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# LEGAL MEMORANDA

## BRAZIL

*The following is a summary of several legislative and administrative decisions of the Brazilian Government which effect foreign trade, investment, and travel in Brazil.*

### I. LEGISLATIVE AND ADMINISTRATIVE RULINGS

#### *Inter-Company Loans*

The Central Bank of Brazil issued Circular No. 900/84, establishing that financial institutions are not authorized by law to grant surety or *aval* guarantees for credit instruments that secure loans made between individuals or non-financial entities. Financial institutions also may not assume any other kind of co-obligation or intermediation in such transactions. The Central Bank considers engaging in such practices a serious violation, and will subject the institution to the penalties set forth in article 44 of Law No. 4.595/64 (DOU-I, December 3, 1984).

#### *Exemption from Import Duties and IPI Tax*

The President of the Republic signed Decree-Law No. 2.180 of December 4, 1984, granting an exemption from import duties and from the tax on manufactured goods (IPI) for equipment, machinery, vehicles, apparatus, instruments, parts, accessories, tools, and utensils imported by public utility companies that offer railway or subway transport services to passengers or cargo. The exemption applies provided that no similar manufactured goods are produced in Brazil, and provided that the imported items are to be used exclusively in such services (DOU-I, December 5, 1984).

#### *Coastal Shipping*

The President of the Republic signed Decree No. 90.603 of

December 3, 1984, authorizing the National Merchant Navy Authority - SUNAMAM to extend until December 31, 1985, the authorization that permits foreign vessels to engage in coastal shipping under charter by Brazilian companies. This extension applies exclusively to carriers of certain cargo specified in the decree (DOU-I, December 4, 1984).

### *New Rules for Informatics*

The President of the Republic issued new regulations in connection with the new Informatics Law (Law No. 7.232/84). The regulations were published in DOU-I of December 28, 1984. Decree-Law No. 2.203 of December 27, 1984, establishes that for purposes of qualification for the tax and financial incentives available under the Informatics Law, national companies are deemed to include publicly-held corporations that have their head offices located in Brazil. This requires, in effect, that decision-making and technological control must be permanently, exclusively, and unconditionally exercised by individuals who are domiciled residents of Brazil or by entities of public law. In addition, national companies are deemed to include those companies with at least two-thirds of their common shares, two-thirds of their preferred voting shares entitled to fixed or minimum dividends, and 70% of their total capital stock held by individuals resident and domiciled in Brazil and private companies organized with their head offices in Brazil that satisfy the requisites defined in article 12 of the Informatics Law for classification as a national company.

Decree No. 90.754 of December 27, 1984, provides for the organization and operation of the National Council on Informatics and Automation (CONIN). This entity will give the President of the Republic direct assistance in establishing the Brazilian Informatics Policy.

Decree No. 90.755 of December 27, 1984, subordinates the existing Special Informatics Office (SEI) to CONIN. SEI's activities shall henceforth be restricted to rendering technical and administrative support to CONIN, and to controlling the mechanism for protecting national companies, ensuring market reservation in informatics, and giving its prior opinion on imports of informatics goods and services for a period of eight years as of publication of the Informatics Law.

Decree No. 90.756 of December 27, 1984, approves the by-laws

of the Informatics Technology Center Foundation instituted by Law No. 7.232/84. This entity is subordinated to CONIN, organized for an indeterminate period of time, and is located in Campinas, State of Sao Paulo.

#### *Agreement for ALAI Tariff Reduction*

The President of the Republic signed Decree No. 90.782 of December 28, 1984, regarding the implementation of an agreement to provide for Regional Tariff Preferences within the area of the Association for Latin-American Integration. After July 1, 1984, all products (except those contained in the list of exceptions submitted by Brazil and attached to the Decree) imported from Argentina, Bolivia, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela will enjoy tariff preference consisting of a reduction of the tariffs of third countries. (DOU-I, January 3, 1985).

