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# Brazil

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*The following is a brief summary of several legislative and administrative rulings, and several judicial and administrative decisions of the Brazilian Government which may affect foreign trade and investment in Brazil.*

## Legislative and Administrative Rulings

### I. Financial Rulings

#### *Priority Payment of Government Debts*

The President of the Republic signed Decree-Law No. 2.169 on October 29, 1984, amending certain provisions of Decree-Law No.1.928 of 1982, regarding the priority of debt payments under foreign currency commitments assumed by the Brazilian Government. As amended, article 1 states: "Debt payments resulting from foreign currency commitments, whether or not secured by a National Treasury guarantee or surety granted directly or through an official financial institution, will enjoy absolute priority in the financial disbursement schedules of the agencies under direct government administration, as well as entities under indirect administration and their subsidiaries and of other entities in which direct or indirect control of shares is held by the Federal Government or by its autonomous government entities, or foundations instituted or maintained by the Government that have assumed such commitments." (DOU-I, October 30, 1984.)

#### *Renewal of Foreign Debt*

The Central Bank of Brazil issued Resolution No. 971 of 1984, altering item VII of Resolution No. 923 of 1984, which established a time table for release of the funds on deposit at the Central Bank to repay Resolution No. 63 loans that were due in 1983 and 1984. The new Resolution liberates blocked funds to repay those loans that were due in 1983 and 1984 and were not renegotiated in six

monthly installments as of January 1985, provided that the funds have remained on deposit at the Central Bank for at least 180 days. (DOU-I, November 30, 1984.)

*Conversion of Foreign Credits*

The Central Bank of Brazil issued Circular Letter No. 1.125 of May, 1984: Based on Article 50 of Decree No. 55.762 of 1965, the Central Bank as of June 7, 1984) will no longer authorize conversion of credits into investment of international financial institutions linked to the Brazilian Financial Plan, or of credits granted before the implementation of such Plan, if such conversions are preceded by an assignment of the credits. (DOU-I, November 13, 1984.)

*Foreign Loan Transactions: FIRCE Restrictions (Circular Letter No. 1016)*

Pursuant to the provisions of Resolutions Nos. 813 and 899 of April 6, 1983, and March 29, 1984 respectively, Circulars Nos. 769 and 770 both of April 6, 1983, 852 and 853 both of March 29, 1984, and without prejudice to other governing rules, foreign loan transactions shall be subject to the following provisions:

1. Loans under item IV of Resolution No. 813 and item V of Resolution No. 899 may be made as set forth in FIRCE (Department of Control and Registration of Foreign Capital) Communique Nos. 10 and 20 of September 12, 1969, and September 1, 1972, respectively and Resolution No. 63 of August 21, 1967.

2. The proceeds of the deposits made under Resolutions Nos. 813 and 899 may be withdrawn by their owners until June 30, 1984, and June 30, 1985, respectively.

3. Applications for prior authorization to contract said foreign loans, which utilize funds derived from new entries of capital into Brazil or deposits made under items I and/or II of Resolutions Nos. 813 and 899, shall be made in accordance with current rules and procedures, and in accordance with the following additions and explanations:

> (a) An indication of the amount and origin of the funds to be used for the granting of the loans, including the following information:

i. New entries (ascertain whether items VI and VII below are applicable);

ii. Deposits - Resolution No. 813, item II No. of deposit account - BACEN;

iii. Deposits - Resolution No. 899, item I No. of deposit account - BACEN;

iv. Deposits - Resolution No. 899, item I No. of deposit account - BACEN;

v. Deposits - Resolution No. 899, item II No. of deposit account - BACEN;

vi. New entries designed for payment of importation with exchange coverage;

vii. New entries designed for down payment of financed importations.

Note: for consortium transactions, the origin of the funds of each participant may be specified in a document attached to the application.

(b) The minimum terms for the loans depend upon the origin of the funds and are determined as follows:

i. *For deposits under items I and/or II of Resolution No. 813*, eight years with a thirty month grace period, to be counted:

[1] As of the date the funds are withdrawn *for deposits under item I of Resolution No. 813*;

[2] As of the first day of the month following the date of formation of the most recent deposit released for effecting the loan *for deposits under item II of Resolution No. 813*;

ii. *For deposits under items I and/or II of Resolution No. 899*, nine years with a sixty month grace period, to be counted:

[1] As of the date of withdrawal of the funds *for deposits under item I of Resolution No. 899*;

[2] As of the 15th day of the nearest month, of January, April, July, or October, immediately subsequent to the date of formation of the most recent deposit released for effecting the loan;

iii. *For new entries*, nine years with sixty month grace period counted as of the disbursement date.

(c) Transactions carried out simultaneously with new entries of capital and/or with different deposits shall have their values segregated in accordance with the origin of the funds. In such case, each amount is limited the minimum term according to law. Alternatively, the longest term may be adopted for the entire transaction.

(d) Interest rates shall be set at the level required for variable interest rates, indicating the spread and the base rate for the currency used. The limit rate for the transaction shall also be stated, if specified by the parties. The application for registration of the transaction shall include the fixed rate obtained, which is based on the definition in the application for prior authorization and on the information of the reference banks of the transaction. Said application shall include the respective vouchers.

(e) Irrespective of the currency in which the deposits were made, the loans may be contracted:

i. In Belgian francs, Canadian dollars, German marks, United States dollars, Dutch florins, Japanese yen, pounds sterling or Swiss francs, *for deposits under item I of Resolution No. 813*;

ii. In Belgian francs, Canadian dollars, German marks, United States dollars, Dutch florins, European currency unit (ECU), Italian liras, Japanese yen, pounds sterling and Swiss francs, *for deposits under item I of Resolution No. 899*;

iii. In any freely convertible currency *for deposits under item II of resolutions Nos. 813 and 899.*

Note: For loans contracted in currencies other than those of the deposits, the exchange parity to be used for conversion of the currency shall be negotiated by the creditor(s) with the Central Bank/Department of International Operations (DEPIN) Operations Division (DIVOP). If no agreement is reached, the parity shall be established by the Central Bank (DEPIN) based on the market rates used for formation of its Exchange Rate Bulletin (i.e., the opening rate two business days prior to the date the funds are to be withdrawn).

(f) The first and second interest periods may be different from the others to enable them to be adjusted to the terms of the transactions.

