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BRAZIL

The following is a review of recent developments in Brazilian tax, labor, and import and export laws, including legislative, judicial and administrative rulings and decisions.

I. CRIMES AGAINST THE NATIONAL FINANCIAL SYSTEM

The President of the Republic sanctioned and announced Law No. 7.492 on June 16, 1986 defining crimes against the national financial system. The Law provides:

Article 1. For the purposes for this law, a financial institution is deemed to be a legal entity of public or private law, whose main or accessory activity, whether or not cumulative, is to raise, intermediate or invest the funds, (VETOED by the President), of third parties in Brazilian or foreign currency, or the custody, issue, distribution, transaction, intermediation or administration of securities.

A financial institution is defined as either a legal entity that raises or administers insurance, foreign exchange, consortia, capitalization or any kind of third party savings or funds; or an individual that engages, even sporadically in any of the activities referred to in this article.

Definition of Crimes Against the National Financial System

Article 2. It is unlawful to print, produce, reproduce or in any way put into circulation, without the written authorization of the issuing company, a certificate or other document that represents a bond or security. The penalty is confinement for two to eight years and a fine. The same penalty shall be incurred by a party that prints, produces, discloses, distributes or causes the distribution of a brochure or publicity material regarding the instruments referred to in this article.

Article 3. It is unlawful to disclose information that is false or detrimentally incomplete concerning a financial institution. The penalty is confinement for two to six years and a fine.

Article 4. It is unlawful to fraudulently manage a financial institution. The penalty is confinement for three to twelve years and

a fine. It is also unlawful for the management to recklessly manage a financial institution. The penalty is confinement for two to eight years and a fine.

Article 5. It is unlawful for any of the persons mentioned in article 25 of this law to appropriate money, bills, values or any other asset in their possession, or divert them for their own or a third party's benefit. The penalty is confinement for two to six years and a fine. The same penalty shall be incurred by any of the persons mentioned in article 25 of this law if they transact a right, bill or any other asset or property in their possession, without the authorization of the proper party.

Article 6. It is unlawful to induce or maintain in error, a partner, investor or competent government entity, in regard to a transaction or financial situation, by withholding information or providing false information. The penalty is confinement for two to six years and a fine.

Article 7. It is unlawful to issue, offer or in any way transact bonds or securities that are (a) false or falsified; (b) without the issue having been previously registered at the proper authority, not in accordance with the conditions shown in the registration, or irregularly registered; (c) without sufficient funding or guarantee under the law; (d) without the prior authorization of the proper authority, when required by law. The penalty is confinement for two to eight years and a fine.

Article 8. It is unlawful to demand, in non-compliance with the law, interest, fees or any kind of remuneration on credit or insurance transactions, administration of mutual or fiscal funds or consortia, for services of brokerage or distribution of bonds or securities. (VETOED by the President.) The penalty is confinement for one to four years and a fine.

Article 9. It is unlawful to defraud an inspector or investor, by inserting or causing the insertion, in a document representing an investment in bonds or securities, a declaration that is false or different from the one that should be so inserted. The penalty is confinement for one to five years and a fine.

Article 10. It is unlawful to cause the insertion of false information or to omit information required by law in accounting statements of a financial or insurance institution or an institution belonging to the bonds and securities distribution system. The penalty is confinement for one to five years and a fine.

Article 11. It is unlawful to maintain or operate funds or values parallel to the accounting required by the law. The penalty is confinement for one to five years and a fine.

Article 12. It is unlawful for a former officer of a financial institution to fail to submit information, declarations or documents for which he is responsible to an intervenor, liquidator or receiver within the periods and conditions established by law. The penalty will be confinement for one to four years and a fine.

Article 13. It is unlawful to divert an asset acquired through the legal non-availability resulting from intervention or extrajudicial liquidation or bankruptcy of a financial institution. The penalty is confinement for two to six years and a fine. The same penalty shall apply to an intervenor, liquidator or receiver that appropriates an asset covered by the main provision of this article, or diverts such an asset to his own or another's benefit. (VETOED by the President.)

Article 14. It is unlawful to present in an extrajudicial liquidation or bankruptcy of a financial institution, a declaration of credit or false claim, or include therewith a false or simulated bill. The penalty is a fine and confinement for two to eight years. The same penalty shall apply to an ex-officer or bankrupt party that acknowledges a false credit as true.

Article 15. It is unlawful for an intervenor, liquidator or receiver to make a false statement on a matter relating to the intervention, extrajudicial liquidation or bankruptcy of a financial institution. (VETOED by the President.) The penalty is a fine and confinement for two to eight years.

Article 16. It is unlawful to provide for the operation of a financial institution, including securities distribution or foreign exchange institutions, without due authorization or with authorization obtained by a false declaration. (VETOED by the President.) The penalty is a fine and confinement for one to four years.

Article 17. It is unlawful for any of the persons mentioned in article 25 of this Law to directly or indirectly take or receive a loan or advance, or to grant one to a controller, officer, member of a council under By-laws, to his/her spouse, ascendants or descendants, to collateral relatives within the second degree, kindred or relative by affinity, or to a company directly or indirectly, under his/her control, or controlled by such persons. The penalty for violation is confinement for two to six years and a fine. The same

penalty shall apply to whomever: (i) as the controller in his own name, or in the capacity of officer of a company, grants or receives an advance payment of fees, compensation, salary or any other payment under the condition referred to in this article; or (ii) falsely provides for the distribution of or receives profits of a financial institution.

Article 18. It is unlawful to violate the confidentiality of a transaction or service rendered by a financial institution or a member of the securities distribution system of which he is informed by virtue of his office. The penalty is confinement of one to four years and a fine.

Article 19. It is unlawful to fraudulently obtain financing from a financial institution. The penalty is confinement for two to six years and a fine. The penalty shall be increased by one-third if the crime is committed to the detriment of an official financial institution.

Article 20. It is unlawful to invest funds derived from financing granted by an official financial institution for purposes other than those provided for by law or contract. The penalty is confinement for two to six years and a fine.

Article 21. It is unlawful to assume or ascribe to another a false identity for the purpose of carrying out an exchange transaction. The penalty for such actions is imprisonment for one to four years and a fine. The same penalty shall apply to whomever, for the same purpose, fails to render the required information or renders false information.

Article 22. It is unlawful to effect an unauthorized exchange transaction in order to divert foreign currency from Brazil. The penalty is confinement for two to six years and a fine. The same penalty shall apply to whomever provides in any manner, without legal authorization, for the transfer of Brazilian or foreign currency to another country, or holds funds abroad without declaring them to the competent federal department.

Article 23. It is unlawful for a civil servant to omit or delay to perform, contrary to an express legal provision, an official act required for the normal functioning of the Brazilian financial system, including the safeguarding of the interests and security of the economic-financial order. The penalty for violations of this article is confinement for one to four years and a fine.

Article 24. (VETOED by the President.)

Application and Criminal Procedure

Article 25. The controller and officers of a financial institution including the directors and managers are criminally liable for violations of this law. (VETOED by the President.) An intervenor, liquidator or receiver is held equivalent to an officer of a financial institution. (VETOED by the President.)

Article 26. Criminal actions, for the crimes in this Law, shall be filed by the Federal Government Attorneys' Office in the Federal Courts. Without prejudice to the provisions of article 268 of the Code of Criminal Procedure, approved under Decree-Law No. 3.689, of October 3, 1941, the assistance of the Securities Commission (CVM) shall be accepted when the crime was committed within the sphere of activities subject to the control and inspection of said Commission, and of the Central Bank of Brazil when the crime was otherwise committed within the sphere of activity subject to such Bank's control and inspection.