#### *Changes in Terms of Readjustable National Treasury Bonds*

The Minister of Finance issued Ordinance No. 242/84 revoking, as of January 1, 1985, the conditions for two and five-year Readjustable National Treasury Bonds (ORTN) established in Ordinance No. 299 of May 18, 1978. The new ordinance now authorizes the issue and placement of ORTNs, either to bearer or registered endorsable, for three and four years, with six-monthly payments of seven and eight percent annual interest, respectively. The interest rate for five-year ORTN was increased from eight to nine percent per annum and the two-year ORTN will continue to receive six percent annual interest paid every six months. (DOU-I, December 28, 1984).

#### *Amendments to Bankruptcy Law*

The President of the Republic sanctioned Law No. 7.274 of December 10, 1984, amending certain provisions of Decree-Law No. 7.661/45 which deals with bankruptcy and *concordata* (court-approved composition of creditors). Among other changes, the wording of article 173 was altered to include among the general creditors (regardless of filing or verification) those creditors that are listed by the debtor company in its request for *concordata*. The wording of article 175, paragraph 1, item 1, was also amended to

establish that a company in *concordata* must make cash deposits for installments that fall due, thus precluding the possibility of securing such payments by means of pledge or other collateral. Paragraph 6 of article 175 now provides for the application of inflation indexing from the due date of the first installment under the *concordata* if it falls due and is not deposited by the debtor company. If it is deposited, indexing and interest shall be the liability of the financial institution at which the deposit was made (DOU-I, December 11, 1984).

### *Income Tax Regulations for 1985*

The federal government made the following changes in the Income Tax Regulations (DOU-I, December 12 and 13, 1984):

(a) Decree-Law No. 2.182 of December 11, 1984, (i) establishing the tables for the withholding of income tax from salary and non-salary income in 1985; (ii) correcting by 160% the progressive income tax table for net income of individuals residing or domiciled in Brazil, as well as for other amounts expressed in cruzeiros in Brazilian tax legislation; (iii) determining the limits for tax deductions by individuals; (iv) providing a tax refund to companies for income taxes withheld "at source" or paid in advance; and (v) regulating tax treatment of futures transactions on foreign commodity exchanges:

b) Ordinance No. 229/84, establishing the following dates for the 1984 income tax returns to be filed: before March 22, 1985, for taxpayers with or without refund; and before April 26, 1985, for those that are exempt or absent abroad. The following individuals are obliged to file an income tax return for 1984 income: (i) those that earned taxable or non-taxable income in excess of Cr\$ 3,900,000 during 1984; (ii) those that on December 31, 1984, have property worth more than Cr\$ 60,000,000; (iii) those that have rural property that produced gross income of more than Cr\$ 25,000,000 in 1984; and (iv) those that have rural property with a total area of more than 1,000 hectares:

(c) Normative Instruction No. 123/84 approving the tables for the withholding of income tax at source on salary and non-salary income as of January 1, 1985.

### *Double-Taxation Treaty between Brazil and Italy*

The Minister of Finance issued Ordinance No. 226/84 to establish that dividends and profits under article 10, paragraphs 2

and 5, of the treaty between Brazil and Italy to avoid double taxation and income tax evasion, (enacted by Decree No. 85.985/81) and royalties, technical assistance, and technical service fees under article 12, paragraph 2(b) of the treaty, are subject to tax in Brazil at the rate of fifteen percent. The provisions of the ordinance will apply as from January 1, 1985 (DOU-I, December 13, 1984).

### *Double Taxation Treaty between Brazil and Norway*

In Ordinance No. 227/84, the Minister of Finance established that dividends, under article 10, paragraph 2, of the treaty between Brazil and Norway to avoid double taxation and the evasion of income and capital taxes(enacted by Decree No. 86.710/81, are subject to taxation in Brazil at the rate of fifteen percent, applicable as of January 1, 1985 (DOU-I, December 13, 1984).