(g) The flat fee levels of the loans depend on the origin of

the funds, and should be established at the following rates:

i. One and a half percent when referring to the utilization of deposits under items I and/or II of Resolution No. 813;

ii. One percent when referring to the utilization of deposits under items I and/or II of Resolution No. 813;

iii. Up to one and a half percent when referring to renewal of installments maturing in 1983;

iv. Up to one percent when referring to new entries or renewal of installments maturing in 1984.

Note: [1] For transactions carried out by using different deposits and/or new entries of capital simultaneously, the flat fee levels shall appear separately for each installment in the application.

[2] Any reductions in said flat fee levels on funds originating from deposits, or even waiver of such payment, shall be arranged in advance by the creditor(s) with the Central Bank/Department of Control and Registration of Foreign Capital (FIRCE).

[3] For renewals, in the events provided for in note (2), this preliminary arrangement may be waived.

(h) The payment condition of the flat fee shall appear in the application as follows:

i. *for new entries of capital into Brazil* "on the disbursement date" or "after issue of the Certificate of Registration," as applicable;

ii. *for deposits under items I and/or II of Resolution No. 813,* "by means of a symbolic exchange transaction as set forth in Circular Letter No. 866 (April 6, 1983), and DECAM (Exchange Department) Communique No. 560 (April 6, 1983);"

iii. *for deposits under items I and/or II Resolution No. 899,* "by means of a symbolic exchange transaction, as set forth in Circular Letter No. 866 (April 6, 1983), and in DECAM Communique No. 679 (March 29, 1984);"

iv. F*or transactions with simultaneous use of new entries of capital and deposits,* by separating the portion remittable abroad from the unremittable amount;

v. F*or renewal of installments of principal subject to deposit under item II of Resolutions Nos. 813 and 899,* "on the renewal date (symbolic exchange transaction)" or

"after issue of the Certificate of Registration," as applicable.

(i) In connection with income tax levied on the transactional charges, the provisions of DECAM Communique Nos. 560 and 679 (April 6, 1983, and March 29, 1984, respectively) shall be observed.

(j) For renewal transactions with transfer to other foreign creditors, the item "Observations" should include a statement that:

i. "[T]his is a renewal transaction designed for full and simultaneous allocation for the settlement of a commitment due abroad on . . . to creditor . . ., in connection with the transaction under Certificate of Registration (or Authorization) No. . . . of . . . ;"

ii. "[T]he creditor of said commitment authorized the transfer of the proceeds of the deposit to be made with the Central Bank, pursuant to item II of Resolutions No. 813 (April 6, 1983), and/or No. 899 (March 29, 1984), to the creditor of the proposed transaction."

Note: The following documents (telex or letter) should be attached to the application:

[1] An authorization from the original creditor to transfer the proceeds, of the deposit to be made with the Central Bank, to the creditor of the proposed transaction.

[2] A statement from the creditor of the new transaction, accepting the transfer of the deposit and authorizing disbursement from its account in order to carry out the transaction, in accordance with item 6 of Circulars No. 769 of April 6, 1983, and No. 852 of March 29, 1984. In such event, the respective deadlines for sending this notification must be observed.

(k) Any guarantee given by a financial institution abroad shall clearly state whether the loan utilizes new entries of capital into Brazil, when the creditor(s) is/are not a financial institution(s).

4. The creditor's notification, referred to in item 6 of Circulars Nos. 769 and 852, shall be sent to the same division of the Central Bank where the application for prior authorization submitted by the interested party, stating:

(a) The amount(s) and date(s) established for debiting its account;

(b) The number(s) of its account(s)/deposits with the Central Bank (items I and/or II of Resolutions Nos. 813 and 899);

(c) The amount(s) and date(s) of the deposit(s) (item I of Resolutions Nos. 813 and 899) to be used in the transaction;

(d) The amount and date of the deposit, and the number and date of the original Certificate of each deposit (item II of Resolutions Nos. 813 and 899) showing the date of the most recent deposit.

5. Renewals of loan transactions by a borrower who has commitments of a financial nature (subject to deposit under item II of Resolution Nos. 813 and 899) shall conform as follows:

(a) Transactions involving amounts already deposited are not considered renewals;

(b) Renewals can be made with the existing or different creditor, whether or not a financial institution;

Note: The borrower must follow the provisions of item 3 (j) above.

(c) The minimum period of eight years with a thirty month grace period for amounts subject to deposit under item II of Resolution No. 831 shall start on the first day of the month subsequent to the date of the symbolic exchange transaction;

(d) The minimum period of nine months with a sixty month grace period, for amounts subject to deposit under item II of Resolution No. 899 shall start on the 15th day of the month nearest to January, April, July, or October, immediately after the maturity date of the installment or of the respective symbolic exchange transaction, whichever occurs last.

6. Renewals of principal installments of currency loans, not subject to deposit under item II of Resolutions Nos. 813 and 899, shall be made in accordance with the provisions of FIRCE Communique No. 22 of October 24, 1972.

7. The principal installments of obligations covered by item II of Resolutions Nos. 813 and 899 that are honored by their guarantors (financial institutions or otherwise) or are transferred to them abroad, may be the subject of loan transactions between their borrowers in Brazil and the respective guarantors abroad. The following documents must be submitted with the corresponding applica-

tion for prior authorization:

(a) Evidence of payment of the respective installment by the guarantor to the foreign creditor, if applicable;

(b) A statement of acceptance by the new creditor of the deposit with the Central Bank;

(c) The original Certificate of Registration or Authorization granted by the Central Bank for the transaction referring to the installment due abroad.

8. In order to enable the remittance abroad of the principal obligations with maturity in 1984, financial institutions abroad interested in making deposits in advance shall submit a notification to the Central Bank/Department of Control and Registration of Foreign Capital (FIRCE) - Data Division (DIVAP), in Brasília, which includes the necessary data for identification of the installment(s) of the principal to be remitted. Such notification shall be made at least fifteeen consecutive days prior to the date of the respective entry of capital.

9. The funds deposited under items I and/or II of Resolutions Nos. 813 and 899 may be converted into an investment only after the loan transactions have been initiated. Conversion of the loans into risk capital shall observe the procedures contained in current provisions, specifically those of FIRCE Communique No. 28 and DECAM Communique No. 38 both of April 10, 1978. The receiving company shall also submit a liability commitment in which it shall undertake to retain within Brazil the sums converted for the minimum period (8 or 9 years) to which the funds, invested in the loan transaction, would have originally been subject.

