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## **BRAZIL**

### **LETTER OF NOVEMBER 1995**

#### **1. EXPORT PROCESSING ZONES (EPZ)**

The EPZ were created by the Federal Administration on July 29, 1988 under Decree No. 2452, with the main objective of attracting, through tax and exchange incentives, foreign manufacturers to certain areas of Brazil in need of investments. The EPZC (the Brazilian Export Processing Zones Council), which is the administrative entity in charge of establishing the general rules and guidelines regarding EPZ matters, issued on May 16, 1995 Resolution No. 18, spelling out the rules and conditions for organizing a company within a EPZ.

One condition is that the prospective investor must present to EPZC the schedule for the start-up of activities, especially the date for commencement of the infrastructure construction work. As established by Decree 2452/88, if the authorized company does not comply with the conditions set forth in the above-mentioned schedule, the authorization to operate may be revoked.

In order to clarify the procedure for cancellation of an authorized to operate within a EPZ, on October 18, 1995 President Fernando Henrique Cardoso issued Decree No. 1679. Under this decree, cancellation of the authorization to operate will be decreed by the President, after an administrative proceeding has demonstrated that the interested party did not start the infrastructure construction work on a timely basis.

Under Decree 1679/95, the beginning of the infrastructure construction work will be considered:

- (a) clearing of the land to be used for the EPZ project authorized by the competent environmental entity;
- (b) bulldozing, grading or other preparation of the land for the first EPZ stage;
- (c) digging of ditches, construction of canals, installation of pylons, posts or ducts for water, electric power, commu-

nications and basic sanitation systems; and

- (d) construction of foundations and similar works intended for the support of fences, wire fences, walls and the like for the EPZ.

The General Secretary of EPZC is the person empowered to start an administrative proceeding regarding cancellation of the authorization of the deadline for starting the infrastructure construction work.

An EPZC technician will be assigned to visit the EPZ in order to verify the actual status of any construction work. After a report is prepared by this technician, it is sent to the EPZC board for action. The interested parties must be able to justify the delay in the infrastructure construction works. If the EPZC board nevertheless decides to cancel the authorization to operate, the EPZC will present a final report to the President requesting formalization of the decision regarding cancellation of the authorization (i.e., issuance of a decree) (DOU-I, October 19, 1995).

## 2. IMPORT DUTY REDUCTION

On December 26, 1995, President Cardoso republished Provisional Measure No. 1132 under No. 1165, thereby fostering the import of capital goods for the automobile industry (including agricultural machinery).

Provisional Measure 1165/95 reduced by ninety percent the import duty on new machinery and equipment, including test tools, molds, industrial and quality control instruments and equipment and their accessories.

Provisional Measure 1165/95 also reduced by up to ninety percent the import duty on raw materials, parts, components, sets, subsets, finished or semi-finished goods and pneumatic products (DOU-I, October 27, 1995).

## 3. RESTRUCTURING AND STRENGTHENING OF THE BRAZILIAN FINANCIAL SYSTEM

In recent times, the Brazilian financial system has been severely affected by liquidity crises caused mainly by: (a) high compulsory deposits; (b) general default of the domestic econo-

my; and (c) the difficulty of adapting financial institutions to a low-inflation environment.

Experts consider that there are currently more financial institutions in Brazil than are needed. Previously, with the high-inflation environment, flotation was one of the main sources of funding financial institutions, causing the continual opening and expansion of the financial network. Today, however, with inflation stabilized at lower levels, compounded by the tight-money scenario, the financial system has had to redefine its size. Emphasis has now turned to fixed costs and modified organizational structures.

The Administration, concerned with the liquidity and solvency of the Brazilian financial system and interested in protecting the interests of depositors and investors in financial institutions, created the Program for Incentive of the Restructuring and Strengthening of the Brazilian Financial System (the "Program").

The Program was implemented on November 3, 1995, by Provisional Measure No. 1179 and National Monetary Council Resolution No. 2208.

The Program's main scope is to assure the liquidity and solvency of the Brazilian financial system and to protect the interests of depositors and investors in financial institutions, including institutions under temporary management of the Federal Administration, or under intervention, liquidation or bankruptcy proceedings.

The Program will be implemented by administrative, operating and corporate reorganization of financial institutions, resulting in the transfer of control or modification of the corporate objectives of financial institutions.