Article 27. When an accusation is not filed within the legal period, the wronged party may represent to the Attorney-General of the Republic for the latter to offer it, appoint another body of the Government Attorney's Office to offer it, or order the shelving of the information received.

Article 28. When in the performance of its legal duties the Central Bank of Brazil or the Securities Commission determine the occurrence of a crime under this law, it shall inform the Federal Government Attorneys' Office thereof, sending it the documents required to evidence the fact. The procedure referred to in this article shall be observed by the intervenor, liquidator or receiver who during the course of an intervention, extrajudicial liquidation or bankruptcy procedure determined the occurrence of a crime under this Law.

Article 29. The Federal Government Attorneys' Office, may request from any authority information, documents or investigations relating to evidence of the crimes established in this Law whenever it is deemed necessary. The confidentiality of the services and financial transactions may not be invoked as a defense against producing information requested as referred to in the main provision of this article.

Article 30. Without prejudice to the provision of article 312 of the Code of Criminal Procedure, approved under Decree-Law No. 3.689, of October 3, 1941, the arrest and confinement without bail

of a party accused of a crime under this Law may be decreed in relation to the extent of the damage caused. (VETOED by the President.)

Article 31. In the event of crimes established herein and punished with the penalty of confinement, the defendant may neither post bond nor appeal before being confined to prison, even in the case of a first-time offender if a situation requires pre-trial confinement without bail.

Article 32. (VETOED by the President.)

Article 33. After the establishment of the fine relating to the crimes hereunder, the limit referred to in paragraph 1 of article 49 of the Criminal Code, approved under Decree-Law No. 2.848, of December 7, 1940, may be increased ten-fold, if the situation established therein is determined.

Article 34. This Law becomes effective on the date of publication thereof.

Article 35. All provisions contrary to this Law are hereby revoked.

Brasília, June 16, 1986; 165th of Independence and 98th of the Republic.

II. CENTRAL BANK RESOLUTIONS AND RELEASES

The National Monetary Council

At various meetings held in 1986, the National Monetary Council adopted the following decisions which were issued as resolutions of the Central Bank of Brazil:

1. *Meeting held on June 26, 1986 (DOU-I, June 27, 1986)*

(a) Resolution No. 1.139/86 reduces to zero the rate of the Tax on Financial Transactions (IOF) for imports from Bolivia, Ecuador and Paraguay of products listed under the Regional Agreements for Opening of Markets of the Latin-American Integration Association (ALADI).

(b) Resolution No. 1.140/86, provides for institutions authorized to receive individual savings deposits, to credit the return on such deposits only every three months.

(c) Resolution No. 1.141/86, amends the wording of article 3 of

the Regulations attached to Resolution No. 454/77, which regulates the procedure to be adopted when the Securities Commission (CVM) institutes administrative investigations or proceedings.

(d) Resolution No. 1.142/86, defines the face value, the term and the interest for National Treasury Bills (LTN) issued by the Central Bank of Brazil.

(e) Resolution No. 1.143/86, authorizes financial institutions to carry out asset and liability transactions at floating rates, which may be adjusted at fixed intervals of not less than 180 days.

(f) Resolution No. 1.144/86, establishes that National Treasury Bonds (OTN) issued before or after February 28, 1986 shall be entitled to monetary adjustment on March 1, 1987 according to the full variation of the Consumer Price Index (IPC) over the preceding twelve months.

(g) Resolution No. 1.145/86, prohibits the use of credit cards to buy fuel and oil by-products at gas stations and from dealers.

(h) Resolution No. 1.146/86, reduces by twenty percent, as from July 31, 1986, the credit that may be granted to individuals by commercial banks and savings banks.

(i) Resolution No. 1.147/86, establishes a plan for the reduction of credit extended by financing companies, for the purchase of goods and services.

(j) Resolution No. 1.148/86, prohibits private pension funds from using their funds to grant loans.

2. *Meeting held on July 23, 1986 (DOU-I, July 25, 1986)*

(a) Resolution No. 1.154/86 requires until December 31, 1987, the payment of a surcharge of twenty-five percent on the amount of: (i) international air and sea fares issued in Brazil; (ii) orders for the delivery of travel tickets abroad; and (iii) sales of foreign exchange to cover travel expenses abroad.

(b) Resolution No. 1.155/86 changes income tax rates in certain cases. Accordingly, the rate of withholding tax is now thirty-five percent for "real income" produced by instruments of credit (bills of exchange with the acceptance of financial institutions and debentures in general) and fixed-term deposits, with or without certificate. In these cases, "real income" is the total nominal income on the instrument or deposit. This rate will be reduced to twenty percent when the beneficiary of the income is identified. In

short-term financial transactions (those for less than sixty days), the rate of withholding tax will be sixty-five percent. Furthermore, the rate will be forty percent for capital gains made on the assignment or liquidation of instruments, bonds or fixed-yield investment, unless the tax has been paid as provided for in the Resolution;

(c) Resolution No. 1.156/86 authorizes full withdrawal of quotas in the Fiscal Fund 157 worth less than ten National Treasury Bonds (OTN's), excluding quota dividends and other quotas available for redemption.

3. *Meeting held on September 4, 1986* (DOU-I, September 5, 1986).

(a) Resolution No. 1.182 authorizes the Central Bank of Brazil to increase its participation in the gold market by purchasing and selling gold. The Central Bank will institute a system of brokers and custody houses for this purpose.

(b) Resolution No. 1.184 defines venture capital companies as corporations whose only purpose is to invest their own capital in the subscription of shares or quotas of small and medium-sized companies. In order to be entitled to the tax benefits provided for by Decree-Law No. 2.287, a venture capital corporation must cumulatively satisfy the following requirements: (i) the capital must be paid up only in cash; and (ii) the corporation must be incorporated for a limited period of time.

Resolution No. 1.184 also lists certain restrictions applicable to venture capital corporations, and provides that their capital shall be invested exclusively in small and medium-sized companies defined as those (i) whose majority voting capital is held, directly or indirectly, by individuals who are resident and domiciled in Brazil; (ii) whose final decision-making power is controlled by the majority of the capital stock represented by the Brazilian participation; and (iii) whose net worth is less than Cz\$ 50,000,000 before the subscription of the shares or quotas by a venture capital corporation. Item IV of the Resolution provides that any income distributed by venture capital companies to their shareholders, as well as any capital gain in the disposition or liquidation of their equity investments, shall be subject to the withholding of twenty-three percent income tax. In the case of an individual, the withholding tax shall be considered as a pre-payment of the tax owed on the

tax return, though the taxpayer may elect to be taxed only at source. In the case of companies, the income shall be included in their taxable income, and the withholding income tax shall only be credited against the income tax owed on any distribution by the company. Any capital gain shall be included in the taxable income, and the tax withheld shall be considered as a pre-payment.