10. Applications for authorization to contract foreign loan transactions (under Decree No. 84.128 of October 29, 1979 and Decree No. 84.471 of December 10, 1980) shall continue to be submitted directly to FIRCE in Brasília for the purpose of authorization pursuant to Decree No. 65.071 (August 27, 1969). Other entities shall observe current geographical zoning.

11. Circular Letter No. 883 (May 19, 1983) is consequently revoked.

*Central Bank Resolutions*

On September 12, 1984, the National Monetary Council issued

several decisions which are the subject of the following Central Bank resolutions (DOU-I, September 13, 1984.):

1. Resolution No. 951 of 1984, changes the rates for the withholding tax on income earned by individuals and non-financial entities on short-term purchase transactions of bonds or securities and the subsequent transfer or redemption thereof;

2. Resolution No. 952 of 1984 requires that the Foreign Trade Department of Banco do Brasil, S.A. (CACEX) and other competent federal agencies be heard by the Central Bank at the registration of foreign financing for the importation of capital goods, intermediate products, raw materials, and other goods.

3. Resolution No. 953 of 1984, states that the terms for import financing shall be reviewed periodically by the National Monetary Council to conform with the conditions prevailing on the international finance markets. Translation follows:

*Resolution No. 953*

The Central Bank of Brazil, pursuant to Article 9 of Law 4.595 of December 31, 1964, announces that the National Monetary Council, at a session held on this date, in view of the provisions of article 4, item V, of said law, resolved:

i. The terms for import financing as mentioned in Resolution No. 767 of October 6, 1982, shall be revised periodically by the National Monetary Council to conform with the conditions prevailing on the international financial markets.

ii. Item IV of Resolution No. 767 of October 6, 1982 shall hencefore state:

"IV - The Foreign Trade Department of Banco do Brasil, S.A. (CACEX) may authorize imports that do not comply with the provisions of this Resolution in the following cases:

a. Imports in which the payment term, although shorter than the terms established in this Resolution, is equivalent to the terms of the financing granted by foreign governments or foreign governmental entities (including export credit agencies) or by international organizations;

b. Transactions intended for projects that seek to substitute imports, or for the production of

exports;

c. Imports made by small to medium size Brazilian capital companies which have limited access to the international financial market;

d. Exceptional cases of proven urgency."

iii. This resolution shall become effective on the date of its publication.

4. Resoltion No. 955 of 1984, establishes that foreign currency deposits made under Resolution No. 432 of 1977 may only be released at the maturity dates of the principal, interest and fee installments, as provided for in the respective Certificate of Registration issued by the Central Bank. Translation follows:

*Resolution No. 955*

The Central Bank of Brazil, pursuant to Article 9 Law No. 4.955 of December 31, 1964, announced that the National Monetary Council, at a session held on this date, in view of the provisions of article 4, items V and XXXI, of said law, resolved:

i. Foreign currency deposits already made or that may be made under Resolution No. 432 of June 23, 1977, may only be released on the installment due dates for the principal, interest and fees provided for in the respective Certificate of Registration issued by the Central Bank for the transaction that gave rise to the deposit.

ii. The following are excluded from the provisions of the preceding item:

a. Deposits for which early release is linked to the simultaneous conversion into direct capital investments of the respective loans;

b. Special cases of deposits made with the approval of the Central Bank, in which the release conditions are previously submitted to the Central Bank.

iii. The release of deposits already made according to item ii.b. shall be governed by the conditions established by the Central Bank.

iv. The Central Bank may adopt measures necessary to implement this resolution

v. This resolution shall become effective on the date of its publication.

5. Resolution No. 956 of 1984, increases the period defined in Resolution No. 595 of 1980 (item II (a)) to 180 days for foreign currency deposits made before December 31, 1984, for funds derived from transactions under Resolution 63 of 1967;

6. Resolution No. 957 of 1984, establishes that foreign currency deposits made before December 31, 1984, under Circular No. 230 of 1974 may only be released as follows: 25 percent in January 1985; 50 percent in February 1985; 75 percent in March 1985; and 100 percent in April 1985. Translation follows:

*Resolution No. 957*

The Central Bank of Brazil, pursuant to Article 9, Law No. 4.595 of December 31, 1964, announced that the National Monetary Council, at a session held on this date, in view of the provisions of Article 4, items V and XXXI, of said law, resolved:

i. Foreign currency deposits already made or may be made before December 31, 1984, under Circular No. 230 of August 29, 1974, may only be released at the request of the depositing institution, in the months specified below and in the amounts which in the aggregate do not exceed the following percentages of the balance shown in the deposit account as of December 31, 1984:

25 percent in January 1985;

50 percent in February 1985;

75 percent in March 1985; and

100 percent in April 1985.

ii. The provisions in item i do not apply to cases where a release of funds is necessary to:

a. To cover repayments abroad established in the payment schedule of the respective loan; or

b. To carry out the transactions made under Resolution No. 923 of May 17, 1984, as amended by Resolution No. 926 of June 7, 1984.

iii. The release of the balances remaining on April 30, 1985, and of the deposits that are made as of January 2, 1985, shall be subject to the provisions of item IV of Circular No. 230 of August 29, 1974, as amended by Resolution No. 686 of March 18, 1981.

iv. The Central Bank may adopt measures necessary to

implement this Resolution.

v. This Resolution shall become effective on the date of its publication.

7. Resolution No. 960 of 1984, requires commercial banks, development banks, and investment banks to deposit at the Central Bank, 22 percent of the balance of their time deposits (calculated on the last day of each month) including interest and monetary correction charges for the time elapsed from the date the deposit was made.

*Central Bank Resolutions: Financial Institutions and Regional Market Import Tax Exemption*

At a meeting held on November 7, 1984, the National Monetary Council passed several decisions issued as resolutions of the Central Bank of Brazil. The most relevant follow:

1. Resolution No. 968 of 1984, forbids investment banks from implementing so-called "related transactions;" i.e. where financial institutions raise funds without issuing bank deposit certificates, thereby avoiding compulsory deposit requirements of the Central Bank;

2. Resolution No. 969 of 1984, permits the Central Bank to require financial institutions to provide guarantees, other than those already required for cash loans. These additional guarantees will be established at the discretion of the Central Bank;

3. Resolution No. 970 of 1984, reduces to zero the rate of IOP tax levied on imports of goods from Bolivia, Ecuador and Paraguay, if such goods are included in the open market lists under the Additional Protocols to the Regional Open Market Agreements of the Association for Latin-American Integration (ALADI).