Provisional measure 1179/95 establishes the following tax/accounting benefits for institutions participating in the Program in the event of merger:

- (a) the institution to be merged will post all bad debts as losses, observing the rules to be spelled out by the Brazilian Monetary Council;
- (b) the merger institution may register as a premium on acquisition of the investment the difference between the purchase price and the book net worth of the corporate stake acquired;

- (c) the losses referred to in (a) above will be added to the net profits of the institution to be merged, for the purposes of determination of the actual profit and the basis for computation of the social contribution on net profits;
- (d) after the merger, the premium referred to above, posted to the accounting books, may be amortized, observing the provisions of (e) below;
- (e) for the purposes of determination of the actual profit, the sum of the amortized premium and the compensated value for tax losses for previous tax periods cannot exceed, in each period, thirty percent of the net profits adjusted by the sums and exclusions set forth in applicable legislation; and
- (f) the value of the amortized premium will be added to the net profits, for the purpose of determination of the basis of computation for the social contribution on the net profits.

The tax accounting benefits, however, will only pertain to mergers effected on or before December 31, 1996.

As determined by Central Bank Resolution 2208/95, the Program will encompass:

- (a) a special line of assistance linked to:
  - (i) securities or transactions under the authority of the Brazilian Treasury or entities of the indirect federal administration;
  - (ii) losses resulting from the clearance process;
  - (iii) expenditures for downsizing and administrative reorganization arising from the restructuring and modernization of operating systems; and
  - (iv) sale of assets belonging to the financial institution participating in the Program.
- (b) allowing amortization of funds of compulsory deposits/obligatory cash applications on sight deposits for the acquisition of Certificates of Bank Deposit (CBD) issued by the institutions participating in the Program;
- (c) modification of operating limits applicable to financial institutions; and
- (d) deferment of expenditures relating to costs, expenses and other charges for restructuring, reorganization or modernization of the financial institutions.

The Program was wisely implemented by the Federal Administration to stimulate downsizing of the Brazilian financial system, thereby checking the risk that the system might collapse entirely (DOU-I, November 6, 1995).

#### 4. IMPORT EXEMPTION LIMITS

On November 6, 1995, the Federal Revenue Office issued Normative Instruction No. 52, determining that manufactured goods in the equivalent of up to U.S. \$150.00 per person that enter the country by land or inland waters (i.e., rivers or lakes) are exempt from the import duty.

Previously, the exemption limit was U.S. \$250.00 per capita, but it was decreased due specifically to the massive entry of undeclared goods from Paraguay. This was negatively affecting the domestic economy and fostering expansion of the Brazilian informal economy (DOU-I, November 7, 1995).

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## LETTER OF DECEMBER 1995

### 1. ISSUANCE OF SECURITIES ABROAD

On November 10, 1995 the President of the Federal Senate passed Resolution No. 57 authorizing the Federal Administration to issue securities up to U.S. \$5,000,000,000.00 abroad. The scope of this measure is to allow the Federal Administration to reschedule its internal debt, thereby replacing high interest rates and costs and short maturity with a lesser cost and better overall conditions. All particulars for the issuance of such securities (including type of security, maturity with a lesser cost and better overall conditions). All particulars for the issuance of such securities (including type of security, maturity, interest, and other characteristics) will be tied to international market standards (DOU-I, November 13, 1995).

### 2. ADVANTAGES ON EXCHANGE CONTRACTS

On November 16, 1995, the Central Bank of Brazil issued Circular No. 2632, implementing charges in the rules on Exchange Contract Advances. The issuance of Circular 2632/95 was a consequence of Provisional Measure No. 1180 of November 10, 1995, which determined that monies furnished under Exchange Contract Advances will be earmarked exclusively for payment of any credit line that has given rise to these transactions in the events of bankruptcy, extrajudicial liquidation or intervention of the financial institutions that obtained funds abroad in order to implement the transaction (please refer to item 3 of our October 1995 Legal Letter. Provisional Measure 1180/95 was first under No. 1113 on September 12, 1995).

Circular 2632/95 determines that all monies received by the exporter will be allocated exclusively for payment of the creditor of the Exchange Advance transaction abroad, and will not be incorporated into the bankruptcy estate in the events of bankruptcy, extrajudicial liquidation or intervention of the financial institutions that loaned the funds (DOU-I, November 17, 1995).



