates the filing of legal liability actions for collection of damages caused to investors in the securities market.

This new law provides that the Public Attorney's Office, independent of actions filed by the injured parties, may in its official capacity or at the request of the Securities Commission, file actions to collect the damages caused to investors or holders of securities when such damages arise from any of the following activities:

a) fraudulent transactions, nonequitable practices, price manipulation, the creation of artificial conditions of supply and demand, and securities pricing;

b) purchase or sale of securities by officers and controlling shareholders of publicly held companies, through the use of undisclosed material facts, or the same transactions if involving someone who has obtained undisclosed material facts in view of his profession or position or someone who has obtained any such information from any of the above persons; or

c) disclosure of incomplete, false, or misleading material corporate information, as well as failure to disclose any such information.

Item (b) above deals specifically with insider trading. Insider trading occurs where one, due to his position or other circumstances, becomes aware of information relevant to the business or situation of a publicly-held company and avails himself of such confidential information in order to obtain an advantage in trading of said company's securities.

Under Law No. 7913, insiders may include the following persons:

a) the officers, members of the audit committee, and other technical or advisory bodies;

b) controlling shareholders;

c) individuals that, in their professional capacity, have access to privileged information; or

d) any person that has access to privileged information, provided that this information has been hitherto held confidential.

In addition to the above, consultants, independent auditors,

attorneys, financial institutions, or any others that, as a direct result of their professional situation, have access to privileged information regarding a publicly-held company may be held liable for engaging in insider trading.

Any individual or legal entity that uses material information not yet publicly disclosed to obtain an advantage may be sued for reimbursement of the losses incurred by those who transferred, acquired, or subscribed for securities of the publicly-held company.

Under Law No. 7913, this liability is extended to third parties that have access to relevant information through tips. Both the individual providing the tip ("tipper") and the individual who used the tip to his advantage ("tippee") can be held both civilly and criminally liable. If the tipper is an employee of a financial institution, the penalties may be more serious, as set forth in the White-Collar Law. For instance, any employee of a financial institution violating the confidentiality of a transaction or service rendered by the institution may be penalized.

Legislative Bill No. 1317/88, still pending a vote in Congress, defines the following actions as crimes against the securities market:

a) failure to provide the Securities Commission or the market with any material information, or the providing of incomplete, false, or biased information; and

b) performance of insider trading.

In the first case, the infringer will be subject to imprisonment for six months to two years and a fine; in the second case, imprisonment will be for one to three years. Fines will also be levied on the legal entity in keeping with the illegal advantage it obtained (DOU-I, December 12, 1989).

D. Securities Market Fee

The Securities Commission has relied on federal budgetary funds since its creation in December 1976. During this period, the Commission has remained a small federal agency located in Rio de Janeiro. In an attempt to provide the Commission with a continuous and substantial flow of funds sufficient to permit an increase in its staff and facilities, the federal administration proposed to Congress the creation of a securities market fee. Such fee will be charged to individuals and financial entities authorized to deal in

securities, publicly-held companies, investment funds, investment companies, portfolio managers, independent auditors, securities consultants and analysts, and listed companies benefiting from fiscal incentives.

Congress approved the creation of this fee, and on December 20, 1989, President Sarney signed Law No. 7940, regulating the assessment and collection of the securities market fee. Funds from payment of this fee, to be paid annually by the aforementioned entities and individuals, will be transferred by the Treasury to the Securities Commission. The fee varies from 200 to 4,000 National Treasury Bonds (from approximately US$ 160.00 to US$ 3,190.00) (DOU-I, December 21, 1989).

Opening up of the Financial Market

On October 25, 1989, the Central Bank of Brazil issued Resolution No. 1649, establishing the new rules applicable to the constitution of financial institutions. The new rules allow any person or entity to establish a financial institution, provided certain capital and organizational requirements are met. For the first time in this century, the establishment of new institutions does not depend on the acquisition of existing companies. These new rules will prevail until Congress passes a new law regulating the financial market (DOU-I, October 26, 1989).

Portfolio Investments

The National Monetary Council, by means of Resolution No. 1654 issued by the Central Bank of Brazil on October 26, 1989, authorized the Central Bank of Brazil and the Securities Commission to jointly regulate portfolio investments managed by financial institutions. The new rules establish maximum investment limits and the mandatory diversification of such portfolio investments.

The National Monetary Council prohibited multiservice banks and investment banks from enjoining brokerage firms (which are the only companies entitled to operate on the stock and futures exchanges) from making transactions involving a final consignor unless the latter is registered at the stock exchange (DOU-I, October 27, 1989).

Rights of Dissenting Shareholders

Under the Brazilian Corporation Law, shareholders dissenting from certain fundamental corporate changes are entitled to have their shares appraised in accordance with a recent corporate balance sheet, and may compel the company to buy their shares back.

These fundamental changes, until recently, included the following corporate actions:

1) creation of preferred shares or increase in a class without maintaining the existing proportion among classes of shares;

2) amendments in the preferences, advantages, and conditions of redemption or amortization of one or more classes of preferred shares, or the creation of a new, more favored class;

3) merger, amalgamation, or spin-off;

4) change in the minimum mandatory dividend;

5) change in the corporate purpose;

6) dissolution of the company or suspension of the liquidation; and

7) participation of the company in a group of companies (as defined in the Corporation Law).

On December 20, 1989, President Sarney signed Law No. 7958, which terminates the dissenting shareholders' appraisal rights in the case of mergers, amalgamations, and spin-offs, as well as where a company decides to participate in a group of companies.

A variety of groups immediately criticized the new law, including stock analysts, law professors and various other market members, as well as the country's two most important stock exchanges. Criticism has been so unrelenting against Congress (where the bill originated) that the Executive Branch has announced that it will likely propose legislation revoking the new law (DOU-I, December 21, 1989).

New Rules on Temporary Imprisonment

On December 21, 1989, President Sarney signed a new law regulating the cases in which temporary imprisonment may be decreed by the courts at the request of police authorities or the Public Attorney's Office. In accordance with Article 1 of Law No. 7960, temporary imprisonment may be decreed in the following

situations:

1) if essential to a police investigation;

2) when the suspect does not have a fixed residence, or does not adequately identify him/herself; or

3) when, based on evidence admissable under penal legislation, there are sound reasons demonstrating participation in or responsibility for crimes listed in Article 1, item (iii), varying from homicide, kidnapping, and extortion to drug traffic, genocide, and crimes against the financial system ("white-collar crime").

Temporary imprisonment may last up to five days and may only be extended for a similar period in the event of extreme, evidenced necessity. In any case, arrests can only be made after issuance of a court order (DOU-I, December 27, 1989).

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