*Central Bank Resolutions of August 21, 1984*

On August 21, 1984, the National Monetary council issued several further decisions subject to the following Central Bank resolutions (DOU-I, August 22, 1984.):

1. Resolution No. 941 of 1984, establishes a minimum period of 180 days for the receipt of time deposits by financial institutions, with or without issuance of certificates;

2. Resolution No. 942 of 1984, authorizes Banco do Brasil to

receive time deposits with issuance of bank deposit certificates (CDB), with due regard for the 180-day minimum period;

3. Resolution No. 944 of 1984 permits investment banks not connected with commercial banks to deal in exchange, with due regard for Resolutions 663 and 664, of December 17, 1980;

4. No. 948 of 1984, increases the composition of the Capital Market Advisory Commission to include the representative of IBRACON (Brazilian Institute of Accountants);

5. Resolution No. 949 of 1984, extends advance payment limits provided for in Resolution No. 940, of August 13, 1984, to medium-sized agricultural and livestock producers, whose annual gross production does not exceed an amount equal to 2,000 times the highest reference value;

6. Resolution No. 950 of 1984, includes development banks and development portfolios of commercial banks, among the financial agents participating in the export production financing program, amending provisions of Resolution Nos. 694 of 1981, 882 and 833 of 1983.

### *Extinction of the Centavo*

The President of the Republic sanctioned Law No. 7.214, of August 15, 1984, which abolished the centavo fraction of the cruzeiro. Under the law, amounts in money shall be written preceded by the symbol "Cr$." Financial institutions in which the total amount in centavos to be disregarded exceeds one minimum salary, shall pay that amount to the Banco do Brasil, S.A. . That amount shall accrue to the credit of the National Treasury. On August 21, 1984, the National Monetary Council issued a decision under Central Bank Resolution No. 945 of 1984, establishing the dates and rules required for the application of Law No. 7.214. (DOU-I, August 16, 1984; August 22, 1984.)

## II. Import/Export Rulings

### *Import Duties Reduced on Published Materials*

In Resolution No. 07-0698 of 1984, the Customs Policy Council (CPA) reduced to zero the ad valorem import duty rates applicable to imports of raw materials and consumption materials not pro-

duced in Brazil, if such imports are intended for the composition, printing and finishing of books, newspapers and magazines and are imported by journalistic and/or publishing companies for their own use. (DOU-I, November 12, 1984.)

*Vessels Arriving from Abroad: Regulation of Brazilian Customs Agents*

In Normative Instruction No. 115 of 1984, the Secretary of Federal Revenue regulated the boarding of customs agents onto vessels arriving from abroad. Accordingly, the arrival of a long haul or major coastal shipping vessel should be announced at least twelve hours in advance by the agent of the shipping company to the customs agency of the Federal Revenue Office having jurisdiction over the respective port. Upon receiving such notification, the customs authority will order a visit by a Federal Tax Inspector who is to be accompanied by a representative of the shipping company authorized by the customs agency. (DOU-I, November 20, 1984.)

*Tax Incentives for Trading Companies*

In Ordinance No. 191 of 1984, the Minister of Finance established that companies that supply locally manufactured goods for export to trading companies, in accordance with Decree-Law No. 1.894 of 1981, are entitled to the benefits granted under Decree-Law No. 1.158 of 1971. Said Decree-Law allows a deduction of the export profit from the taxable profit of the company. The gross sales revenues from exports of the trading company shall be determined as follows: the difference between the value of the manufactured products that were purchased and the FOB value in Brazilian currency of the export of such products in the base period. (DOU-I, October 3, 1984.)

*Simplified Rules for Imports*

In Communique No. 111 of October 18, 1984, the Foreign Trade Department (CACEX) issued new rules for the import programs of companies in 1985. The bureaucracy involved in such import programs was simplified, the administrative costs of imports were reduced, and the decision-making level of the regional CACEX agencies was raised. (DOU-I, October 24, 1984.)

*Tax Exemption of Frontier Zone Goods*

The Secretary of the Federal Revenue issued Normative Instruction No. 104 of 1984 establishing that goods purchased in cities adjacent to the Brazilian frontier will be exempt from certain taxes: (a) taxes due on imports for goods purchased by Brazilian residents; (b) taxes due on exports for goods purchased by residents of other frontier countries. The tax benefit is subject to the following conditions: (a) the exemption only extends to goods produced in Brazil and in the neighboring countries; (b) the goods must satisfy the basic needs of the purchaser and his family; and (c) there must be no import or export restriction on the goods in Brazil. (DOU-I, October 19, 1984.)

*Drawback Transactions*

CACEX issued Communique No. 110 of 1984 announcing that the agencies of CACEX are duly authorized to examine and grant applications for drawback transactions made by companies known as Intermediary Product Manufacturers, only if these companies need to import foreign goods to manufacture intermediary products that will be supplied directly to industrial/export companies for use in the production of goods for export. (DOU-I, October 23, 1984.)

*Brazilian Customs Tariff Rates*

The President of the Republic signed Decree-Law No. 2.162, of September 19, 1984, increasing the authority of the CPA to raise import duty rates by increasing the limit of ad valorem taxes from 30 percent to 60 percent. Such limit shall no longer be subject to the maximum rate in the respective Brazilian Customs Tariff (TAB) chapter. (DOU-I, September 20, 1984.)

*Suspension of Imports*

CACEX issued Communique No. 105 of 1984 listing 2,081 products for which the issue of import licenses continues to be suspended. Most of the products which continue to be banned from importation are destined for final consumption and include toys, weapons, vehicles, watches, optical products, musical instruments, sound equipment, domestic appliances, and office equipment.

(DOU-I, September 25, 1984.)