### 3. RESTRUCTURING AND STRENGTHENING OF THE BRAZILIAN FINANCIAL SYSTEM

On November 3, 1995, Provisional Measure No. 1179 (now republished under No. 1214 of December 5, 1995) and National Monetary Council resolution No. 2208 created the Incentive Program for the Restructuring and Strengthening of the Brazilian Financial System (the "Program"), whose main scope is to assure the liquidity and solvency of the Brazilian financial system and to protect the interests of both depositors and investors in financial institutions (including institutions under temporary management of the Federal Administration or under intervention, liquidation or bankruptcy proceedings).

The Program will be implemented by administrative, operating and corporate reorganization of financial institutions, resulting in the transfer of control or modification of the corporate objectives of financial institutions. The Program will also afford tax/accounting benefits to institutions participating in the Program in the event of merger and a special line of assistance (please refer to item 3 of our November 1995 Legal Letter).

The Central Bank of Brazil has recently issued the following circular of note:

- (a) Circular No. 2633 of November 26, 1995, determining the requirements that financial institutions wishing to participate in the Program should meet. Basically, the Program will target the financial institutions previously approved by the Central Bank of Brazil on a case-by-case basis that:
  - (i) acquire the corporate control of any other financial institution or transfer corporate control to another institution; or
  - (ii) assure rights and/or obligations of another financial institution (DOU-I, November 17, 1995);
- (b) Circular No. 264 of November 16, 1995, setting out the rules for deferment of (i) expenditures relative to costs, expenses and other charges for restructuring reorganization or modernization of financial institutions; (ii) losses from financial recovery programs; and (iii) sales of assets. The expenditures cited above can be amortized over ten semesters,

counting as from the month following the end of the process of either acquisition of control or assumption of the rights and/or obligations referred to in Circular 2633/95 (DOU-I, November 17, 1995); and

- (c) Circular No. 2636 of November 17, 1995, governing the following conditions for the special line of assistance linked to securities or transactions under the authority of the Brazilian Treasury or the indirect Federal Administration:
  - (i) the special line of assistance must be requested of the Central Bank of Brazil by the financial institution involved;
  - (ii) the maturity and form of payment will be determined by the Central Bank of Brazil, considering, however, the conditions of the maturity and payment means for the securities or rights on which the transaction is based;
  - (iii) the costs will be identical to the ones for the securities and/or rights on which the transaction is based; and
  - (iv) the collateral for the transaction will be the securities or rights related to transactions under the authority of the Brazilian Treasury or entities of the indirect Federal Administration internal debt bonds sold at competitive auctions (DOU-I, November 18, 1995).

#### 4. CENTRAL BANK OF BRAZIL REGULATIONS

The following regulations of note were issued by the Central Bank of Brazil:

- (a) Circular No. 2635 of November 16, 1995, prohibiting financial institutions from loaning money to companies involved in debt renegotiation (DOU-I, November 17, 1995);
- (b) Circular No. 2638 of November 22, 1995, reducing to 0% the export duty on sales of products incorporating imported alcohol under the drawback system (DOU-I, November 23, 1995);
- (c) Circular No. 2639 of November 22, 1995, altering to a maximum of 180 days the anticipatory period for the closing of the exchange transaction prior to the ship-

ment of goods for export transactions whose date of payment does not exceed 180 days from the date of shipment (DOU-I, November 23, 1995);

- (d) Resolution No. 2214 of November 29, 1995 determining new rules for the Export Financing Program (PROEX). When financing exports of Brazilian goods and/or services, the Brazilian Treasury will allow the financing party to equalize any excess between the charges agreed to with the borrower and the actual costs of raising the funds in the form and on the conditions to be spelled out by the Central Bank of Brazil (DOU-I, November 30, 1995);
- (e) Resolution No. 2216 of November 29, 1995, and Circular No. 2646 of December 4, 1995, authorizing financial institutions to grant credit to credit card companies in order to allow them to offer their card-members revolving credit; this credit will be limited, however, to fifty percent of the outstanding amount due. Revolving credit for credit cards has been temporarily suspended since October 19, 1994, by Central Bank Resolution No. 2218 (DOU-I, November 30 and December 5, 1995).

## 5. INFLUENCE PEDDLING

On November 16, 1995, President Fernando Henrique Cardoso sanctioned Law No. 9127, altering the wording of article 332 of the Brazilian Penal Code that deals with influence peddling. Under the new article, influence peddling will be defined as when someone solicits, requests, charges or obtains for him/herself certain advantages or promises of advantages, so as to influence an act performed by a civil servant in the exercise of his/her duty.

