4-1-1988

Brazil

BRAZIL

The following is a review of recent legal and economic developments in Brazil.

Legislative and Administrative Rules

Central Bank Resolutions

The Brazilian Debt-Equity Conversion Program

The long-awaited Brazilian rules on debt-equity conversion have finally been issued. The proposal developed by the Central Bank of Brazil was approved by the National Monetary Council on November 17, 1987. On the same day the Central Bank issued Resolution No. 1416, setting forth the applicable rules.

The first key feature of these rules is the distinction made between the various credits of foreign financial institutions:

(a) deposits at the Central Bank of payments of principal and interest on medium and long-term (more than 360 days) external obligations, regardless of whether or not already covered by the external renegotiation process (hereinafter Debt Renegotiation Funds);

(b) credits not yet matured, when the debtors are public sector entities, namely, the federal government, states, municipalities, and legal entities controlled by the federal government, states and municipalities (hereinafter Unmatured Public Sector Debt);

(c) credits not yet matured, when the debtors are private sector entities (hereinafter Unmatured Private Sector Debt); and

(d) voluntary deposits made by Brazilian debtors with the Central Bank for hedging purposes, under Resolution No. 432 and Circular No. 230 (hereinafter 432/230 Deposits).

A second important feature is that all converted funds must remain in Brazil for a minimum period of twelve years from the date of conversion. Moreover, the Central Bank may restrict remittance of profits generated by such funds during a period of four years from the date of conversion. Conversions that directly or indirectly cause the transfer of corporate control to foreign investors are not allowed; however, assignment of credits abroad for conver-

sion purposes is allowed. Approval of each conversion is conditioned on the formal agreement of the original creditor of the amounts being converted to the issuance of exit bonds by Brazil and the implementation of the debt-equity conversion program. Central Bank officials state that mere agreement with the idea, not an undertaking to subscribe for the exit bonds, is all that is required.

1. Conversion of Debt Renegotiation Funds

Debt Renegotiation Funds for investments in the private sector will be converted pursuant to an auction system to be regulated by the Central Bank with two periodically established ceilings: one for investments in any project selected by the interested party, and another in an equal amount, for investments in projects located in the Sudene and Sudam, Espiritu Santo, and Vale do Jequitinhonha areas. Debt Renegotiation Funds that are converted pursuant to the auction system for investment in private sector projects must be channelled to new investments or to the expansion of existing investments. These funds cannot be utilized for the acquisition of equity participation in existing projects other than through foreign capital conversion funds.

2. Conversion for Portfolio Investment

Debt Renegotiation Funds and Unmatured Private Sector Debt may be invested in the Brazilian Stock Market through the formation of foreign capital conversion funds subject to the following rules:

(a) foreign capital conversion funds may not acquire shares in excess of five percent of voting capital and twenty percent of the total capital of a given company;

(b) the funds shall be subject to the tax and foreign capital registration rules determined by Law No. 4131 of September 2, 1962, as amended, meaning that they will not enjoy the tax advantages for remittances abroad recently granted to similar funds created with fresh money investments in Brazil;

(c) the funds will be subject to the operating rules that apply to similar fresh money funds; and

(d) the units of foreign capital conversion funds must be in registered form and are non-transferable for a period of five years.

3. Conversion for Investment in the Public Sector

Investment in the public sector, which includes privatization of companies presently controlled by the government, are subject to the following rules:

(a) utilization of Debt Renegotiation Funds for investments in the public sector is not subject to the auction system;

(b) Unmatured Public Sector Debt can be utilized only for investments in the public sector;

(c) cruzados coming from conversion of Unmatured Public Sector Debt must be used to repay loans previously granted by the government to companies controlled by the government;

(d) Unmatured Private Sector Debt and 432/230 Deposits may be used for investments in the public sector; and

(e) any such investment is subject to other applicable laws and regulations, and requires the prior approval of the Special Secretary for the Control of Government Companies (SEST), as well as of the Secretary of the National Treasury (STN). Conversion funds for investments in the public sector will be registered as foreign capital, at face value less the discount established by the Central Bank, taking into consideration the results of the auction system.

4. Conversion of Unmatured Private Sector Debt

Use of Unmatured Private Sector Debt is at the investor's discretion. The terms of the transaction will be negotiated among the parties involved. Registration of foreign investment then will be granted by the Central Bank at the discount established for these transactions, with due regard for the results of the auction system.