(c) Resolution 1.185 introduces modification in the investment policy of open private pension funds. An open private pension fund is defined as one whose pension plans can be sold to the public in general, and not only to employees of a limited number of entities. Resolution No. 1.185 determines that the reserves of open private pension funds shall be invested as follows: (i) a minimum of thirty percent in ten-year securities issued by the recently created National Development Fund (NDF) or in federal, state or municipal securities, cumulatively or otherwise; (ii) a minimum of twenty-five percent in stock of publicly-held companies, at least seventy-five percent of which is in stock issued by publicly-held companies under Brazilian control; (iii) a maximum of forty percent can be invested in real estate for their own use or in urban real estate other than for their own use, provided these properties are not included in National Housing System programs; (iv) a maximum of ten percent can be used for certain loans, provided for by regulations, if the granting of such loans has been approved by the Private Insurance Authority (SUSEP); and (v) the remaining funds, if any, shall be invested, cumulatively or otherwise, in any of a list of six items that include certain federal, state or municipal securities, as well as certain private sector securities. Resolution 1.185 also establishes certain minimum diversification levels for each of the above listed investments, restricts the investment of funds in securities of affiliated companies, and prohibits open private pension funds from acting as financial institutions on the market.

(d) Resolution 1.186 establishes new tax rates for certain short-term financial transactions. Resolution 1.186 defines as taxable, at the rate of twenty-five percent, any income from securities or time deposits subject to adjustment by any applicable index. This rate is reduced to fifteen percent when the beneficiary is identified. The Resolution also establishes a sliding tax rate for transactions involving the acquisition and subsequent disposal of securities maturing in less than fifty-six days as follows: (i) up to twenty-eight days, sixty percent; (ii) from twenty-eight to forty-two days,

fifty percent; and (iii) from forty-three to fifty-six days, forty-five percent.

Resolution 1.186 also considers as taxable income any income arising from financing transactions on the stock market. Financing transactions are defined as cash purchases on the spot market or futures market, the subsequent sale on the futures market by the same taxpayer, and involves shares of the same class and form, issued by the same company. The Federal Revenue Office will issue rules regulating the taxation of such transactions.

Foreign Debt

At a meeting held on September 8, 1986, the National Monetary Council (CMN) adopted the following decisions regarding the rules applicable to the Brazilian foreign debt, which were issued as resolutions and circulars of the Central Bank of Brazil and published in DOU-I on September 9, 1986:

1. Resolution 1.189

Resolution 1.189 establishes that the principal amounts of any financial obligation, due to foreign financial institutions and maturing during 1985 and 1986, shall be deposited with the Central Bank of Brazil in United States dollar accounts opened on behalf of the foreign creditor. Excluded from the mandatory deposit system are the following obligations:

- (a) publicly issued bonds, publicly issued floating rate certificates of deposit, or publicly issued floating rate notes;
- (b) publicly issued securities;
- (c) obligations owed to foreign governments or governmental or international entities, including credit agencies;
- (d) obligations guaranteed or secured by foreign governments, or governmental or international entities, including credit agencies;
- (e) obligations arising from financing guaranteed by ships, aircraft or drilling equipment;
- (f) obligations arising from the leasing of ships, aircraft, or drilling equipment;
- (g) obligations arising from arbitrage operations with foreign currencies abroad and from the purchase and sale of bullion;

- (h) interest equalization arising from FINEX transactions;
- (i) transactions in bankers' acceptances or commercial paper;
- (j) obligations arising from the use of funds from Phase II of the Brazilian Financing Plan under Resolution No. 899, dated March 29, 1984; and

(k) any obligation arising from credit transactions with fresh money disbursed after January 1, 1983. Resolution No. 1.189 also provides that principal amounts maturing during 1985 and deposited with the Central Bank, can be lent again to Brazilian borrowers with due regard for the monthly limits established by the Central Bank. In reference to the principal amounts maturing during 1986, Resolution No. 1.186 prohibits the amounts from being lent again, but allows them to be converted into equity investments, with due regard for the applicable regulations issued by the Central Bank. Finally, Resolution No. 1.186 provides that the principal amounts maturing during 1985 can be lent again and subsequently converted into equity investments.

2. Circular No. 1.068

Circular No. 1.068 establishes that transactions involving the relending of principal amounts maturing during 1985 shall have a minimum term of seven years, with a five-year grace period.

3. Circular No. 1.069

Circular No. 1.069 establishes that the deposits with the Central Bank of Brazil of principal amounts maturing during 1985 and 1986 will be made in the original currency of the obligation. The withdrawal of the deposits from the Central Bank shall depend on prior receipt of a notice by the Department of Control and Registration of Foreign Capital of the Central Bank (FIRCE), at least five business days before the disbursement date, specifying the amount of the transaction, the list of deposits to be withdrawn, and the disbursement date.

Commodities and Futures Contracts

The Central Bank of Brazil released, on September 19, 1986, Resolution No. 1.190, which requires the prior approval by the Central Bank or the Securities Commission (CVM) of any stan-

dard contracts to be traded on any commodities or futures exchanges. According to the provisions of the Resolution, any such contract submitted for approval shall be deemed approved if neither the Central Bank nor the Securities Commission issue any opinion or request for further information within thirty days of the filing of the contract pattern. It also provides that, in order to prevent or correct any unusual trading circumstances, especially those related to artificial purchases and sales, price manipulation, fraud, or any other inequitable practices, both the Central Bank and the Securities Commission may:

(i) suspend the trading and liquidation of any contract traded on the commodities or futures exchanges, including all those related to any specific commodity; or

(ii) cancel or liquidate any transaction on both exchanges.

Resolution No. 1.190 also determines that the exchanges must fully disclose any information necessary for the correct taxation of futures and/or commodities transactions, as provided by Decree-Law No. 2.286, dated July 23, 1986.

Following the release of Resolution No. 1.190, the Central Bank issued Circular No. 1.071, which temporarily suspends all trading in live cattle and feeders. The measure, which takes effect during a meat shortage in the market, is aimed at avoiding increases in meat and livestock futures quotations, since prices have been frozen since the February 28 monetary reform, the measure has received intense public support (DOU-I, September 18, 1986).

Insurance for Resolution 63 Loans

On July 15, 1986 the Central Bank of Brazil issued a telex to the International Financial Community, offering creditor banks the opportunity to obtain insurance through the Central Bank of Brazil which would guarantee the payment of foreign currency loans granted under Resolution 63 in the event of intervention, extrajudicial liquidation or bankruptcy of the Brazilian borrower banks. The creditor banks may elect to take such insurance up to December 31, 1986 by prepaying the annual premium which consists of the difference between the spread registered at the Central Bank for each guaranteed loan and the spread negotiated by the Brazilian Government for the foreign debt maturing in 1985 and 1986. The annual premium may not be less than 0.125% and the guaran-

tee shall cover the entire portfolio of the creditor bank as of June 30, 1986. The guarantee remains in effect until the final maturity and full repayment of each guaranteed loan.

Domestic Relending

The Central Bank of Brazil issued Circular Letter No. 1443/86, stating that the prior express approval of the Central Bank of Brazil is still required for the collection and payment of any charges in Brazilian or foreign currency in connection with foreign credit transactions, whether they be currency loans, import financing or foreign leasing (DOU-I, July 18, 1986).

Foreign Loans

The Central Bank of Brazil issued Circular Letter No. 1438/86 to affirm that currency loans and financing granted by foreign financial institutions for imports of goods and services remain subject to the conditions of rescheduling of the Brazilian foreign debt, even if there is a change in the creditor (DOU-I, July 15, 1986).

Bank Secrecy

The Central Bank of Brazil issued Circular Letter No. 1.422/86, amending Section 16-7-14 (Commercial Banks Operating Rules Bank Secrecy) of the Manual of Rules and Instructions (MNI). Accordingly, a public commercial bank must render information to the Legislature if the request was approved by the Chamber of Deputies or the Federal Senate. The bank may request that such information be kept reserved or confidential if there are relevant reasons for doing so. A breach of such secrecy constitutes a crime and makes the offenders liable to confinement from one to four years, subject to the Penal Code and to the Code of Penal Procedure, without prejudice to any other applicable sanctions (DOU-I, June 25, 1986).