Influence peddling will be penalized with imprisonment from two to five years plus a fine. This alteration in article 332 of the Brazilian Penal Code is intended to curb any improprieties of government employees, which is an issue of some concern due to the recent scandal involving President Cardoso (DOU-I, November 17, 1995).

## 6. BRAZILIAN INFORMATICS POLICY

On August 15, 1995, Congress approved Constitutional Amendment No. 6 eliminating the concepts of Brazilian companies with domestic capital and Brazilian companies with foreign capital previously contained in the Constitution. In the past, certain services (such as prospecting for minerals and mining) could only be rendered by Brazilian companies with domestic capital authorized by the Federal Administration. This meant that companies organized in Brazil but with direct and indirect foreign participation were forbidden to render such services. Under the new Constitutional Amendment 6/95, any and all companies organized in Brazil pursuant to Brazilian law (regardless of any foreign holdings) have the same rights (please refer to item 5 of our September 1995 Legal Letter).

In light of the above, on November 14, 1995, the Minister of Science and Technology approved Opinion No. 231 of November 13, 1995, issued by the Legal Consultant for the Science and Technology Ministry. This opinion suggested the alteration of all infraconstitutional regulations regarding informatics as a natural consequence of Amendment 6/95 (DOU-I, November 20, 1995).

## 7. CABLE TV

On November 28, 1995, President Cardoso signed decree No. 1718, approving the Ruling for Cable TV Services in Brazil (Ruling). Under Brazilian law, cable TV is considered a telecommunications service entailing the distribution of video and/or audio signals to subscribers through physical means, the Ruling will conform to legislation on telecommunications and Law No. 8977 of January 6, 1995 (please refer to item 3 of our January 1995 Legal Letter).

## 8. CONCESSION OF TELECOMMUNICATIONS SERVICES

On February 13, 1995, President Cardoso sanctioned Law No. 8987 (also known as the Concession Law), setting forth the public-service concession system. This law basically permitted

the participation of private capital in the performance of services that in the past were in the exclusive domain of public companies. The Concession Law also will force already-existing public-service concessionaires to become more efficient and competitive (please refer to item 3 of our March 1995 Legal Letter).

On November 28, 1995, President Cardoso signed Decree No. 1719, which goes along the same lines as the Concession Law, and approves the Ruling regarding the concession or permission for the commercial exploration of telecommunications services on a commercial basis, except for radio-broadcasting services.

Any Brazilian company can participate in the bidding process of the commercial offer of telecommunications services, provided however that it complies with the regulations in force at the time of the bidding. The following companies are forbidden to participate in the bidding process for the rendering of telecommunication services:

- (a) a company in a consortium with an already existing consortium for the same bid;
- (b) a company that is a part of the consortium that also participates in the bid;
- (c) a company that is affiliated with another company that also participates in the bid, with the exception of the services to be rendered that accept multiple associations;
- (d) a concessionaire company for the same services as the bid in the same area of work; and
- (e) a company affiliated with another company that is already a concessionaire of the same subject to the bid, with the exception of the services that accept multiple applications.

Decree 1719/95 also determines the conditions and procedures of the public bid notice, the concession of the services, characteristics of the service rendering contracts and the services, as well as the transfer and/or elimination of the permission granted.

On the same date, President Cardoso signed Decree No. 1720, thereby altering certain provisions of the Radio-broadcast-

ing Services Regulations approved previously by Decree No. 52795 of October 31, 1963 (DOU-I, November 29, 1995).

#### 9. MISSING PERSONS

On December 4, 1995, President Cardoso sanctioned Law No. 9140, recognizing as dead for all intents and purposes of the law certain persons listed in Annex 1 to Law 9140/95 considered missing (*desaparecido*) as a direct result of their participation in political activities during the military regime in Brazil (from September 2, 1961 through August 15, 1979). Law 9140/95 also created the special committee composed of up to seven members appointed by the President, the main scope of which will be the recognition of other persons not listed in Annex 1 to Law 9140/95 (DOU-I, December 15, 1995).

#### 10. RADIOTELECOMMUNICATIONS SERVICES

On November 28, 1995, the Communications Minister issued Ordinance No. 282, embodying the principles that should be considered for the updating and revision of the rules regarding radiotelecommunications services. The main principles contained in Ordinance 282/95 are the following:

- (a) incentive for the use of digital technology;
- (b) improvement of the safety of communications;
- (c) harmonization of Brazilian frequencies to the frequencies under the International Telecommunications Union; and
- (d) redetermination of the width of bands and spectrum occupation means (DOU-I, November 29, 1995).

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