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shall be brought before civilian magistrates for their trial.

DABINOVIC & ASOCIADOS
BUENOS AIRES, ARGENTINA

BRAZIL

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

I. LEGISLATIVE AND ADMINISTRATIVE RULINGS

Cooperation between the United States and Brazil

Secretary of State George P. Shultz visited Brazil in February, 1984. In response to his visit, five working groups were organized. These working groups conducted meetings for the purpose of analyzing the possibility of increased cooperation between Brazil and the United States in the fields of economics, industrial and military interaction, nuclear energy, science and technology, and space activities. Appropriate reports were prepared by each working group, setting forth its respective views. In addition, two protocols were signed on the occasion of Mr. Shultz's visit regarding the development of two major hydroelectric plants in the State of Goiás. One plant will be developed in Santa Isabel on the Araguaia River, and the other will be developed in Sao Felix on the Tocantins River. It appears that such protocols are actually preliminary contracts between Allis Chalmers and Combustion Engineering, on the one hand, and Eletrobrás and its subsidiaries, Eletronorte and Furnas, on the other. Mr. Schultz' visit was generally considered to be beneficial and should lead to increased business opportunities involving the two countries.

Assignment for Work Abroad

The President of the Republic signed Decree No. 89.339 on January 31, 1984, to regulate several provisions of Law No. 7064/82 in connection with employees that are transferred to work in another country. According to the new decree, an employee hired in Brazil or transferred by a company engaged in engineering, consulting, design, construction, assembly, management and similar

services, while assigned to work abroad, will be able to convert and remit his compensation in Brazilian currency to his foreign workplace. These remittances are to be made through a bank authorized to deal in exchange upon the written instructions of the employee or his attorney-in-fact, supported by a statement from the employer as to the amount of compensation paid to the employee, the place where he is working abroad and the employee's Work Card number and taxpayer number. These remittances will be subject to the control of the Central Bank of Brazil (DOU-I, February 1, 1984).

Bonded Warehouse for Exports

The Secretary of Federal Revenue issued Ordinance No. 58/84 which delegates authority to the Federal Revenue Officers and Inspectors to: (a) extend the period during which goods may remain stored in public warehouses to three years under the system of bonded warehousing for exports and (b) authorize goods deposited under said system to be returned to the establishment of the depositor for adaptation to the foreign market requirements referred to in item 21 of Ministry of Finance Ordinance No. 541/77 (DOU-I, January 31, 1984).

New Regulations for Publicly-Held Companies

The Securities Commission (CVM) issued CVM Resolution No. 15 on January 17, 1984, revoking former CVM Resolution No. 13 of October 15, 1981. The CVM also issued Instruction No. 30 on January 17, 1984, to amend some provisions of CVM Instruction No. 1 of April 27, 1978. Accordingly, the revaluation reserves established as a result of the revaluation of the fixed assets of publicly-held companies can now be used for any purpose permitted by law without restriction (DOU-I, January 26, 1984).

The CVM then issued Instruction No. 31/84 regarding the disclosure and use of information on the relevant acts or facts of publicly-held companies. Accordingly, relevant acts or facts are deemed to be any resolution passed by a general meeting or by the management of a publicly-held company, and any occurrence in the company's course of business that exerts considerable influence on (i) the quotation of the securities of the company, (ii) investor decisions to trade the company's securities, or (iii) decisions by investors to exercise any rights as holders of securities issued by the

company (DOU-I, February 14, 1984).

Taxation of Savings Accounts

The Coordinator of the Tax Collection System issued Declaratory Act No. 03/84 establishing that individuals who have more than one savings account and who want to opt for taxation exclusively at source under item 5 of Interministerial Ordinance No. 188/83 must make prepayments of the withholding tax due on the interest and dividends credited to their savings accounts over the year. These prepayments are to be made before the last business day of January, April, July and October of each year by means of a duly completed Federal Revenue Collection Document (DARF). (DOU-I, February 9, 1984).

Taxation of Fixed-Income Bills

The gains made on short-term fixed-income bills were previously subject to income tax of 4 percent until the enactment of Decree-law No. 2065 of October 26, 1983, which raised the tax rate to 8 percent to be withheld as an advance on the overall income tax due under the income tax return. The Minister of Finance has now issued Ordinance No. 11/84 to establish that those individuals who received earnings on fixed-income bills for less than 90 days in base year 1983 and did not have any income tax withheld when such earnings were credited or paid, may opt for taxation exclusively at source under Article 2 of Decree-law No. 2065/83, by paying the tax at the following rates: (i) 10 percent for the income earned before June 9, 1983 and (ii) 4 percent for the earnings made after June 9, 1983. The tax is to be paid before the individual files his income tax return for 1984 and not later than March 23, 1984 (DOU-I, February 23, 1984).