Purchases of Exchange on the Interbank Market

In Circular No. 1.039/86, the Central Bank of Brazil permitted the purchasing bank to grant to the selling establishment an advance on the Brazilian currency amount of the transaction, as a partial or full advance on account of the cruzado price of the for-

eign currency purchased on the interbank market to pay for exports. The Circular introduces several changes in the Accounting Plan for Commercial Banks (COBAN) (DOU-I, June 9, 1986).

Foreign Currency Deposits

The Exchange Department of the Central Bank of Brazil issued DECAM Communiqué No. 925 of July 23, 1986, to release the foreign currency deposits made under Resolutions No. 1.134/86 and 479/78, which affect state companies, states, and municipalities. The deposits will be released according to the following time schedule: (i) twenty percent immediately; (ii) twenty percent on September 15, 1986; (iii) ten percent on November 17, 1986; (iv) twenty percent on January 15, 1987; (v) twenty percent on March 16, 1987; and (vi) ten percent on May 15, 1987.

Accounting Procedures for Stock Market Transactions

The Department of Capital Market Regulation of the Central Bank of Brazil has clarified through Circular Letter No. 1.468, dated September 5, 1986, that all transactions on the stock market, whether on the same day, or on futures or option markets, shall be registered by mutual funds and by foreign investment companies according to Accounting Schedules Nos. 1 to 4 attached to the Circular Letter. Circular Letter No. 1.468 revokes Circular Letter No. 1.393, dated April 17, 1986 (DOU-I, September 9, 1986).

III. NATIONAL COUNCIL FOR INFORMATICS AND AUTOMATION

Sale of Software

The Special Informatics Office (SEI) drew up a draft of a resolution to be analyzed by the National Council for Informatics and Automation (CONIN), determining that foreign software can only be sold in Brazil if it is registered with the Special Informatics Office (SEI), and if the sale agreement is duly approved by the National Institute of Industrial Property (INPI).

Protection for Software

The National Informatics and Automation Council (CONIN), in a meeting held on August 26, 1986, voted for a recommendation

for the adoption of the copyright system for the protection of software. This recommendation, adopted by a 13-8 vote of the CONIN members, involved a choice among the copyright system, the industrial patent system and a special system to be created only for software. The vote was taken amidst press comments that it aimed at facilitating the talks to be held between the Brazilian and the United States governments during the visit of the Brazilian President to Washington, D.C.. The copyright system, unlike the patent system, does not allow full disclosure of the data used in the software, and therefore makes counterfeiting more difficult. The recommendation, however, refers to the copyright system that is especially adapted to protect software.

Brazilian Software Policy

At a meeting held on August 26, 1986, the National Informatics and Automation Council (CONIN) issued the following resolutions and opinions, which were published in DOU-I of September 22, 1986:

(a) Resolution No. 001/86 establishes rules and criteria for Software Communication Agreements, which are defined as agreements for the marketing of software by a distributor and for the provision of complementary services of installation, maintenance and technical support. Software is defined as an organized set of instructions, expressed in natural or artificial language, contained in any physical base, which must be used to control the states of digital-based machinery, equipment and devices that carry out functions of collecting, processing, structuring, storing, commutating, recovering and presenting information so as to make them operative for specific purposes;

(b) Resolution No. 002/86 institutes within the Special Informatics Office (SEI), a Software Register for the registration of software to be marketed in Brazil in any way;

(c) Resolution No. 025/86 delegates authority to the Minister in charge of coordinating CONIN to approve, on a case-by-case basis and after a hearing by the Minister of Finance, the granting of tax incentives under articles 13, 14 and 15 of Law No. 7.232/84 (the Informatics Law), or to suspend such incentives when the beneficiary company does not honor the commitments it assumed;

(d) Resolution No. 027/86 approves CONIN Opinion No. 001/86, which proposes to the President of the Republic that he adopt

the system of copyright for the protection of software, with the necessary adaptations;

(e) Opinion No. 002/86 establishes that projects, for the production of informatics goods previously approved by SEI and to be carried out by national companies located in the SUDENE (North-east) and SUDAM (Amazon) regions, may be granted exemption from the Tax on Manufactured Products (IPI) under article 13 (b)(III) of Law No. 7.232/84; and

(f) Opinion No. 003/86 approves Norm PB-1201/85, which is called "Man/Machine Communication Brazilian Information Exchange Code." The President of the Republic then issued Decree No. 93.925 on September 25, 1986, to approve CONIN Resolution No. 026/86, which regulates article 23 of Law No. 7.232/84. On the same date, the Ministry of Science and Technology issued Justification Statement No. 029/86 to submit CONIN Resolutions Nos. 001/86 and 002/86 to the examination of the President of the Republic. These Resolutions were then returned by the President to CONIN with instructions to delete the amendments that had been introduced by the plenary session of CONIN (DOU-I, September 26, 1986).

IV. TAX PROVISIONS

Futures Transactions

The President of the Republic signed Decree-law No. 2.286 of July 23, 1986, which concerns futures transactions made by individuals on the commodities exchange or on other futures markets, which were previously exempt from income tax under Decree-law No. 1.929/82. The income and gains on these transactions will now be taxed under the individual's annual income tax return according to article 51 of Law No. 7.450/85. Included in the taxation of the futures markets are futures transactions in bonds, securities, options or similar bills, foreign exchange, commodities, stones and precious metals (DOU-I, July 24, 1986).

New Income Tax Regulations

The President of the Republic signed Decree-law No. 2.287 of July 23, 1986, amending income tax legislation, particularly the rules established in Law No. 7.450/85. Article 1 of the new Decree-law confirmed the requirement that companies which show a taxa-

ble profit of more than the equivalent of 40,000 National Treasury Bonds (OTNs) prepare semi-annual balance sheets. Article 22 revoked the system of monetary correction of financial statements. With the amendment of article 34 of Law No. 7.450/85, capital income and gains are now taxed under the semi-annual or annual income tax return of legal entities. However, the withholding of income tax on such income and gains was maintained for individuals, condominiums and legal entities that are not taxed on the basis of their taxable profits. Under article 5 of Decree-law No. 2.287/86, companies that violate the provisions of Decree-law No. 2.284/85 (the Economic Stabilization Plan) will lose any tax incentives or official credit they may enjoy. Also, starting in fiscal year 1987, financial institutions will pay an income tax of ten percent on their taxable profits rather than the prior fifteen percent. Tax incentives in the decree were created for the organization and operation of risk capital companies engaged in the investment of their own capital in the subscription of shares or quotas of small and medium-size companies. Furthermore, the progressive income tax table for the annual income of individuals in fiscal year 1987 was adjusted by approximately 110%. Beginning in August 1986, the payment or credit of monthly rent or royalties by legal entities to individuals will be subject to the withholding of income tax at the rates of the progressive table for income from work, as an advance on the tax owed under the individual's annual income tax return (DOU-I, July 24, 1986).

Corporate Income Tax Return

The Coordinators of the Economic-Fiscal Information System and Tax System issued Execution Rule No. 33/86, which determines that the following legal entities shall be required to file income tax return for the first six months of 1986: all those that in fiscal year 1985 or 1986 determined a profit (i) of 40,000 National Treasury Bonds (OTNs) or more; and (ii) of less than 40,000 OTNs, but which absorbed the equity of another company by merger, consolidation or spin-off and whose profit was equal to or greater than 40,000 OTNs over such period. Filing of the income tax return is obligatory even if the company enjoys tax incentives (DOU-I, August 14, 1986).