5. Conversion of 432/230 Deposits

The use of 432/230 Deposits is subject to a ceiling to be periodically established by the Central Bank. Investor utilization of the corresponding funds is at the investor's discretion. Applications will be reviewed pursuant to the order of filing, and the investment will be registered at the discount established by the Central Bank, with due regard for the results of the auction system.

6. General Rules

One of the features of the conversion rules is that the funds resulting from debt conversions always must be applied to risk investments. In addition, the funds cannot be used for investments in projects that enjoy a minimum profitability guarantee or investment repurchase guarantee, whenever such guarantee is directly or indirectly funded with government funds. Whenever a party interested in debt conversion has repatriated a foreign investment or remitted a capital gain abroad during the preceding thirty-six months, approval of the debt conversion will be conditioned on the reinvestment in Brazil of the remitted foreign currency. In addition, funds resulting from debt conversion cannot be used for the acquisition of equity investments held by foreign investors unless the funds are reinvested in Brazil by the selling foreign investor, subject to these debt conversion rules. The Central Bank may prohibit or limit debt conversions for investments in a given sector of the economy for conjunctional reasons or whenever such sectors already have sufficient installed capacity. Resolution No. 1416 confirms that proposals for debt conversion submitted to the Central Bank on or before July 20, 1987 shall be processed pursuant to the rules contained in Circular Letter No. 1125 of November 9, 1984. The specific rules regarding this debt conversion system, as reported in the Official Gazette, follows.

*Official Gazette of the Federal Executive - Section I, November 18, 1987, Resolution No. 1416**

> The Central Bank of Brazil, pursuant to Article 9 of Law No. 4595, of December 31, 1964, announces that the National Monetary Council, in a meeting held on this date, in view of the provisions of Articles 4, items V, XXXI and 57, and of Article 50 of Decree No. 55762, of February 17, 1965,
> RESOLVED,
> With due regard for applicable legal rules on foreign investments in Brazil, to establish the rules specified below for the conversion into investment in Brazil of Brazilian foreign debts.
>
> I. Credits covered by agreements for the rescheduling of Brazilian foreign debt, relating to the following, are eligible for debt-equity conversion in Brazil:

* Free translation provided by Pinheiro Neto, Advogados.

(a) medium and long-term foreign obligations (loans and financing) registered at the Central Bank of Brazil, and respective charges;

(b) foreign currency deposits made at the Central Bank of Brazil, relating to installments of principal in arrears, and respective charges; and

II. The credits mentioned in item I may be converted into investment whether or not the credit rights abroad or the corresponding obligations in Brazil have been assigned.

III. Prior to the offer of debt-equity conversion bonds by the Federative Republic of Brazil, conversion of the credits mentioned in item I shall be conditioned:

(a) in the case of creditors participating in agreements for rescheduling of the Brazilian foreign debt, on their having formally agreed to any contractual changes which may be required as a result of the bond offer mentioned and the conversion of credits hereunder;

(b) in the case of creditors not participating in agreements for the rescheduling of Brazilian foreign debt, on the original creditors participating in said agreements having formally agreed to the contractual changes resulting from the bond offer mentioned and the conversion of credits hereunder.

IV. After the offer of debt-equity conversion bonds by the Federative Republic of Brazil, conversion of the credits mentioned in item I shall be conditioned:

(a) in the case of credits against the Central Bank (amounts owed contractually by the Central Bank of Brazil or deposited thereat), on prior subscription, by their holders, of said bonds;

(b) in the case of credits against other debtors held by creditors participating in agreements for rescheduling of Brazilian foreign debt, on their holders having formally agreed to the contractual changes resulting from the bond offer mentioned and the conversion of credits hereunder;

(c) in the case of credits against other debtors held by creditors not participating in agreements for the rescheduling of Brazilian foreign debt, on the original creditors participating in the agreements, having formally agreed to the contractual changes resulting from the bond offer mentioned and the conversion of credits hereunder.

V. Conversions for investment of the amounts owed contractually by the Central Bank or deposited there shall be carried out under an auction system, pursuant to regulations to be

issued.