### *Export Financing*

CACEX issued Communication No. 92 of 1984 which announced that a credit agreement between Banco do Brasil, S.A. (as agent of the Brazilian Government), Chase Manhattan Bank, N.A. (as agent of American banks) and EXIMBANK, was signed on July 25, 1984, in Washington. Said agreement provides for credit of U.S. $ 1,500,000,000 to finance exports of products originating from the United States and destined for Brazil. (DOU-I, August 3, 1984.)

### EXIMBANK *Guarantees for Import Financing*

The Central Bank of Brazil, in DECAM Communique No. 728 of 1984, informed banking establishments, authorized to deal in exchange, the following: import exchange transactions, made with EXIMBANK guaranteed financing, in accordance with the agreement entered into with Banco do Brasil, S.A. (as agent of the Brazilian Government) shall be carried out exclusively by banking establishments entitled to credit limits agreed upon with Banco do Brasil under the conditions of the EXIMBANK Agreement. The Central Bank also issued Circular Letter No. 1060 of 1984 providing instructions for accounting entries regarding exchange transactions under DECAM Communique No. 728 of 1984. (DOU-I, August 9, 1984.)

### ICM *Tax on Some Imported Goods Abolished*

The Tax Administration Coordinator of the State of São Paulo under CAT Communique No. 28 of 1984 abolished the levy of the Tax on Distribution of Goods (ICM) on the importation of products originating from countries in the General Agreement on Tariffs and Trade (GATT) and in the Latin-American Integration Association (LAIA), provided that the same or similar national product is exempt from ICM tax, notwithstanding the fact that the company intends to use the products for fixed assets or for its own consumption. (DOE, August 9, 1984.)

## III. Securities Rulings

### *Investment Clubs*

In Normative Instruction No. 111 of 1984, the Secretary of the Federal Revenue established the tax treatment to be afforded to income earned by investment clubs. For such purposes, an investment club is defined as an association of individuals with no legal identity, organized for the purpose of common participation in a portfolio of bills and securities. The investment club must be registered at the Stock Exchange according to the rules of the Securities Commission. Income earned by the investment club on investments in bills and securities is subject to income tax withheld at its source, in accordance with the legislation that applies to the taxation of such income when received by individuals. (DOU-I, November 1, 1984.)

The President of the Securities Commission (CVM) issued Normative Instruction No. 40 of 1984 declaring that an association formed by individuals for the investment of common funds in bills and securities will be called an Investment Club and will be subject to the provisions of the Normative Instruction when linked to a brokerage company, investment bank, or distributor company. The portfolio of the Investment Club should be made up of shares and debentures convertible into shares issued by publicly-held companies. However, investments in simple debentures issued by publicly-held companies, or in government bonds will be allowed on an exceptional basis. (DOU-I, November 19, 1984.)

### *Brokerage Companies' Share Portfolio*

The Securities Commission issued Ruling No. 37 of 1984 authorizing brokerage companies to operate their own portfolio and to sell shares on their own account, and to their own order on the Stock Exchange and on the Over-the-Counter market. Brokerage companies opening such portfolios should indicate to the Securities Commission which one of their directors or managing quota holders will be responsible for operating the portfolio. The Stock Exchange will establish a control system required for implementation of the rule. (DOU-I, August 28, 1984.)

*Futures Market: Securities Commission Abolishes Restrictions*

The Securities Commission issued Instruction No. 36 of 1984, abolishing the investors' limit of 50 million shares in the same kind of futures and options. The instruction also establishes a minimum margin of 20 percent in cash, to guarantee futures positions; this percentage may be increased by stock exchanges either in the aggregate or for specific shares. It also determines that the total value, per brokerage company, of their principals' short positions on the futures and options markets may not exceed ten times their net worth, calculated in reference to the last montly balance sheet, after deduction of the value of the respective share. (DOU-I, August 15, 1984.)

## IV. Rulings Regarding Business Associations

*Small Companies: Council for the Development of Micro, Small and Medium-Sized Companies*

The President of the Republic signed Decree No. 90.414 of November 7, 1984, to create, within the organization of the Ministry of Industry and Commerce, the Council for the Development of Micro, Small, and Medium-sized Companies. The Council will have the authority to pass joint resolutions and will be responsible for establishing, directing, and coordinating Brazilian policy for the development of smaller companies (DOU-I, November 8, 1984).

*Micro Company Statute*

On November 8, 1984, the Brazilian Congress approved a law that provides favored and simplified treatment for micro companies. Micro companies are to enjoy a series of benefits in the administrative, tax, social security, labor, and credit spheres.

The President of the Republic then santioned Law. No. 7.256 on November 27, 1984, to establish the rules of the micro company statute. The law defines a micro company as a legal entity or individual firm with a maximum annual gross income equivalent to the face value of 10,000 Readjustable National Treasury Bonds (ORTNs) using January as a base year. (DOU-I, November 28, 1984.)

*Reduction of the IPI Tax Rates for Micro Companies*

The President of the Republic signed Decree No. 90.573 of November 28, 1984, reducing to zero the rates of the Tax on Manufactured Products (IPI) for the goods specified in the list attached to the decree. The reduction applies to about 200 products manufactured by micro companies: certain plastic and leather articles, wood, gypsum, iron and steel articles, copper and aluminum articles, and some items of furniture. (DOU-I, November 29, 1984.)

*Administrative Council for Economic Defense (Antitrust)*

The President of the Republic signed Decree No. 90.283 of October 8, 1984, altering the composition of the Administrative Council for Economic Defense (CADE). According to the Decree, CADE will now be made up of the following members: (a) two representatives from the Ministry of Justice, one of whom shall be the President of CADE; (b) one representative from the Planning Office of the President of the Republic; (c) one representative from the Ministry of Agriculture; (d) one representative from the Ministry of Finance; (e) one representative from the Ministry of Industry and Commerce; and (f) one representative from the Ministry of Health. The President and other members of CADE will continue to be appointed by the President of the Republic. (DOU-I, October 9, 1984.)

*Industrial Automation*

The Secretary of the Industrial Technology Office (STI) and the Secretary of the Special Office for Informatics (SEI) issued Communique STI/SEI No. 001 of 1984, providing for the integration and sale of Computer Aided Design (CAD), Computer Aided Engineering (CAE), and Microprocessor Development Systems (MDS) in Brazil. (DOU-I, September 25, 1984.)