Additional Income Tax

The Coordinator of the Tax System issued Declaratory (Normative) Act No. 82/86, which declares that the additional tax payable by commercial, investment, development and savings banks, credit, financing and investment companies, real estate credit companies, brokerage houses, securities distributor companies and leasing companies with yearly profits in excess of 40,000 National Treasury Bonds (OTNs), shall be reduced from fifteen percent to ten percent beginning in fiscal year 1987. Consequently, such institutions subject to the preparation of semi-annual balance sheets shall, in their balance sheet for the first six months of 1986 (to be filed by September 1986), still pay an additional tax of fifteen percent on the taxable profit in excess of Cz\$ 2,128,000.00 (DOU-I, August 1, 1986).

Tax Incentives for Cultural Activities

The President of the Republic sanctioned Law No. 7.505 of July 2, 1986, dealing with income tax benefits for cultural and artistic activities. The taxpayer may now deduct from its gross income, as a business expense, the amount spent on donations for, sponsoring and investments in such activities. This includes related expenses and contributions made through or for the account of profit or non profit cultural entities registered with the Ministry of Culture (DOU-I, July 3, 1986).

Capital Gains on Book OTNs

The Coordinator of the Tax System issued Declaratory (Normative) Act No. 49/86, in order to clarify that earnings made on National Treasury Bonds (OTNs) and certificates of interbank deposit will be treated as capital gains for purposes of withholding of income tax. Furthermore, the basis of calculation of the tax shall include discounts granted on the first placement and the interest paid thereon. This does not apply to such earnings when made by financial institutions, which shall include them in the determination of their taxable profit (DOU-I, July 15, 1986).

Withholding Tax

The Coordinator of the Tax System issued Declaratory (Nor-

mative) Act No. 50/86, which states that the income tax withheld from the profits of branches, agencies or representation offices of companies established abroad, which are considered to be automatically received by the parent company on the date of closing of the balance sheet, shall be paid by the last business day of the month following the month of each semi-annual balance sheet, if their profits for 1985 were in excess of 40,000 National Treasury Bonds (OTNs) (DOU-I, July 30, 1986).

V. ADMINISTRATIVE REFORM

Since the February 28, 1986 monetary reform, the Executive has been preparing a reform of the federal administration, for the purpose of cutting down the number of entities within the Executive Branch, reducing costs and increasing the administration's efficiency. In early September, the Ministers of Finance, Planning and Administration Matters and the Counselor-General of the Republic submitted to the President of the Republic a Justification Statement, dated September 3, 1986, setting forth the basic principles and steps to be taken when implementing the reform (DOU-I, September 4, 1986). Following the Justification Statement, the President of the Republic signed three Executive Decrees, as follows:

Public Administration Office

On September 3, 1986, the President of the Republic signed Executive Decree No. 93.211, which creates the Public Administration Office of the Presidency of the Republic (SEDAP), which is in charge of establishing Executive policies on organization and modernization of the federal administration as well as controlling and hiring, training and allocating federal employees (DOU-I, September 4, 1986).

State Company Control

Also on September 3, 1986, the President of the Republic signed Executive Decree No. 93.216, which provides for certain control procedures to be observed by an entity within the Executive Branch. The procedures aim at giving the Office for the Control of State Companies (SEST) better control over the spending and investment policies of state companies, by determining that it

is mandatory to file with SEST, for review, their balance sheets, financial statements, performance, productivity and profitability reports, as well as any organizational and/or investments plans. Decree No. 93.216 also determines that special audits shall be made as required by SEST (DOU-I, September 4, 1986).

Counselor-General Office

On September 8, 1986, the President of the Republic signed Executive Decree No. 93.237, which structures and regulates the legal departments existing within the Executive Branch. Accordingly, all attorneys and their legal departments within the federal administration are subject to the Office of the Counsellor-General of the Republic. Decree No. 93.237 sets forth the jurisdiction of the Office of the Attorney-General of the National Treasury, and provides the rules and procedures to be followed in any dispute which must be resolved within the federal administration. Finally, the Decree also determines that all legal departments shall follow the policies and recommendations established by the Counselor-General of the Republic (DOU-I, September 9, 1986).

VI. SECURITIES COMMISSION INSTRUCTIONS

Margin Account

The Securities Commission (CVM) issued Instruction No. 51/86 in connection with margin account transactions. According to the Instruction, securities brokers and dealers may finance their clients' purchase of shares or lend their clients' shares for sale on the stock exchange. The Instruction contains 41 articles describing exactly what financial institutions are permitted and prohibited from doing in margin account transactions (DOU-I, June 12, 1986).

Financial Statements of Publicly-Held Companies

The Securities Commission (CVM) issued Instruction No. 53/86, which established procedures for the preparation and publication of Extraordinary Financial Statements of publicly-held companies authorized to operate by the Central Bank of Brazil. These procedures were established for the purpose of adaptation to the new monetary unit introduced by Decree-law No. 2.284/86 (DOU-I, July 7, 1986).

VII. COMMUNICATIONS ORDINANCES

Publication of Telephone Directories

The Minister of Communications issued Ordinance No. 207/86 which amends several provisions of Ordinance No. 189.83, which regulates the procedure for the publication of telephone directories. According to the new ordinance, publishing companies must demonstrate their good standing, including evidence of labor, social security and tax liabilities; evidence that their shareholding and decision-making control is held exclusively by Brazilian individuals or companies, allowing foreigners to hold an interest of up to thirty percent of the preferred shares of the company; have the financial capacity, and the financial, material and human resources of their own, or partially contracted with third parties, to ensure performance of a contract involving marketing, editing, industrial production and distribution of telephone directories (DOU-I, July 31, 1986).

Telephone Line Transfers

The Minister of Communications issued Ordinance No. 209/86 forbidding transfers of the right to use telephone lines throughout the Brazilian territory. From now on telephone lines will be transferred only if the user can prove an actual change of address (DOU-I, August 7, 1986).

The Minister of Communications then issued another ordinance which established exceptions to the new rule: court orders for the seizure of property, divorce, sale or disposal of real property and companies.

VIII. OTHER LEGISLATIVE AND ADMINISTRATIVE RULINGS

National Development Plan

The President of the Republic sanctioned Law No. 7.486 of June 6, 1986, approving the new government's guidelines for the National Development Plan for the Northeast (PND) for the period from 1986 to 1989. The Northeast Development Authority (SUDENE) shall enact the policy, strategy and programs for the development of the Northeast Region, and shall set up a plan for the continued development of the Northeast. On June 25, 1986, the President of the Republic sanctioned Law No. 7.499, approving

the plan's established priorities (DOU-I, June 26, 1986).

Manaus Free Trade Zone

The President of the Republic signed Decree No. 92.743 of June 3, 1986, extending, until July 31, 1986, the period for the Ministers of the Interior, of Finance, of Industry and Commerce, and of Planning to issue instructions regarding the implementation of new developments in the Free Zone of Manaus and in the West Amazon, as well as enabling existing developments to enjoy available tax incentive (DOU-I, June 4, 1986).