VI. To facilitate V above, the Central Bank shall establish, from time to time, two conversion limits, one designed for projects to be carried out in the Sudene (Development Authority for the Northeast), Sudam (Development Authority for the Amazon), State of Espirito Santo, and Jequitinhonha Valley areas, execution of which shall be evidenced in the manner to be established by the Central Bank, and one for investments in any project selected by the interested party.

VII. The Central Bank may establish a limit of convertible credit per creditor, taking into account the amount of the bonds subscribed to by the creditor.

VIII. The funds resulting from conversions under item V shall necessarily be invested in new projects or in the expansion of existing enterprises.

IX. The investments resulting from conversions under item V and respective registrations shall be equal to the amounts of the proposals which are successful in the auctions.

X. The funds originating from conversion of the amounts mentioned in item V may also be invested in securities through "Foreign Capital Conversion Funds," with due regard for the following rules:

(a) the "Foreign Capital Conversion Fund" may not hold in its portfolio more than five percent of the voting capital or twenty percent of the total capital of one company;

(b) the tax and foreign capital registration systems shall observe Law No. 4131, of September 3, 1962;

(c) the provisions of Regulations Exhibit II to Resolution No. 1289, of March 20, 1987, of the National Monetary Council, apply to the "Foreign Capital Conversion Fund," as applicable;

(d) the quotas issued by the "Foreign Capital Conversion Fund" shall be book entry quotas and nontransferable abroad for a period of five years.

XI. The conversion of amounts owed contractually by the Central Bank or deposited there is excepted from the auction system when the conversion is designed for investment in companies of the public sector, for payment of loans authorized by Ministry of Finance Notice No. 30, of August 29, 1983, and for supplements thereto.

XII. The debt registered at the Central Bank in the name of companies or entities of the public sector - Federative Republic of Brazil, States, Federal District, Territories, Municipalities,

and the respective Autonomous Government Entities, Government-held Companies, Mixed Capital Companies and Foundations and transactions carried out by such entities under Resolution No. 63 of August 21, 1967 - may only be converted into investments with companies of the public sector itself, the product of the conversion being necessarily used for the payment of loans authorized by Ministry of Finance Notice No. 30, of August 29, 1983, and supplements thereto, or of medium and long-term foreign credits registered at the Central Bank, for which companies of the public sector are also liable.

XIII. In any event, conversions for investment in companies of the public sector shall observe the restrictions and limitations of applicable law and regulations. A prior favorable statement by the Special Office for the Control of State Companies (SEST) and the National Treasury Office (STN) is also required.

XIV. Registration of the investment resulting from the conversions under items XI and XII shall be equal to the face value of the converted obligations less a discount to be established by the Central Bank which shall take into account the results obtained from the auctions referred to in item V.

XV. The debt registered at the Central Bank in the name of companies not included under item XII may be converted into investment in companies of the private sector or of the public sector.

XVI. The provisions of the preceding item apply to conversion of deposits made at the Central Bank under Circular No. 230 and Resolution No. 432, of the National Monetary Council. Such conversions shall be subject to the limit to be periodically established by the Central Bank of Brazil, which shall examine the respective proposals in accordance with their chronological order of submission.

XVII. Registration of the investment resulting from conversions under items XV and XVI shall be equal to the face value of the converted obligations, less a discount to be established by the Central Bank which shall take into account the results from the auctions.

XVIII. The minimum period for the converted funds to remain in Brazil shall be twelve years, as of the date of capitalization of the funds.

XIX. The Central Bank may establish specific criteria for remittance of the profits or dividends generated by the investments resulting from the conversions hereunder, for a period of up to four years as of the date of capitalization of the funds.

XX. Until the corresponding investment is made, the amount of the credits referring to an already authorized conversion may be deposited at the Central Bank, under conditions to be established by that body.

XXI. Conversions for investment shall not be accepted in the event a minimum profitability and/or repurchase of the investment is guaranteed, either directly or indirectly, with government funds.

XXII. Conversions shall not be accepted if they result either directly or indirectly, in the transfer of control of companies directly or indirectly controlled by individuals domiciled in Brazil to individuals or legal entities domiciled abroad.

