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LEGAL MEMORANDUM

RECENT DEVELOPMENTS IN BRAZILIAN LAW

LEGISLATIVE AND ADMINISTRATIVE RULINGS

Stock Market

The Securities Commission (CMV), in Opinion No. 4/79, alerted openly-held companies of the large number of mistakes being made in the financial statements published by the companies and reminded them to strictly observe the requirements of applicable law in such respects. In Ruling No. 8.79, the CMV defined the concepts of artificial conditions of demand, supply or price of securities, price manipulations, fraudulent operations, and non-equitable practices. According to the Ruling, any such practices are deemed to be serious violations and shall subject the offending company to certain penalties. By clarifying these concepts, the CMV intends to facilitate its control of the Brazilian stock market.

Foreign Self-Employed Persons in Brazil

On October 8, 1979, the President sanctioned Law No. 6.696 which classifies the employees of foreign diplomatic missions and other international organizations which operate in the country as self-employed. The effect of such a designation is that those classified as self-employed are subject to both the benefits and expenses of the Brazilian social security system.

Price Controls

The Price Control Commission (CIP) announced the reinstatement of strict price controls in an attempt to moderate inflation which has, once again, become problematic for the Brazilian economy. CIP Resolution No. 123/79 established maximum percentage limits for increases of prices charged by retailers on credit sales, the highest limit being an increase of 38% for credit extended over a period of fifteen or more months. The price margins of commercial distributors and manufacturers of industrial products were subordinated to Commission control by CIP Resolution No. 124/79. In Resolution No. 125/79, the CIP stipulated that the readjustment of product and service prices will be permitted, at most, twice a year.

Export Credit Insurance

As of October 26, 1979, Brazilian exports of goods and services will be protected against commercial, political, and extraordinary risks by the insurance of export credit as provided for by Law No. 6.704. It is anticipated that the passage of this law will increase the credit extended to Brazilian exporters.

Arbitration Commission Organized by the Canadian Chamber of Commerce for Brazil

An Arbitration Commission was officially installed in Sao Paulo on July 26, 1979, to decide disputes of a commercial nature that are referred to arbitration. This initiative on the part of the Canadian Chamber of Commerce for Brazil is not restricted to parties of any particular nationality, as the Commission may be called upon to decide issues between parties domiciled in Brazil and parties domiciled in any foreign country. The arbitrators of the Commission were chosen from among the most notable Brazilian professors, jurists, and attorneys specialized in civil, commercial, and international law. The Arbitration Rules adopted by the Commission were set up in strict accordance with Brazilian procedural law so that its awards will be fully enforceable in Brazil.

Political Amnesty

The President of the Republic approved Law No. 6683, granting full amnesty to all those accused of committing political or electoral crimes between September 2, 1961, and August 15, 1979. The grant of amnesty covers all those whose political rights were suspended and all others punished under any of the Institutional and Supplementary Acts issued during that period.

Foreigners in Brazil

Decree No. 83.914 amended and simplified the procedure for obtaining a permanent visa by the foreign spouse or children of a Brazilian citizen and by foreign minors who travel in the company of their parents or guardians if the latter are permanent residents of Brazil. Additionally, an application to the Federal Department of Justice is now sufficient for a permanent visa to be granted to a foreigner who entered Brazil prior to August 20, 1938, provided he can prove continuous residence.

International Convention

The President of the Republic signed Decree No. 83.976 that approves the Convention instituting the International Organization of Marine Satellite Telecommunications and its Operational Agreement.

Cancellation of Protest of Negotiable Instruments

New rules have been enacted to facilitate the cancellation of protests on negotiable instruments. In accordance with Law No. 6.690, existing protests may now be cancelled upon presentation of the relevant paid instruments by the debtor at the Notary Office.

International Agreement Between Germany and Brazil

Brazil and Germany have entered into an International Agreement providing for commercial representation offices of the German Government to be opened in Rio de Janeiro and Sao Paulo. Under the agreement, Brazil is afforded the same right to open two commercial offices in German cities of its choice.

JUDICIAL DECISIONS

Sales Tax on Goods Imported for Leasing

The Federal Supreme Court, on Extraordinary Appeal No. 91-325-4, ruled that no sales tax is due on goods imported for leasing, provided that they are incorporated into the fixed assets of the importer. This is an exception to the general principle that all imported goods are subject to sales tax.

Contractual Penalties and Liability for Attorneys' Fees

Contractual provisions which provide for both cash penalties in the event of a breach and payment of attorneys' fees for the ensuing lawsuit were held to be lawful by the Federal Supreme Court on Extraordinary Appeal No. 91.237.

Statute of Limitations—Trade Acceptance Bills

The statute of limitations for actions to collect trade acceptance bills is three years, whether it is an ordinary action, execution proceeding, or execution of an extra-judicial bill. (4th Civil Chamber of the 1st Court of Justice of Rio de Janeiro on Special Appeal No. 17.742.)

Registration of Promissory Notes

The Federal Supreme Court ruled that promissory notes which are not registered at the tax department within the legal term are null and cannot be collected by execution. Although the failure to register the notes invalidates the government's guarantee, the holder can still collect on them in an ordinary action against the debtor.

Pledge for Court Costs

Under Brazilian procedural law, a foreign corporation making a claim in a Brazilian court may waive the pledge for court costs by proving ownership of property within Brazil. (4th Group of the Federal Court of Appeals, Appeal No. 40.147.)

Registration of Trademarks

Article 125 of the Industrial Property Code requiring owners of registered trademarks to maintain an attorney with special powers in Brazil, under penalty of forfeiture of the registration, was found to be unconstitutional by the Federal Court of Appeals. As the previous registration of the trademark is an acquired right, a subsequent law cannot, under penalty of extinction of the registration, subject the registrant to an obligation that did not exist before, without contravening Article 153, § 3, of the Federal Constitution.

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