On September 9, 1986, the President of the Republic signed Executive Decree No. 93.241, which amends the provisions of Executive Decree No. 92.534, dated April 10, 1986, to provide for an increase of US\$ 60,000,000 in the overall import limit for the Manaus Free Trade Zone (the limit is now US\$ 610,000,000 for 1986). The Manaus Free Trade Zone is an area of free import/export trade with special tax exemptions, which was established in 1957 to create an industrial, commercial and agricultural center in the Amazon region (DOU-I, September 10, 1986).

National Petroleum Council

The President of the Republic sanctioned Law No. 7.487 of June 10, 1986, establishing the following wording for art. 14 of Decree-law No. 538/38, which organized the National Petroleum Council and defined its duties:

The National Petroleum Council is authorized to take all action deemed necessary to ensure true performance of the provisions of the laws and regulations on the matter, and may seize goods and close establishments and facilities of any kind if they are in violation of any such laws and regulations, and impose fines of up to five thousand times the updated value of the National Treasury Bond (OTN) in effect at the time of application of the fine, without prejudice to the applicable criminal action.

(DOU-I, June 11, 1986).

New Strike Law

The President of the Republic forwarded to Congress a bill of law on collective bargaining and the right to strike. The bill, which

was prepared by the Ministry of Labor one year ago, establishes that workers can only strike if they call a general meeting at least five days before the strike to examine the proposal. The general meeting must be attended by more than half of the members of the respective trade union. In addition, the workers must notify their employers and the Ministry of Labor at least seventy-two hours before starting the strike.

Employees to Share Profits

The Federal Senate approved Bill No. 138, sponsored by Senator Roberto Campos, dealing with the distribution of company profits to employees as a production incentive. This distribution, whether in cash or in shares, shall be voluntary and may not be incorporated in salaries or in individual or collective employment contracts. The respective amount shall be tax deductible. This bill will now be examined by the Chamber of Deputies.

Exemption for the Retired

The President of the Republic sanctioned Law No. 7.485 of June 6, 1986, determining that, those retired or receiving a pension from the National Social Security and Assistance System (SINPAS), as of July 1, 1986, will be exempt from payment of contributions to social security required under Article 2 of Decree-Law No. 1.910/81 (DOU-I, June 10, 1986).

Minimum Salary for Lawyers

Congress had approved a bill of law providing a minimum salary and a maximum workday (four hours as employees per day) for lawyers. However, in Message No. 320 of July 4, 1986, to Congress, the President of the Republic vetoed the entire bill because he considered it to be unconstitutional and contrary to the public interest (DOU-I, July 7, 1986).

Brazil-Argentina Integration Program

On July 29, 1986, the Government of the Federal Republic of Brazil and the Government of the Argentine Republic signed an Agreement for Brazil-Argentina Integration, as well as Protocols Nos. 1 to 12 on the following topics: capital goods, wheat, supple-

mentation of food supply, trade expansion, binational companies, financial matters, investment funds, energy, biotechnology, economic studies, immediate information and reciprocal assistance in the case of nuclear accidents and radiological emergencies, and aeronautical cooperation (DOU-I, August 7, 1986).

Trademark License Agreements and Patent Annuities

The President of the National Institute of Industrial Property (INPI) issued Normative Act No. 81/86 to institute a Simplified Procedure for Trademark Licensing, using a form of agreement attached to the Act. Submission of the agreement form, together with the articles of association or By-laws of the licensee and the trademark license form referred to in Normative Act No. 15/75, will expedite the procedure of approval of the agreement unless obstacles are found in the analysis of the case.

The President of the INPI also issued Normative Act No. 82/86 to regulate the payment of patent annuities, applications for patent reinstatement and the means for the reinstatement of patent applications. The Normative Act re-establishes the need to evidence the payment of annuities to the INPI and permits the owners of patents to prepay patent annuities.

Medication Control

The National Division of Sanitary Medication Control (DIMED) issued Ordinance No. 17/86, which establishes procedures to be adopted in the registration of products (drugs, medication, pharmaceutical products, diet products, and others) subject to DIMED control. According to the ordinance, in the case of drugs, medication and pharmaceutical inputs of foreign origin, the company must submit a copy or transcript of the registration in the country of origin. A report must also be submitted with the indications, counterindications and warnings submitted for registration in the country of origin. The ordinance also lists the documents required for the modification, revalidation or exemption of registration of a product, authorization for operation and enrollment of a company, as well as cancellation of authorization for operation (DOU-I, July 28, 1986).

Engineering and Technical Consulting

Under the terms of Executive Decree No. 64.345, dated April 10, 1969, the federal, state and municipal administrations, including the indirect administration, were permitted to contract for technical and engineering consulting services only with domestic companies. These companies were defined for such purposes as entities incorporated and with head office in Brazil, with shareholding control held by native Brazilians domiciled in the country and whose majority of its technical staff were either native or naturalized Brazilians. Contracting with foreign consulting companies was only allowed by special authorization from a Minister of State, provided there was no domestic company duly qualified to provide the services required. This restriction was recently revoked by the President of the Republic, after receiving Justification Statement No. 069, which was a request by the Ministers of Finance and Planning for revocation. The reason for the change is to permit substantial funds to be raised through the World Bank and the Inter-American Development Bank for use in certain public works in Brazil, subject to international bidding.

Natural Gas

The Minister of Mines and Energy issued Ordinance No. 1.061/86, which deals with the production, transportation, distribution, consumption, importation and exportation of natural gas. According to the ordinance, PETROBRÁS shall speed up its prospecting and extraction studies and activities in order to increase the availability and use of natural gas in Brazil (DOU-I, August 11, 1986).

National Program for Strategic Minerals

The Chamber of Deputies approved Bill of Law No. 6.777/85, sponsored by Deputy Marcos Lima, instituting a National Program for Strategic Minerals. Article 5 of this bill determines that the right to prospect and mine minerals that are considered to be strategic, as well as the production of concentrate, chemical products, metallurgical products or alloys and other by-products derived from such minerals, shall only be granted to mining companies in which the majority of the capital is controlled by native Brazilians or by companies having Brazilian stockholders. The bill also for-

bids the existence of shareholder agreements that inhibit or restrict the control of the development by individual or corporate Brazilians. This bill of law is now pending examination by the Federal Senate.

Scientific Expeditions

The President of the Republic signed Executive Decree No. 93.180 on August 27, 1986, which regulates scientific expeditions in Brazil. A scientific expedition is defined as the use of human and material resources for exploration or field activities within the Brazilian territory to collect data or materials to be used for study or research, excluding any other purpose. Article 3 establishes as mandatory: (i) Brazilian participation from the beginning until the end; (ii) Brazilian co-participation; and (iii) co-responsibility of a Brazilian institution in the event of foreign scientific expeditions within the national territory. The rules established by Executive Decree No. 93.180 are applicable to any expedition, whether undertaken by foreign individuals or entities, by international governmental organizations domiciled abroad, by exercising activities in Brazil, or by individuals or entities domiciled in Brazil, regardless of whether the expedition is in cooperation with foreign individual or entities. In the case of participation of foreign entities or individuals, and when the expedition is (i) to take place in national security areas, or (ii) to involve research of interest to national security, prior approval from the General Secretary of the National Security Council is required. The Executive Decree also lists all documents to be presented to the Ministry of Science and Technology for the authorization of any expedition. The Ministry shall authorize the transfer abroad of any material collected by the expedition. Regulations under Executive Decree No. 93.180 are to be enacted by the Ministry of Science and Technology (DOU-I, August 28, 1986).