*Air Cargo Agencies Require Civil Aviation Department Approval*

The Director-General of the Civil Aviation Department issued Ordinance No. 221/SPL of 1984 providing for the registration of air cargo agencies with the Civil Aviation Department. The ordinance establishes that domestic and international air cargo agency

operations in Brazil is an auxiliary service of civil aviation and may only be operated with the authorization of the Civil Aviation Department. Authorization for agency operation shall only be granted to legal entities incorporated in Brazil and managed by Brazilian citizens residing in Brazil. (DOU-I, September 17, 1984.)

## V. Tax Rulings

### *Consortia*

In Declaratory (Normative) Act No. 21 of 1984, the Coordinator of the Tax System declared that the fact that consortia (organized under Articles 278 and 279 of Law No. 6.404 of 1976) are subject to the same tax treatment as legal entities does not oblige or authorize them to file income tax returns. Consortia shall compute income tax: the income derived from the main and accessory activities of consortia are to be computed in the results of each member company in proportion to its participation in the venture. Tax withholdings on the income earned by consortia will be offset in the income tax return of the member companies in proportion to the consortium and in light of Article 7 of Decree-law No. 2.072 of 1983. (DOU-I, November 12, 1984.)

### *Income Tax Deduction for Loss on Sale of Securities*

The Coordinator of the Tax System issued Declaratory (Normative) Act No. 20 of 1984 to indicate that losses incurred in the sale of shares, securities, or quotas will only be deductible if (a) the amount of the discount does not exceed 10 percent of the respective purchase cost; and (b) in the case of a discount exceeding 10 percent of the purchase cost, only if the sale of those securities was made on the Stock Exchange (Article 267, item 1, of the Income Tax Regulations approved by Decree No. 85.450 of 1980). Otherwise, the total amount of the discount will not be deductible. (DOU-I, November 16, 1984.)

### *ICM Tax Exemption Limited by Region*

The Tax on Distribution of Goods (ICM) Convention 20 of 1984 provides that an exemption of ICM on the exits of tractors, agricultural implements, industrial machinery, and appliances and

equipment manufactured in Brazil, is revoked as of January 1, 1985, unless such exit is destined for the states of the North, Northeast, and Mid-West Regions, or takes place within such States. In the other States of Brazil, the following reduction on the ICM calculation basis will be granted instead of the exemption: (a) 70 percent during the 1985 fiscal year; (b) 50 percent in the 1986 fiscal year; and (c) 30 percent in the 1987 fiscal year. Such reduction also applies to exits of products from the States of the North, Northeast and Mid-West Regions to the other States of Brazil. (DOU-I, September 13, 1984.)

*Federal Tax Benefits Waiver of Fines and Default Interest*

The President of the Republic signed Decree-Law No. 2.163 of September 19, 1984, providing that outstanding taxes are payable to the National Treasury by December 31, 1984, whether or not registered as Active Debts of the Federative Republic of Brazil or filed in court. Outstanding taxes may be paid in a lump sum with a waiver of fines and default interest, until November 30, 1984. Indebtedness relating only to fines or penalties of any origin or nature may be paid within the period provided by such Decree-Law, with a 75 percent reduction of the amount. If the indebtedness has been partially settled, the benefits shall apply only to the balance of the original amount. The Decree-Law cancels and determines the shelving of the administration proceedings referring to indebtedness in an original amount equal to or less than Cr$ 40,000.00. (DOU-I, September 20, 1984.)

*Leasing Agreements*

By Ordinance No. 140 of 1984, the Minister of Finance issued rules on the tax treatment of leasing agreements, whereby lease payments will be computed on the net profit for the base period in which they are due. Prepayments of the guaranteed residual value or of the purchase option payment will be treated as being liabilities of the lessor and as assets of the lessee, and will not be computed in determining the taxable profit. For calculating the depreciation quota of the assets being leased, the acceptable period of normal useful life is reduced by 30 percent. The use of depreciation acceleration coefficients is prohibited in any manner, except for projects approved for the lessee by the Council on Industrial Development (CDI), on which the lessor may deduct the acceler-

ated depreciation incentive, in accordance with Articles 203 and 204 of the Income Tax Regulations. (DOU-I, July 30, 1984.)

*Income Tax Deduction for Industrial Technology*

According to reliable press information, the Minister of Industry and Commerce submitted a proposed decree-law to the President of the Republic, which would permit companies to deduct from their taxable profits expenses attributable to industrial technology. The decree-law would establish a deduction limit of 10 percent of the taxable profit. In order to qualify for the benefit, the company must submit the research and technological development project to the STI for examination and approval. The STI will then coordinate execution of the project and provide evidence to the Federal Revenue Office of the amount of funds actually invested during the year.

*Prepayment of Income Tax Required*

The Federal Revenue Secretary issued Normative Instruction No. 75 of 1984 establishing that prepayment of income tax is due quarterly by individuals receiving income: (a) from another individual arising from the practice of a legally-regulated profession which does not require employment bond; and (b) from the lease and sublease of real estate. Payment can be made by the individual with a 20 percent deduction from the gross income. There is no requirement for details or evidence of the expenses. (DOU-I, August 13, 1984.)

*Income Tax on Real Estate Profits*

In Normative Opinion No. 16 of 1984, the Coordinator of the Taxation System ruled that real estate profits are not exempt from taxation for individuals (or relatives in the first-degree of sanguinity) who: (a) are owners, on the date of purchase of residential property, of other property of the same kind; or (b) who hold specific in rem rights on an alien object which guarantees the full availability of the property for residential purposes for an indeterminate time, such as useful title, usufruct and habitation. (DOU-I, August 13, 1984.)

*Income Tax - Loan Agreements*

The Coordinator of the Taxation System, in his Normative Opinion CST No. 17, of August 20, 1984, examined the provisions of Article 21 of Decree-Law No. 2.065, of October 26, 1983, and clarified: that in the event that investing legal entities provide cash advances without remuneration (or with remuneration lower than that specified by law) to associated, interassociated or controlled companies, it is not necessary to calculate monetary correction so long as: (a) the advance is designed specifically for capital stock increases of the beneficiary; and (b) capitalization occurs: (i) at the time of the first Extraordinary General Meeting subsequent to the advance; (ii) at the time of the first amendment to the Articles of Association subsequent to the advance; or (iii) at the latest, within 120 days of the end of the borrower's base-period. (DOU-I, August 22, 1984.)