XXIII. Conversions shall not be authorized if the interested parties themselves, or persons with whom these parties are linked, have made remittances abroad by way of capital gain or repatriation during the thirty-six months immediately prior to the date of submission of the application for conversion to the Central Bank. Such prohibition shall not apply in the event of re-entry into Brazil of the funds transferred abroad during this period.

XXIV. The funds resulting from conversion may not be invested, by the interested party or by persons with whom that party is linked, during the minimum term in which the funds indicated in item XVIII are to remain in Brazil, in the partial or full acquisition of foreign investments, unless the proceeds from the disposal are reinvested in Brazil, thus becoming subject to the rules of this Resolution.

XXV. Any remittance abroad by way of capital gain or repatriation by companies already holding foreign capital shall be subject to a deposit at the Central Bank of up to the full amount of the investments resulting from the conversions, whenever the beneficiary of the remittances is also the holder of such investments or persons linked to such holder by control. Such amounts shall be held in deposit, under conditions to be established by the Central Bank until the minimum term for the funds to remain in Brazil, as indicated in item XVIII, has been completed.

XXVI. The Central Bank may limit or prohibit conversions for investment in specific sectors of the Brazilian economy, by virtue of situational reasons or when they have already been sufficiently assisted.

XXVII. The limit for conversion with regard to investments in the Sudene, Sudam, Espirito Santo and Jequitinhonha Valley

areas shall correspond to fifty percent of the total amount to be allocated to the auctions referred to in items V and VI, the surplus, if any, to revert to the next auction.

XXVIII. In any event, the funds resulting from conversion may only be allocated to risk investments.

XXIX. Proposals for conversion submitted to the Central Bank on or before July 20, 1987 shall be examined and decided in accordance with the rules of Circular No. 1125, of the Central Bank.

XXX. The Central Bank shall regulate the provisions hereof.

XXXI. This Resolution shall take effect on the date of its publication, all contrary provisions being revoked.

Brasilia (Federal District), November 17, 1987.

Presidential Decrees

1. Manaus Free Trade Zone

On November 10, 1987 the President signed Executive Decree No. 95176 providing for an increase of US$ 92,100,000 in the overall import limit for the Manaus Free Trade Zone. The limit for 1987 was set at US$ 610,000,000 in February 1987 by means of Executive Decree No. 94025, and is now US$ 702,100,000. Excluded from this limit are imports of wheat and oil, subject to special controls, goods imported for the manufacture of products to be exported (draw-back system), as well as: up to thirty percent of the foreign trade surplus of any company operating on a draw-back basis; imports by government agencies; and imports arising from a final decision of a court of law. The Manaus Free Trade Zone is a free import-export area that enjoys special tax exemption established to create an industrial, commercial, and agricultural center in the Amazon region.

2. Disposition of Federal Lands

During the early 1970s, the federal administration made use of the executive power to issue decree-laws — a kind of law which is enacted without congressional review and which Congress can only approve or reject, without amendments — to declare as essential to national security and development, and under federal possession

and dominion all public land situated within 100 kilometers of each side of federal highways in the Amazon region. The measure included all current, under-construction, or projected highways, and caused a substantial reduction in the sovereignty of the Amazon region states over their territory. On November 24, 1987, the President signed another decree-law, revoking Decree-law No. 1164 of April 1, 1971, which had established the security zone along the federal highways. Decree-law No. 2375, now enacted, maintained federal possession of, and dominion over, frontier areas.

3. Tax Reform

Once again, the Executive Branch has effected a tax reform in the last days of the year. As in past years, the main reasons for the new tax legislation were inflation-corroded tax revenues and a substantial federal deficit. In 1986, the tax reform came out on November 21 through codifications in the former Cruzado Plan. In 1985, the tax reform was done through Law No. 7450 of December 23. The 1987 tax reform (or "tax package" as tax measures introduced by the Executive Branch through the issuance of decree-laws are known to Brazilians) is in fact less severe than the measures proposed by the Minister of Finance, Luiz Carlos Bresser Pereira, who recommended the progressive taxation of capital gains (currently taxed at a flat twenty-five percent rate), the liquidation of several federal-owned companies, and the elimination of certain subsidies. Bresser Pereira resigned on December 18 when it became clear that the President would not go along with his proposals. Earlier in December, the President had rejected Bresser Pereira's idea of taxing wealthy individuals on their net worth.