Pollution Control

The National Environment Council issued Resolution No. 18/86, instituting the Program for the Control of Air Pollution by Automotive Vehicles (PROCONVE) for the purpose of: (a) reducing the levels of emission of pollutants by automotive vehicles, to safeguard the Air Quality Standards, especially in urban centers; (b) providing for national technological development in automobile en-

gineering and in testing methods and equipment for measuring pollutant emission; (c) creating programs for the inspection and maintenance of automotive vehicles currently in use; (d) making the population aware of the subject of air pollution by automotive vehicles; (e) establishing conditions for the evaluation of the results obtained; and (f) improving the technical characteristics of liquid fuels available to the national fleet of automotive vehicles, so as to reduce the emission of pollutants into the atmosphere (DOU-I, June 17, 1986).

Price Control

The Price Commission issued Resolution No. 187/86 in order to regulate the introduction and pricing of any new products or models sold on the domestic market. The resolution covers products that: (i) are new and are not produced in Brazil; (ii) are not produced as part of a company's line of products; (iii) have components with new technical and physical features which alter their output and performance; and (iv) were changed in their form, packaging, sales unit quantity, brand, fictitious name or other marketing aspect that affects their presentation. The sanctions of Delegate Law No. 4/63 shall apply to companies that launch new products or models without observing the new rules or that refuse to supply supplementary documentation, information and explanations (DOU-I, July 18, 1986).

Calculation of Inflation

The Minister of Planning issued Ordinance No. 94/86 which states that the effects of the compulsory loans instituted by article 5 of Decree-law No. 2.284/86 will not be taken into account by the Brazilian Institute of Geography and Statistics (IBGE) in calculating the general price index (DOU-I, July 30, 1986).

Rural Credit

The President of the Republic signed Decree No. 93.115 of August 14, 1986 which creates a Rural Development Fund (FDR) held by Banco de Brasil S.A., for the purpose of ensuring permanent and stable sources of financial support for rural activities. The decree also creates a Rural and Agroindustrial Credit Council (CCRA) to assist the National Monetary Council in the prepara-

tion, follow-up and implementation of the Consolidated Rural Credit Budget, which shall be approved before December 20 of each year by that Council, and shall contain the general program for selective investment in the rural sector (DOU-I, August 18, 1986 and August 20, 1986).

Inter-American Investment Corporation

The President of the Republic signed Executive Decree No. 93.153 on August 28, 1986, which approves the Agreement for Incorporation of the Inter-American Investment Corporation. The Agreement, which Congress had approved by way of Legislative Decree No. 13, dated June 30, 1986, was concluded in Washington, D.C., on November 19, 1984. The Corporation, which will divide its capital of US\$ 200,000,000 among its members, seeks to promote the economic growth of member States. This will be accomplished by stimulating the establishment, growth and modernization of private companies, especially small and medium-sized companies. These measures will complement the activities and policies of the Inter-American Development Bank (DOU-I, August 25, 1986).

Compulsory Loan

The Minister of Finance approved an opinion of the Attorney-General of the National Treasury to the effect that the compulsory loan instituted by Decree-law No. 2.288, of July 23, 1986, on the purchase of passenger and utility vehicles and on the consumption of gasoline and alcohol fuel is lawful and constitutional, and is not subject to the constitutional principle that it can only be charged in the fiscal year subsequent to the year in which it was introduced by law. The position upheld in the opinion is that the compulsory loan is not a tax but a forced contract of public law. The opinion is a statement of the Executive Branch, and is not binding on the Courts (DOU-I, September 3, 1986).

The Coordinator of the Tax System then issued Declaratory (Normative) Act No. 75/86, which states that the amount of the twenty-eight percent compulsory loan, charged on the consumption of gasoline and alcohol fuel, is not to be included in the basis of calculation of the FINSOCIAL and PIS/PASEP contribution, and is also not a part of the gross income of companies authorized to deal in fuel (DOU-I, September 11, 1986).

In Normative Instruction No. 115/86, the Secretary of Federal Revenue then determined that the compulsory loan will not apply to purchases of vehicles specifically designed or adapted for use by the handicapped, provided that the following requirements are met: (a) the purchaser proves to the manufacturer or dealer that he is handicapped and thus hindered from driving a normal vehicle; (b) the purchase invoice is issued in the name of the handicapped person; and (c) the vehicle is only delivered to the purchaser after being duly adapted (DOU-I, September 19, 1986).

Compulsory Loans to Form National Development Fund

The President of the Republic signed Decree-law No. 2.288 of July 23, 1986, creating the National Development Fund (FND). The FND is an autonomous government entity that provides funds for investments that further national development and private initiative in terms of organization and expansion of economic activities. The Decree-law also institutes a compulsory loan on sales of alcohol and gasoline for automotive vehicles and sales of passenger and utility automobiles. The amount of the compulsory loan is the equivalent of: (i) twenty-eight percent of the price of gasoline and alcohol fuel; (ii) thirty percent of the purchase price of new vehicles and used vehicles up to one year old; (iii) twenty percent of the purchase price of vehicles from two to four years old; and (iv) ten percent of the purchase price of vehicles from two to four years old. The compulsory loan will be repaid with a return equal to that on savings accounts, on the last day of the third year following the date of deposit of the loan. The repayment will be made in the form of quotas in the National Development Fund (DOU-I, July 24, 1986).

Brazilian Corn Program

The President of the Republic sanctioned Law No. 7.512 of July 7, 1986, instituting the National Corn Program (PROMILHO) for the following purposes: (a) to increase the production of corn in the entire Brazilian territory; (b) to encourage corn consumption, mainly as a substitute for wheat; (c) to improve the productivity of corn by intensive employment of technical assistance; and (d) to favor the establishment and expansion of industries that use corn in their products, in particular, products for human consumption (DOU-I, July 8, 1986).

Amendment to the Code of Civil Procedure

The President of the Republic sanctioned Law No. 7.513 of July 9, 1986, amending article 649 of Law No. 5.869/73 the Code of Civil Procedure. The amendment adds a provision forbidding the attachment of rural property with an area of less than one module (DOU-I, July 10, 1986).

Foreign Ownership of Real Estate

The President of the Republic signed Decree No. 93.075 of August 6, 1986, which delegates authority to the Minister of Finance, after hearing the relevant military authorities, to authorize the disposal, concession or transfer to foreign individuals or companies of real estate owned by the Federal Government and located within the frontier strip, within 100 meters of the sea coast or within a circumference of 1,320 meters of fortresses and other military facilities (DOU-I, August 7, 1986).

Anti-Trust Administrative Council on Economic Defense

The President of the Republic signed Decree No. 92.083 of August 7, 1986, dealing with the composition of the Administrative Council on Economic Defense (CADE) a collective decision-making agency of the Ministry of Justice, created by Law No. 4.137/62 for the purpose of determining and suppressing abuse of economic power and its effects on the public economy. CADE shall be made up of a President and four Council members, all appointed by the President of the Republic by indication of the Minister of Justice from among Brazilians over thirty years old, of recognized legal and economic knowledge, and of faultless reputation (DOU-I, August 8, 1986).

The Minister of Justice then issued Ordinance No. 454/86 approving CADE's new internal regulations (DOU-I, August 12, 1986).

Foreign Residents in Brazil

The National Immigration Council issued Resolution No. 10/86, establishing that the departure of a foreigner from the Brazilian territory for a period of not more than ninety days shall not affect the processing and granting of an application for extension

of a temporary visa if otherwise timely filed. This provision does not, however, authorize the foreigner to return to Brazil without obtaining a consular visa if required (DOU-I, June 11, 1986).