## VI. Labor Related Rulings

*Adjustment of Social Security Payments*

The President of the Republic signed Decree-Law No. 2.171 on November 13, 1984, in connection with the adjustment of social security benefits. Accordingly, medium and long-term social security payments are to be adjusted as of the date of implementation of any new minimum wage raise. The adjustment indices will correspond to the current salary policy; the base month being the month of implementation of any new minimum wage. (DOU-I, November 14, 1984.)

*Price Controls*

The Price Commission (CIP) issued Resolution No. 164 of 1984 indicating that companies may not transfer any increased costs because of salary raises, under Article 11 of Law No. 7.238 of 1984, to the prices of their products and services if they are controlled by CIP. The Price Commission also issued Ordinance No. 32 of 1984, establishing that increased costs resulting from the salary adjustments (referred to in Article 2 of Law No. 7.238 of 1984) may only be transferred to the prices of CIP-controlled products and services after each case has been analyzed and expressly au-

thorized by CIP. Similarly, cost increases resulting from supplementary salary raises based on increased productivity in a professional category (as determined by Article 13 of Law No. 7.238 of 1984) may not be transferred to the prices of products and services subject to CIP control. (DOU-I, November 14, 1984.)

*Small Claims Courts*

The President of the Republic sanctioned Law No. 7.244 of November 7, 1984, determining that Small Claims Courts (*Juizados Especiais de Pequenas Causas*) may be created in the Brazilian States, Federal Districts, and Territories to hear small claims. The procedure of these Small Claims Courts shall be oral, simple, informal, and directed at procedural savings and celerity. They shall seek conciliation of the parties whenever possible. Small claims are those that deal with property rights, amount to less than 20 times the minimum wage prevailing in Brazil at the time the claim is filed. Small Claims Courts may award only three types of relief: (a) money; (b) an order for the delivery of consumer goods or services; and (c) recision of contract dealing with personalty and livestock. (DOU-I, November 8, 1984.)

*Amendment to the Consolidated Labor Laws*

The President of the Republic sanctioned Law No. 7.223 of October 2, 1984, amending the wording of Article 543, Paragraph 4, of the Consolidated Labor Laws. Under the previous law, trade union officers or representatives were chosen in accordance with the law; also chosen were administrators designated by the Minister of Labor, who were allowed to designate intervenors in case of vacancies in the management of the trade unions. In accordance with the new law, the administrators designated by the Minister of Labor, and the intervenors, do not enjoy the same advantages as the elected officer and this may be discharged without reference to the guarantees enjoyed by said officers. (DOU-I, October 3, 1984.)

*New Minimum Salary*

The President of the Republic signed Decree No. 90.381 of October 29, 1984, establishing the new minimum salary of Cr$ 166,560 for the entire Brazilian territory, effective as of November 1, 1984. (DOU-I, October 30, 1984.)

## JUDICIAL AND ADMINISTRATIVE RULINGS

### I. BUSINESS ASSOCIATIONS AND COMMERCIAL RULINGS

*Execution of Checks: Date of Presentment*

The rule that a check is payable on the date of its presentation, whether or not it shows a subsequent date, cannot revert in favor of a creditor who accepts the check as a promise of payment instead of requiring the proper instrument of credit, namely a promissory note. If the debtor issues a check under such circumstances, he does so in accordance with a requirement of the creditor. By agreeing with the improper use of a check, and thus contributing to the discredit of this instrument, the creditor is estopped from claiming the benefit of this rule. Therefore, the amount shown on the check cannot be demanded by means of execution action *before* the date established for payment. Furthermore, a creditor that receives a check for presentation on a date which is subsequent to the issue date of the check and does not respect such an arrangement is deemed to be acting in *bad faith*. (Decision of the First Civil Chamber of the Higher Court of the State of Parana on Appeal No. 391.)

*Monetary Correction for all Judicial Awards and Execution: Special Pleading Not Required*

Monetary correction for judicial awards and executions is an adjustment to the delinquent payment which has caused the claimant to lose purchasing power due to currency devaluation. Monetary correction is due on all payments resulting from a court award and on executions under Law No. 6.899 of 1981, even if not demanded in the claim (Decision of the First Panel of the Federal Court of Appeals on Civil Appeal No. 76.281.)

*Corporate Amendments: Effective on Day of Transcription*

The effects of corporate amendments are retroactive to the date on which the amendment document was written, so long as it was submitted to the Commercial Registry within thirty days of such date. (Decision of the First Panel of the Federal Court of Appeals on Civil Appeal No. 68.529.)

*Denial of Petition for Bankruptcy on Account of Barred Check*

A barred check has no execution force as it is not an instrument of a net, certain, and payable debt. If it has no such execution force, it cannot be used as grounds for a bankruptcy petition. (Bankruptcy Petition No. 1499/84 at the 18th Lower Civil Court of São Paulo.)

*Chattel Mortages Reserved for Financial Institutions*

A corporation signed an agreement for the sale of goods with an individual client and guaranteed performance of the agreement by means of a chattel mortgage (*alienação fiduciária*) on the goods. The agreement was not carried out and the company sued the debtor. The case was considered valid in the first instance; however, the debtor's appeal was accepted on the grounds that chattel mortgages are reserved exclusively for financial institutions. According to the judge, there are three schools of thought: (a) the use of a chattel mortgage is the privilege of financial institutions; (b) chattel mortgages may be used by any individual or entity; and (c) financial institutions, as well as similar institutions may enjoy this privilege. Adopting the first school of thought, the First Higher Civil Court of the State of São Paulo held that its decision was based on the fact that chattel mortgages are provided for in the capital market law. (Law No. 4.728 of July 14, 1965.) (Decision of the Fifth Chamber of the First Higher Civil Court of the State of São Paulo on Civil Appeal No. 318.485.)

*Monetary Correction and Pledge in Concordat*[1] *Proceedings*

The judge of the 10th Lower Civil Court of São Paulo rejected the claim, made by the creditors of a company subject to preventative concordat, for receipt of monetary correction on the credits proved in the proceedings. According to the judge's decision, the company in concordat paid its first concordat installment on time and was thus not in default. Therefore, the company was not liable for payment of monetary correction to its creditors. (Preventative Corcordat No. 648 of 1983.)