### *Supplementary Income Tax*

The Secretary of Federal Revenue issued Normative Instruction No. 134/84, amending Decree-Law No. 2.073/83, which altered the Supplementary Income Tax. According to the new provisions, the supplementary income tax shall not apply to the profits of branch, agency, or representative offices in Brazil of companies domiciled abroad that are computed only when the profits are actually distributed. According to the instructions, the 1984 calculation basis includes distributed profits and dividends, while for 1982 and 1983 only remittances actually made are to be taken into account. For purposes of comparing the average capital registered in foreign currency, distributions are converted at the exchange rate shown on the form used to purchase the foreign currency. If no currency was purchased for the distribution, it shall be computed at the exchange rate in effect on the last day of the three-year period in which the distribution was made (DOU-I, December 14, 1984).

### *Tax on Communication Services*

By means of Decree-Law No. 2.186 of December 20, 1984, the President of the Republic dissolved the National Telecommunications Fund (FNT) and instead instituted a tax on communications services. According to the Decree-Law, the tax on communications services is assessed when the services are rendered to the public.

The rate of the tax is twenty five percent, is paid by the party that provides the service, and is to be recovered from the consumer. This tax is calculated on the basis of the service's price (namely the total amount paid by the user of the service) including the amount of the tax (DOU-I, December 21, 1984).

The Minister of Finance issued Ordinance No. 2/85, establishing that the tax on communications services must be paid by the last business day of the month subsequent to the month of payment for the services. The payment of the communications tax is to be made to Banco do Brasil S.A. by the party that rendered the services according to instructions that will be issued by the Secretary of Federal Revenue (DOU-I, January 9, 1985).

In addition, the Minister of Finance, the Minister in Charge of the Planning Office, and the Minister of Communication issued Inter-ministerial Ordinance No. 004/85, reducing the rates of the tax on communications services and adjusting the tariffs on the respective services to be taxed. The ordinance came into force on January 16, 1985, but is effective starting on January 1, 1985. The ordinance grants the benefit of a zero tax rate to telegram services, telecommunications services not open to the public, services and not subject to the public, and services not subject to fixed official tariffs, sporadic services, and videotext services (DOU-I, January 16, 1985).

### *Central Bank Resolutions*

At a meeting held on December 13, 1984, the National Monetary Council passed several decisions contained in resolutions and circulars issued by the Central Bank of Brazil, including: (a) Circular No. 902/84, approving supplementary rules for investment banks authorized to deal in foreign exchange; (b) Resolution No. 980/84, regulating leasing transactions and defining the authority and activities of companies authorized to engage in leasing transactions. Under the resolution, leasing transactions may only be carried out by companies whose main business purpose is leasing, and by financial institutions authorized to contract leasing transactions with the seller of the item or with companies associated with such seller. The Central Bank also issued Circular No. 903/84, establishing that the rules for foreign currency deposits under Circular No. 600/81 are to remain in effect for leasing companies and financial institutions authorized to deal in leasing; (c) Resolution No. 981/

84, establishing that the Central Bank may set minimum standards for internal controls and may determine the forms for providing and disclosing information on transactions with fixed-income bills; (d) Resolution No. 983/84, establishing that capital goods may be leased if they enter the country in accordance with the rules that apply to imports, even if the Foreign Trade Department of Banco do Brasil (CACEX) objects to the nature of the transaction, or the merits, suitability, and use of the item to be leased; (e) Resolution No. 984/84, increasing the limits established on foreign exchange for individuals traveling abroad in all countries outside of Latin America to U.S. \$1000.00 and in all Latin American countries to U.S. \$500.00; (f) Resolution No. 987/84, establishing that credit, financing, and investment companies may invest funds derived from credit assignments in federal government bonds; (g) Resolution No. 988/84, authorizing bond and securities trading companies to administer third party assets and to act as fiduciary agent for debenture holders, with due regard for current regulations; (h) Resolution No. 990/84, revoking Resolution No.796/83, which permitted the release of up to five percent of the deposits subject to compulsory deposit by commercial banks for subscription of convertible debentures or new shares in private national companies, excluding financial institutions, up to the limit of forty nine percent of the capital of the companies in which such subscription was made; (i) Resolution No. 992/84, establishing that foreign currency deposits already made, or to be made before December 31, 1984, under Circular No. 2309/74, may only be released according to the following schedule: two percent in January 1985; five percent in February 1985; nine percent in March 1985; fourteen percent in April 1985; and twenty percent in May 1985.