A brief overview of the legislation enacted on December 21, 1987 is given below.

(a) Changes in Income Tax Legislation

(i) Taxation of Financial Transactions

By means of Decree-law No. 2394, dated December 21, 1987, the tax payable on income from short-term financial transactions was reduced to six percent. A short-term financial transaction is any transaction with a time period equal to or less than twenty-eight days from the date of acquisition of the financial instrument or of the date of the investment until its subsequent transfer, liquidation or redemption. The measure aims at investments in the

overnight and open markets, which attract billions of dollars daily and which have a return at least equal to the daily inflation rate, close to one percent during 1987.

(ii) Taxation of Pension Plan Benefits and Retirement Accounts

Decree-law No. 2394 also subjects to a withholding income tax rate of twenty percent the following income:

(1) Funds redeemed from savings and investment accounts created by Decree-law No. 2292 of November 21, 1986. This Decree-law was part of the 1986 year-end tax reform, and authorized both individuals and employers to form retirement security portfolio accounts, known as PAIT, and created tax incentives for contributions to these portfolio accounts. Redemption of the investments could only occur ten years after the initial contribution, or five years after the initial contribution when the owner became sixty-five years old, or at any time in the case of permanent disability. The incentive for individuals to establish PAIT accounts was that the annual contribution to the portfolio — not to exceed Cz$ 100,000 or thirty percent of the individual's gross income — could be deducted from gross income for tax purposes;

(2) Redemptions of the sole contribution by individuals to open pension funds for purposes of subscription to a retirement plan, as well as any cash payments made by pension funds to a beneficiary under a retirement plan; and

(3) Funds withdrawn from retirement savings accounts created by Decree-law No. 2301 of November 21, 1986 (also part of the 1986 year-end tax reform), after the deduction of accrued income.

(iii) Taxation of Gains on Futures Exchanges

Article 8 of Decree-law No. 2394 subjects all net income earned on the financing of forward sales, futures contracts, and securities options, and then liquidated within a period of less than twenty-eight days, to a withholding income tax rate of six percent. For purposes of taxation, the net income from transactions of more than twenty-eight days will be equated with income from fixed-income investments.

Article 9 of Decree-law No. 2394 establishes that any income paid to an unidentified beneficiary will be subject to the highest income tax rate applicable to individuals, which is now forty-five percent. The taxation of futures contracts and options ends the income tax exemption granted to income realized on these markets,

which, according to market sources, has been responsible for the substantial growth of these markets since their creation in Brazil in the early 1980s.

(iv) Taxation of Individuals

Decree-law No. 2396, also dated December 21, 1987, amended the rules applicable to the taxation of individuals. Accordingly, the income and progressive tax schedule for 1988, as well as the allowable itemized deductions, were monetarily corrected by 250% as against the 1987 inflation of 365%. The income tax to be paid can now be liquidated in eight installments; however, the tax due must be converted into federal bonds. Thus, taxpayers will have their income tax liability determined in a given number of federal bonds, which are monetarily corrected every month. Even those opting for a single lump sum payment will have their tax liability monetarily corrected from January 1988 until the month of payment.

(v) Taxation of Corporations

Decree-law No. 2397 revoked the taxation of professional firms. These firms are now exempt from payment of income tax; any profit determined, however, will be considered automatically distributed to the partners on the date of closing of the fiscal year in accordance with the allocation of profits among partners and is subject to withholding income tax. Partners may take any tax withheld from any payment made to a professional firm as a tax credit. The same distribution principle applies to the profits determined by microcompanies created by Law No. 7256 of November 27, 1984. Decree-law No. 2397 also provides detailed rules for the monetary correction of the financial statements of corporations.

(vi) Taxation of Income from Exports

Under article 11 of Decree-law No. 2391, income from export sales is not excluded from the taxable income of corporations in 1988. The exemption was established during the 1970s to encourage exports, and its termination has raised strong objections from export-related businesses. A gradual termination of the exemption in the coming years is being studied by the federal administration, and may be announced instead of the termination determined by article 11 of Decree-law No. 2397.

(b) Deposit Insurance Systems

Decree-law No. 2395, dated December 21, 1987, authorized the

Executive Branch to create a mechanism to guarantee deposits and investments in financial institutions and other organizations under the Central Bank of Brazil's jurisdiction. The mechanism insures depositors and investors against risks and losses associated with intervention, liquidation, special temporary management or bankruptcy.