In the 15th Lower Civil Court of São Paulo, a company concordat contested a court decision which granted concordat but held

1. A type of composition with creditors.

that monetary correction should apply to the credits. The judge accepted the appeal in part and ordered the application of monetary correction only after the due date of the first installment of the concordat.

*Payment of Concordat Installments: Pledging Property Disallowed*

A judgment rendered by the Full House of the Higher Court of the State of São Paulo on Interlocutory Appeal No. 44.600 was held as a consolidation of court decisions on the matter.

The judgment established that companies in concordat cannot pledge property, instead of cash payments, on their concordat installments; instead, payments must be made when due by depositing cash with the court.

*Legal Actions against Foreign Governmental Bodies*

The Federal Courts have original jurisdiction to hear civil actions filed by a person resident or domiciled in Brazil against a Consulate or other body of a foreign state. Appellate jurisdiction to hear such actions lies with the Federal Supreme Court. (Federal Supreme Court decision on civil appeal No. 9.689.)

*Aval*[2] *Guarantor and Co-guarantor*

The aval guarantor of a bill of exchange is entitled to receive from his co-guarantor one-half of the amount paid under the guarantee. Article 32 of the Uniform Law Relating to Bills of Exchange and Promissory notes - Annex I (Decree No. 57.663 of January 24, 1966) provides that the guarantor who redeems a bill becomes subrogated against the holder of the bill and against other co-guarantors. The subrogation is legal and is therefore not subject to prior agreement. (Second Panel of the Federal Supreme Court, Extraordinary Appeal No. 75.297.)

*Aval Guarantor Released from Monetary Correction*

An investment bank proved its credit in a concordat proceedings and at the same time executed against the guarantors. Under

2. An aval is a type of surety.

the concordat, the bank received its credit with interest and intended to continue the execution against the aval guarantors in order to receive monetary correction. The Judge of the 15th Lower Civil Court of São Paulo, however, rejected the bank's claim. The court held that the guarantor is not liable for an amount in excess of the amount for which the guarantee party is liable. (Execution Action No. 379 of 1981.)

*Aval Guarantors are Liable for Monetary Correction*

The judicial debate continues on the legality of charging interest and monetary correction to guarantors and aval guarantors of bankrupt and legally incapacitated entities. Examining a judicial execution, the Judge of the 26th Lower Civil Court of São Paulo concluded that such additions are payable, stating that even if the primary obligor of the bankrupt party was not liable for interest and monetary correction, it does not follow that the aval guarantor would not be liable for such monies. In view of the autonomy of exchange obligations, it would not be possible to extend the exclusion of one, to all parties. (Execution Action No. 2.877 of 1979.)

*Invalidity of Issuance of Negotiable Instrument by Means of Power of Attorney*

In an execution action filed by a bank on a loan agreement, the bank presented in court a bill of exchange in which it acted simultaneously as drawer, drawee, acceptor, and borrower. The instrument was accepted by the bank based on a power of attorney granted by the debtor in the loan agreement. Upon review, the Court of the Second Instance of the State of Minas Gerais held the clause of the loan agreement invalid due to the incompatibility of the interest of the attorney-in-fact and his duties under the power of attorney. Consequently, the bill of exchange issued was not deemed a net, certain and demandable instrument, and the bank thus had no grounds to be in court with an execution action. (Civil Appeal No. 23.231.)

*Validity of Negotiable Instruments Instead of Promissory Notes*

Although a loan agreement is guaranteed by a promissory note, the issuance of a bill of exchange by the creditor is admissible in the event of default by the debtor if such procedure has

been expressly contemplated in the loan agreement. Pursuant to the judge's opinion, "if the possibility of the issuance of the bill of exchange is a contractual provision which has been accepted as valid by the debtor, it is not appropriate to speak of nullity, as the provision of the agreement does not violate the legal system." (Civil Appeal No. 320.254 of the Seventh Chamber of the First Court of the Second Instance of the State of São Paulo.)

*Consolidation of Commercial Companies Must be Registered*

The consolidation of two commercial companies, united under a private agreement which is not registered with the Commercial Registry, cannot be accepted, according to the provisions of the final part of Article 301 of the Commercial Code. (First Panel of the Federal Supreme Court, Extraordinary Appeal No. 102.947.)

## II. Tax Rulings

*Monetary Correction of Real Property Investments by Businesses*

The investment of capital in the purchase of real property not intended to sustain the business of a company is considered as an investment, and is therefore subject to monetary correction according to Article 347 of the Income Tax Regulations approved by Decree No. 85.450 of 1980. (Decision No. 103-05.780 of the Third Chamber of the First Taxpayers Council.)

*Deductible Expenses for Conservation Repair and Replacement*

Expenses for conservation, repair, and replacement of parts to maintain assets in good operating condition are deductible if they do not result in an extension of the useful life of the asset as established on the date of its acquisition. (Decision No. 105.0.470 of the Fifth Chamber of the First Taxpayers Council.)

*No Income Tax on Remittances Abroad for Certain Medical Fees*

Income tax is not due on remittances abroad for payment of medical fees or the supply of personal items required for ac-

comodation and meals in mental homes, notwithstanding the tax on remittances for payment of technical service, administrative technical assistance, and other similar fees. (Federal Supreme Court decision on Appeal No. 99.786.)

*Remittance Abroad of Freight*

The amount earned by a foreign company, indicated in the exchange contract as freight for transport of goods imported under the CIF of C&F value systems, is subject to a withholding tax if the exporter contracted to deliver the goods to the importer's establishment, even if payment was made directly by the importer to the foreign export company. (Decision No. 104-3.752 of the Fourth Chamber of the First Taxpayers Council.)

*ICM Tax on Imports Not Required to Clear Customs*

In import transactions, the generating factor for the Tax on Distribution of Goods (ICM) is the entry of the goods into the importer's establishment. Therefore, it is illegal to require evidence of ICM payment at the time the imported goods are cleared at customs, as established in Normative Instruction No. 54 of 1981. (Decision of the Sixth Panel of the Federal Court of Appeals, on writ of mandamus appeal No. 102.886.)

*Withholding Tax Required for "Pro Labore" Remunerations*

The excess remuneration of officers or managers of an entity is subject to taxation, at the normal rate, regardless of the proposed business purpose of the company or of incentives it may be granted. (Decision No. 101-74.068 of the First Chamber of the First Taxpayers Council.)

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