#### *New Securities Commission Requirements*

The Securities Commission (CVM) issued Instruction No.41/85, amending certain provisions of CVM Instruction No. 32/84, in connection with the registration of companies for trading of their securities on stock exchanges and the over-the-counter market. According to the new instruction, the CVM now requires publicly held companies to also disclose the following information reports: the balance of monetary correction of fixed assets and shareholders' equity; the result of equity accounting in investments in associated and controlled companies; and the amount of income tax provision (DOU-I, January 11, 1985).



*Import Regulations*

The Foreign Trade Department (CACEX) issued Communique No. 115/85 to amend certain provisions of CACEX Communique 56/83 (dealing with the administrative rules regarding Brazilian imports). The following imports will now be examined for the existence of similar domestic products: (a) imports that enjoy tax benefits (tax reduction or exemptions); (b) imports made by the government, including supervised foundations, whether state or municipal; (c) temporary imports of goods requiring direct or indirect payment to another country. No prior examination will be required for imports that are made with foreign financing for terms of 360 days or more and which are intended as foreign capital investments in goods with funds derived from foreign currency investments or loans, and for imports made for leasing. These imports are, however, subject to examination by CACEX as to the nature of the transaction, and the merits, suitability, and the proposed use of the imported goods (DOU-I, January 4, 1985).

*INCRA and the Consolidation of Agrarian Legislation*

The President of the Republic signed Decree No. 90.697 of December 12, 1984, dealing with the basic structure of the National Institute of Settlement and Agrarian Reform (INCRA). The established purpose of INCRA is: (a) to promote and implement agrarian reform in order to correct the agrarian structure of Brazil and make it conform with the interests of economic and social development; (b) to promote, coordinate, control, and carry out settlement projects; and (c) to cooperate with state and territorial governments in connection with the implementation of the National Land Administration Policy Program (DOU-I, December 13, 1984).

Ordinance No. 014-MEAF/84 published the first part of a bill consolidating agrarian legislation prepared by the Extraordinary Ministry for Land Administration Affairs. The bill proposes a land statute to consolidate the main agrarian legislation and also introduces some innovations. The document is divided into seven books: preliminary provisions; public and private rural land; agrarian reform and rural development policy; agrarian contracts; agrarian taxation; agrarian procedure and process; and final and temporary provisions (DOU-I, January 4, 1985).

*Three Year Moratorium on New Insurance Companies*

The Minister of Finance issued Ordinance No. 234/84, suspending the granting of any new authorizations for the operation of insurance companies for a period of three years (DOU-I, December 20, 1984).

*Foreign Civil Aircraft*

The President of the Republic signed Decree No. 90.801 of January 11, 1985, establishing procedures for foreign civil aircraft that are not in regular air service to enter, or fly over, Brazilian territory (DOU-I, January 14, 1985).

*Air Freight Agencies*

The Director General of the Civil Aviation Department issued Ordinance No. 294/SPL/84 to supplement Ordinance No. 221/84 dealing with regulations for the operation of air freight agencies. According to the supplemental regulations, the period for existing agencies to comply with the requirements of Ordinance No. 221/84 was extended until March 1, 1985. Air freight agencies with foreign capital can nationalize four-fifths of such capital upon increasing their capital by stock subscription. They may also keep those foreign officers that were already in Brazil on the date of issuance of Ordinance No. 221/84. Local air freight agencies with the same name as their parent companies abroad must make a distinction by an addition to their name that identifies them as companies operating in Brazil (DOU-I, December 20, 1984).