In accordance with article 2 of Decree-law No. 2395, the regulations to be issued will specify the institutions whose liabilities will be insured, the kind of obligations to be insured, the treatment applicable to foreign currency obligations, amount of contribution and contributors, management of funds collected, and the form and time of insurance of payments. Decree-law No. 2395 also exempts credit transactions from payment of the tax on financial transactions after the creation of the deposit and investment insurance.

(c) Proposed Legislative Bills

On the same date that the Executive Branch enacted the tax reform amending income tax legislation, it also proposed to Congress four bills creating new taxes or increasing existing ones:

(i) Tax on Wealth

The bill creates a tax on wealth, to apply to the total net worth of the taxpayer at the beginning of each year. Net worth is defined as all property, assets, and rights of any nature, use or location as described in the taxpayer's annual income tax return. Debts related to the property, assets, and rights will be deductible from their value.

(ii) Tax on Capital Asset Income

The bill on the taxation of income from capital assets revokes the current option for exclusive taxation at source of income from capital assets, except in the case of lottery prizes and short-term transactions. Accordingly, all tax paid at source will be considered only as an advance on the tax owed under the annual income tax return.

Profits and dividends distributed by corporations, as well as any income from financial transactions, will be subject to the tax on income from capital assets. Tax credits, related to tax paid by a corporation distributing profits or dividends, also may be distributed to shareholders, but may not exceed twenty percent of the profits or dividends received by a shareholder, or of the amount of

tax to be paid under his tax return before the set-off of the tax withheld on his income. The bill also proposes that the tax credit be considered as shareholder income and only be used in the year the income to which it refers is subject to taxation.

(iii) Tax on Capital Gains

Capital gains are currently taxed at twenty-five percent. The bill defines taxable capital gain as the result of the sum of the gains realized in the calendar year from the transfer of any property, assets, or rights. Capital gain is defined as the positive difference between the transfer price and the monetarily corrected acquisition cost. The tax must be paid at the rate of twenty percent of the gain on any sale of urban and rural real estate, shares, quotas, and other stockholdings and non-fixed income securities, works of art, antiques and other precious objects, jewelry, precious and semi-precious stones, boats, airplanes, racehorses, stamps, coins, vehicles, and club memberships.

4. Software Law

On December 10, 1987, the President signed, with a few vetoes, Law No. 7646, regulating the protection and marketing of software in Brazil. Law No. 7646 had been approved by Congress a few days earlier, and its subject matter has been in the headlines for the past months as the cause of a recent trade conflict between Brazil and the United States of America.

In 1984 Congress approved, and the President signed into law, a bill regulating the computer industry in Brazil by providing for a market reserve for Brazilian computer manufacturers. This legislation established that a law would be passed regulating the protection of software manufacturers and the marketing of software in Brazil. Earlier in 1987 the Executive finally proposed a bill on the matter, after the Special Informatics Office (SEI), the federal agency in charge of applying the Informatics Law, decided that the principles of the Informatics Law should govern software protection and marketing in Brazil.

Law No. 7646 of December 18, 1987 is divided into three major parts; the first deals with the protection of software, the second with the marketing of software in Brazil, and the third with penalties.

(a) Protection

The Law extends to software the system of protection of "dual property for copyright in Brazil." Software is defined in article 1 as the expression of an organized set of instructions in natural or coded language, contained in a physical medium of any nature, for employment in automatic data processing machines, devices, instruments or peripheral equipment, based on digital technology, to make them operate in a certain manner and for certain purposes.

Article 3, in turn, establishes that the period of protection is twenty-five years from the introduction of the software in any country. The Law does not define the meaning of introduction. Under article 3, the protection of software does not require registration or enrollment, and the author may register it as an entity to be designated by the National Copyright Council. Owners of software who reside abroad are ensured protection provided that their country of origin offers reciprocal treatment, namely, that it affords Brazilians and foreigners resident in Brazil rights equivalent in extent and time. The Law establishes that, unless stipulated otherwise, the employer or party contracting services shall be the exclusive owner of the rights to the software developed and prepared during the effectiveness of the employment or service contract. Article 6 of the Law, however, stipulates that, when established by agreement, the rights to changes shall belong to the authorized person who makes such changes, who shall exercise them autonomously. Ending the chapter on software protection, article 7 of the Law lists items not considered copyright offenses. Among other items, the article mentions a similarity between one software system and another as a result of compliance with the requirements of the law, regulations, technical standards or a limitation on alternative forms of expression.