In Resolution No. 8/86, the National Immigration Council determined that the Minister of Foreign Affairs may grant temporary or permanent visas for purposes of uniting families to the following categories of foreigners that are dependents (i) of a Brazilian citizen, or (ii) of a foreign citizen of more than twenty-one years of age who is temporarily or permanently residing in Brazil: (a) single sons and daughters younger than twenty-one years of age; (b) father, mother, grandfather and grandmother older than sixty years of age; (c) father, mother, grandfather and grandmother younger than sixty years of age who have been proven incapable of engaging in remunerated work; (d) brother, sister, grandson or granddaughter, if an orphan, single and younger than eighteen; (e) the spouse of a Brazilian citizen or of a foreign citizen temporarily or permanently residing in Brazil; and (f) humanitarian cases. The Resolution also determines that permanent visas may be granted, for purposes of uniting families, at the discretion of the Ministry of Foreign Affairs, to foreigners who lived in Brazil on a permanent basis and then left the country for more than two years for post-graduate studies, professional training or research work (DOU-I, June 9, 1986).

Condominium Funds

The President of the Republic signed Decree-law No. 2.285 of July 23, 1986, extending to the condominium funds referred to in Article 50 of Law No. 4.728/65 (with the participation of individuals or entities resident or domiciled abroad), and to mutual investment funds and other entities organized abroad, the tax treatment provided for in Articles 2, 4 and 5 of Decree-law No. 1.986/82, if they comply with the rules and conditions to be established by the National Monetary Council. These rules and conditions include: (a) a minimum term for the foreign capital to remain in Brazil; (b) submission to treatment as foreign capital including the return on such capital; (c) diversified portfolios and investment limits; and (d) official authorization of the administrating entities. The payments on investments made in securities and bonds distributed by these condominium funds will be exempt from withholding tax. This Decree-law seeks to provide a new mechanism for foreign funds to enter the Brazilian capital market (DOU-I, July 24, 1986).

Brazil-United States Agreement

The President of the Republic signed Decree No. 92.885 of July 3, 1986, enacting the Agreement on Scientific and Technological Cooperation executed between Federal Republic of Brazil and the United States of America (DOU-I, July 4, 1986).

Counselor-General of the Republic

The President of the Republic signed Decree No. 92.890 of July 7, 1986, in connection with the Office of the Counselor-General of the Republic (CGR). The CGR is the highest office that provides legal assistance to the President of the Republic and is subject to the President's direct, personal and immediate supervision. The Office of the Counselor-General of the Republic shall have, *inter alia*, the following duties: (a) to assist the President of the Republic in legal matters by submitting opinions and studies, and suggesting rules, measures and guidelines; (b) to establish the uniform interpretation of the Constitution, laws, treaties and other normative acts adopted by the agencies and entities of the Federal Administration; and (c) to establish uniform concepts on federal administrative case law to resolve differences of opinion between the legal entities of the Government (DOU-I, July 8, 1986).

Brazilian Navigation Policy

The Minister of Transport issued Ordinance No. 492/86, to announce and submit to public comment and suggestions the Preliminary Proposal for the National Navigation and Merchant Navy Policy, which is part of the National Transport Policy. The new National Navigation and Merchant Navy Policy seeks mainly to expand domestic and international trade, and also to establish bases for the structuring and operation of the Brazilian Merchant Navy in Brazil and abroad and to make Brazilian navigation companies capable of maintaining adequate levels of efficiency, safety and reliability in their business—to thus ensure competitiveness on the domestic and foreign markets (DOU-I, August 26, 1986).

Civil Aviation Institute

The President of the Republic signed Decree No. 92.857 of June 27, 1986, creating within the basic structure of the Ministry

of Aeronautics a Civil Aviation Institute (IAC). The purpose of the new Institute is to coordinate the activities of specialized technical instruction, studies and research in the area of civil aviation. According to the decree, the Civil Aviation Institute will control the activities of the Integrated System for Control and Supervision of Civil Aviation (SINCONFAC) and the Brazilian Aeronautics Register (RAB) (DOU-I, June 30, 1986).

Foreign Movie Pictures

The National Cinema Council (CONCINE) issued Resolution No. 128/86, waiving the requirement that foreign motion pictures be copied in Brazilian laboratories if they are of recognized artistic and/or cultural value, and are to be distributed in a limited number of copies in Brazil (DOU-I, July 1, 1986).

White-collar Crimes

The President of the Republic sanctioned Law No. 7.492 of June 16, 1986 with some vetoes. This law defines crimes against the national financial system. For such purpose, financial institutions are defined as legal entities of public or private law, whose main or accessory activity is to raise, intermediate and invest third party funds, whether in Brazilian or in foreign currency; or the custody, issue, distribution, transaction, intermediation or administration of securities. Legal entities that raise or administer insurance, foreign exchange, consortia, capitalization or any kind of third party savings or funds are held equivalent to financial institutions, as are individuals that engage in any such activities, even if sporadically. Several articles of the bill that gave rise to the new law were vetoed by the President of the Republic (DOU-I, June 18, 1986).

IX. JUDICIAL AND ADMINISTRATIVE DECISIONS

Immunity from Jurisdiction

In the absence of the exceptions under article 31, (I)(A),(B) and (C) of the Vienna Convention, the silence of a diplomatic representative or of the foreign state itself in joining the proceedings shall not operate as a waiver of immunity from jurisdiction (Decision of the Federal Court of Appeals on Civil Appeal No. 9.697-1,

DOU, May 30, 1986).

Tax Liability

In the event of merger of companies, the acquiring company is liable for the taxes owed by the acquired company up to the date of the merger, and the successor shall pay the tax as if there had been no change in the acquired company. It is not possible to offset the profits of the acquiring company against the losses of the acquired company as they were absorbed together with the shareholders' equity (Decision No. 101-75.466 of the 1st Chamber of the 1st Taxpayers Council).

Rent Expenses

Rent expenses may only be deducted from the taxpayer's gross income if they were actually paid for the use or occupation of property used as the taxpayer's home. This is limited to the annual ceiling established by law (Decision No. 106-0.107 of the 6th Chamber of the 1st Taxpayers Council).

Income Tax Deduction

Medical, dental and hospital expenses may not be deducted from a taxpayer's gross income if covered by insurance policies or reimbursed by any entity (Decision No. 106.0.109 of the 6th Chamber of the 1st Taxpayers Council).

Travel Expenses

Foreign travel expenses of company directors are only deductible if such travel results in business of interest to the company (Decision No. 101-75.591 of the 1st Chamber of the 1st Taxpayers Council).

Civil Name as Trademark

With the authorization of the respective person or its direct successors, a civil name may be registered as a trademark. Any person entitled to use the same civil name may also use or register it as a trademark, if it is made sufficiently distinctive so as to avoid confusion with an already registered trademark and if there is no

case for unfair competition (Decision of the 4th Panel of the Federal Court of Appeals on Appeal in Writ of Mandamus No. 107.752 (DOU, June 12, 1986).

Accounting and Auditing Services

Companies that provide accounting and auditing services are entitled to pay the Municipal Service Tax (ISS) at a fixed rate based on the number of professionals, whether or not employed, and even if not all the partners are qualified to practice the profession (Decision of the 6th Chamber of the 1st Higher Civil Court of São Paulo in Appeal No. 305.606).

Exchange Rate Frozen at Cz\$ 13,77 for purchase and Cz\$ 13,84 for sale of US\$ 1.00.

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