*Foreign Air Transport Companies*

The President of the Republic signed Decree No. 90.802 of January 11, 1985, regulating the procedure for granting authorization to foreign companies engaged in air transport and related services to operate in Brazil. Foreign companies engaged in regular or occasional air transport must obtain the prior authorization of the Brazilian government to: (a) operate in Brazil, when designated under bilateral agreements or, in the absence thereof, when there is a unilateral interest in such operation; (b) open agencies, branches offices, or other establishments or maintain agents for sales of transport or cargo or for publicity if the companies do not

operate in Brazil; (c) maintain a permanent representative or attorney-in-fact if the company does not operate in Brazil; and (d) maintain a general sales agent in cities where the company's aircraft do not land regularly provided the company is designated and authorized to operate in Brazil (DOU-I, January 14, 1985).

### *Reduction of IPI Tax Rates*

The President of the Republic signed Decree No. 90.815 of January 16, 1985, reducing the rate of the tax on manufactured products for a series of products classified in the table approved by Decree No. 89.241/83 (DOU-I, January 17, 1985).

### *Income Tax Exemption on Corporate Sales of Real Property*

The period for the sale of real property received by companies from individuals for payment of capital in such companies and with exemption from income tax has been extended to September 30, 1985, in accordance with Decree-Law No. 2.232 of January 21, 1985, which altered the wording of article 5 of Decree-Law No. 1/950/82 (DOU-I, January 23, 1985).

### *Tax Incentives for Exports*

The Coordinator of the Tax System issued Declaratory Act No. 1/85 to establish that the tax incentive granted to trading companies under item 2 of Ordinance No. 191/84 (referring to the determination of gross sales revenues on exports enjoying incentives) consists of the exclusion from the net profit of the year, on determining the taxable profits, of an amount equal to the difference between the value of local products acquired on the domestic market and the FOB value in Brazilian currency of export sales of these same products during the base period (DOU-I, January 22, 1985).

## II. JUDICIAL AND ADMINISTRATIVE DECISIONS

### *Ratification of Foreign Court Decision*

If the parties submit a dispute to an arbitration tribunal and do not contest the arbitration award before it becomes enforceable, there is no violation of the right of defense (Decision of the Fed-

eral Supreme Court on Foreign Country Decision No. 3.236).

#### *Default in Payment of Public Works*

If the municipal government refuses to pay for public works that it ordered and accepted, it is committing a contractual default subject to full inflation indexing (Decision of the 1st Panel of the Federal Supreme Court on Extraordinary Appeal No. 103.503).

#### *Income Received Abroad*

Upon evidence that salary income received abroad by Brazilians who elected to continue as Brazilian residents was paid by a Brazilian company, proof of actual transfer of such income to Brazil cannot be required for recognition of non-taxation of such income (Decision No. 104-4.092 of the 4th Chamber of the 1st Taxpayers' Council).

#### *Taxation of Foreign Freight Charges*

The withholding of income tax at source applies to the freight charges indicated on the exchange contract and earned by a foreign company for the transport of goods imported at CIF or C&F value, if the exporter has assumed the commitment to deliver the goods at the establishment of the importer, even if payment is made directly by the importer to the foreign exporter (Decision No. 104-3.753 of the 4th Chamber of the 1st Taxpayers' Council).

#### *Taxation of Capital Refunded to Stockholders*

If a company, during the five years following capitalization of profits or reserves, refunds capital to its stockholders by means of a capital reduction, the refunded capital will be treated as a profit or dividend distribution and will thus be taxed as income received by such stockholders. A capital reduction will also be deemed to have occurred if the company acquires its own stock without having the necessary reserves in its stockholders' equity (Decision No. 104-4.201 of the 4th Chamber of the 1st Taxpayers' Council).

#### *Taxation of Foreigners Resident in Brazil*

During the first five fiscal years subsequent to the year in

which a foreigner transfers his residence to Brazil, the income he earns from assets and property located abroad is not taxable in Brazil provided that he included it in his income tax return for the year after his transfer to Brazil (Decision No. 104-3.125 of the 4th Chamber of the 1st Taxpayers' Council).

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