(b) Marketing

The fundamental principle for the marketing of software in Brazil is contained in article 8, which requires prior enrollment of the software with the SEI for it to be marketed in Brazil. This requirement applies to any software, whether Brazilian or foreign. Article 1 mentions that the production and marketing of software is free in Brazil. The Law determines further that the SEI will classify software in different categories depending on its origin, namely, whether developed abroad or in Brazil, and, if developed in Brazil, whether by purely national companies (as defined in the Informatics Law) or in association with non-national companies. Furthermore, in the case of non-national companies, the enroll-

ment of the software is conditioned on the nonexistence of similar software developed by a national company.

In keeping with the treatment that is being given to informatics in general in Brazil, the Law clearly establishes a market reserve to software developed in Brazil and to software developed by national companies. Article 9 establishes that enrollment will be valid for at least three years, and will be automatically renewed by the SEI if there is no similar national software. Basically, article 10 considers similar national software to be software that has equivalent functions. The Law conditions the validity and effectiveness of any legal transactions to the registration of the software, which is also required to allow payments and remittances and to generate tax and exchange effects.

Article 28 of the Law restricts the marketing of software to national companies (as defined in the Informatics Law), except in the case of software intended for equipment produced abroad or in Brazil, and marketed in Brazil by non-national companies. In summary, these companies may only market software for heavy computer equipment. The Law determines further in paragraph 1 of article 29 that no consideration can be remitted abroad for software by non-national companies, which may only remit dividends. On marketing, article 27 of the Law provides that the economic exploitation of software must be covered by license or assignment agreements freely established between the parties. On the other hand, the same article establishes that clauses providing for exclusivity, limited production, distribution or marketing, or exemption of any of the parties from liability for any third-party action as a result of errors, defects or copyright infringement, are null and void.

The Law also regulates the consideration that may be paid to an author residing and domiciled abroad, providing that contracts may be approved and recorded for a certain price per copy, which may not exceed the average price charged worldwide for the distribution of the same product, and prohibiting payments calculated on the basis of production, income or profits of the assignee or user. An important aspect of the Law is the creation of mechanisms to protect consumers and final users. These aspects are contained in articles 23 to 26. Generally, the articles guarantee user receipt, during the period of technical validity of the software, of corrections of any errors and of supplementary technical services. For the same period, the software may not be withdrawn from

commercial circulation without fair indemnity for any losses caused to third parties. In order to protect the user, the Law provides that the owner of the software and marketing rights is liable for the proper technical quality of the software and for the quality of the recording of the software on the respective physical means.

(c) Penalties

The chapter on sanctions and penalties is quite simple, and provides for imprisonment for six months to two years and a fine for the infringement of software copyright. For those who import display the marketing foreign software not registered with the SEI, the penalty is imprisonment for one to four years and a fine.

In addition to criminal action, the injured party may file civil action to bar the transgression, in which case the defendant is subject to a monetary penalty. This action may also be combined with a claim for losses and damages caused by the infringement. According to article 42 of the Law, the Executive will issue regulations for the Law within 120 days of the date of its publication. Presidential vetoes may be submitted to Congress again so that they may be re-examined within forty-five days after notice from the President to the Senate. If this period elapses without a decision by Congress, the vetoes will be maintained. Congress may, however, within the same period, reject the vetoes by the affirmative vote of at least two-thirds of each of its houses. In this case, the provisions previously vetoed by the President and then maintained by Congress would be submitted to the President once again for enactment.

5. Hedging Transactions

On November 11, 1987 the Securities Commission released Instruction No. 71, which allows mutual stock funds to invest in stock index futures contracts and to lend shares of stock for sale on the spot market under margin account rules. This measure provides mutual funds with the advantages of hedging transactions already available on the market for some years. Simultaneously, the Commission announced plans to permit pension fund portfolios to invest in hedging transactions. As a general rule, all institutional investors in Brazil are subject to investment policies set up by the Central Bank of Brazil. The powers to regulate mutual funds and portfolios was only recently transferred to the Securities Commission.

6. Investment Clubs

On November 13, 1987 the Securities Commission released for public comment and suggestion a draft instruction regulating the organization, management and operation of investment clubs. An investment club is a condominium organized by individuals for the investment of common funds in securities of listed companies. An investment club must be administered by an investment bank, brokerage house or securities dealership. Its portfolio, however, may be managed either by any of these institutions or by an independent portfolio manager. The organization of an investment club, which operates in a manner similar to an open-ended mutual fund, depends only on prior registration of the club with a stock or futures exchange or any other self-regulated entity authorized by the Securities Commission. Created just a few years ago as an incentive for portfolio investment by the general public and usually kept separate from the securities market because of the high brokerage fees and inherent complexity of market transactions, investment clubs have boomed in Brazil. There are approximately 2,000 clubs in operation in the market. The draft regulations now proposed by the Securities Commission will replace, if approved and enacted, existing Instruction No.40 of November 7, 1984.

MISCELLANEOUS DECISIONS

Japanese/Brazilian Technical Cooperation

By an exchange of notes executed in Tokyo on August 3, 1987, a Protocol to the Basic Agreement on Technical Cooperation dated September 22, 1970, dealing with agricultural cooperation in Brazil was signed between Brazil and Japan. The new Protocol sets forth the principles and procedures to be followed in agricultural research projects related to the Cerrado region in the midwest Brazilian territory. The Brazilian government has appointed the Brazilian Agricultural Research Company as the executive agency for the two projects.

Proposed Amendment to the Penal Code

The Minister of Justice released for public comment a draft bill that amends the Penal Code by adding a new section on crimes against the democratic state and mankind. The publication of the

draft bill was ordered by Ordinance No. 820, dated November 6, 1987. The draft bill is divided into four chapters: crimes against sovereignty and national integrity; crimes against constitutional order; crimes against mankind; and general provisions. Chapter I on crimes against sovereignty and national integrity includes espionage activities, and provides for imprisonment for two to eight years. Chapter III on crimes against mankind provides for the harshest penalties, twenty to thirty years, for those convicted of murdering members of the same national, ethnic, racial, political, or religious group. The draft bill is open to public comment for thirty days as from its publication.

Videotext Services

On October 28, 1987 the Minister of Communications released Ordinance No. 245, containing Ruling No. 7, which regulates public videotext services. Public videotext services are defined as public telecommunications services that involve means of transmission, storage, and recovery of data, and which are compatible with the procedures and rules established by the Ministry of Communications. Public videotext services may be rendered by public telephone companies as a secondary service and are restricted to subscribers of telephone services. No authorization or license is required for the rendering of these services.

Gold Market

The Central Bank, acting as the federal monetary and exchange authority, issued Resolution No. 1428 on December 15, 1987, authorizing commercial and investment banks and brokerage companies to deal in gold on the spot market on their own behalf or on behalf of third parties. Resolution No. 1428 also allows some institutions, as well as securities dealerships (which are authorized to deal in the gold spot market by Resolution No. 1120 of April 4, 1986) to have purchase stands in the mining areas for the acquisition of gold. These purchase stands, however, depend on prior and express approval by the Central Bank.

On the same date, the Central Bank also issued Resolution No. 1429 to clarify that the raising of funds from the public for investment in gold or gold certificates of deposit is exclusive to institutions authorized by the Central Bank to deal in gold and can only be done with the prior and express approval of the Central

Bank. Resolution No. 1429 authorizes the Central Bank to regulate the custody of gold bars, the operation of gold investment funds, and any other collective form of investment in gold. Both these resolutions were passed by the National Monetary Council and subsequently issued as Central Bank resolutions. These resolutions resulted from a surge in gold transactions and gold investment funds in the market caused by the prior lack of regulations on the matter until now.

Freeze On New Insurance Companies

On December 17, 1987 the Minister of Finance issued Ordinance No. 420, freezing, for a period of three years, the authorization by the federal government of the creation of new insurance companies. Under article 6 of Decree-law No. 1115 of July 24, 1970, the Minister of Finance may freeze the granting of authorization permits to insurance companies for a specified period of time.

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