Price Control

Price control has been imposed and lifted in Brazil several times. In 1975, price control was lifted, only to be re-imposed in 1980 with the option for the Price Commission (CIP) to release certain companies from price control depending on the economic policy adopted by the federal government. Price control was reconfirmed in 1981 and price adjustments were limited to 80 percent of the variation of the face value of Readjustable National Treasury

Bonds (ORTNs) in 1983. Presently, by means of CIP Resolution No. 162/84, the Price Commission determined that companies that manufacture products and render services specified in the list attached to the Resolution may only adjust their prices with the express prior authorization of CIP. The products and services contained in the list include metallic minerals, non-metallic minerals, paper, cellulose and rubber, food and beverages, hygiene, cleaning and textile articles, trade and transport services, automotive industry products, fertilizers, electro-electronic products, petrochemical, chemical and pharmaceutical products. Any request for a price adjustment must be supported by the latest balance sheet of the company (DOU-I, February 24, 1984).

II. JUDICIAL AND ADMINISTRATIVE DECISIONS

Exchange Correction on Foreign Loans

The Judge of the 3rd Public Finance Court of the State of Rio Grande do Sul, in the appeal on execution No. PG 224/83, released Pedrizzi Materiais de Construção Ltda. from the payment of exchange correction on a cruzeiro loan with an exchange parity clause, consisting of the onlending of a foreign loan taken by Banco do Estado do Rio Grande do Sul under Central Bank Resolution 63. Based on the "theory of unforeseeability" ("rebus sic stantibus"), the plaintiff was sentenced to pay only monetary correction based on the variation of the Readjustable National Treasury Bond (ORTN) plus normal interest.

Surety in Bankruptcy

Brazilian Bankruptcy Law states that when a company is declared bankrupt or obtains a "concordata", (analogous to Chapter 11 relief from creditors), its debts in foreign currency are translated into "cruzeiros" and any exchange risk is borne by the creditor. Cases have been brought before the courts by those that guaranteed debts of companies later declared bankrupt or that obtained "concordata" to the effect that their liability for the guarantee given should not exceed that of the primary obligor, i.e. the guarantee should also benefit from the provision of the Bankruptcy Law that converts foreign debts into "cruzeiro" debts, at the "cruzeiro" rate prevailing on the date of the bankruptcy or the "concordata". A recent decision by the Brazilian Supreme Court which

put an end to these attempts, held: "A surety agreement binds the guarantor and obliges him to fully satisfy the payments he guaranteed; the personal benefits extended to a bankrupt party do not extend to the surety. Accordingly, the rules established in art. 213 of the Bankruptcy Law, determining that foreign currency credits are to be converted into Brazilian currency at the exchange rate prevailing on the day the bankruptcy was decreed, do not apply to the surety. The bankrupt's foreign currency debt, guaranteed by a surety agreement, will be converted into Brazilian currency according to the general rule of application of the exchange rate prevailing on the date of actual payment" (Decision of the Federal Supreme Court on special appeal in Extraordinary Appeal No. 94.203-3).

Offset of Losses

The interpretation given to Article 247 of the Income Tax Regulations (Decree No. 58.400/66) has been held to be reasonable; the mere existence of reserves or retained earnings, hinders any offset of tax losses against the profits earned, regardless of the time at which they were constituted (Decision of the 1st Panel of the Supreme Federal Court on Extraordinary Appeal No. 96.615).

Remittance of Fees for Services

Notwithstanding the position that prevails in Brazilian case law since the enactment of Decree-law No. 1418/75 in regard to the applicability of income tax to remittances of foreign exchange to other countries to pay for technical, administrative and similar assistance derived from Brazil; in regard to legal entities this position should not extend to the case which dealt with fees for medical services and supply of personal items that were indispensable for a youth suffering from a mental deficiency to remain and be fed in a specialized establishment (Decision of the 6th Panel of the Federal Court of Appeals on appeal in writ of security No. 95.637).

Registration with CRTA

If a company engages in financial activities that are typical of holding companies, such as planning, organization, coordination and command of associate companies, with the distribution and receipt of profits besides the administration of personal assets, it

must register with the Regional Council of Administration Technicians (CRTA), as provided for in articles 2 (b) and 15 of Law No. 4769/65 (Decision of the 5th Panel of the Federal Court of Appeals on appeal in writ of security No. 96.621).

Deduction of Royalties

Law No. 4506/64 was a general law regarding income similar to Law No. 3470/58; it was not specially designed to discipline foreign capital and remittances abroad. It was silent concerning royalties paid to parties domiciled in Brazil so as to allow the deduction of the expense regardless of the restrictions for payments of royalties to residents of other countries. This signifies that it was intended to make a different distinction than Law No. 3470/58. Furthermore, it dealt with a subject that was polemic under the previous legislation, indicating that the silence of the legislature can be interpreted as an option for the exclusion of payments of royalties to parties residing in Brazil, as in the present case (Decision of the Federal Court of Appeals on Civil Appeal No. 59.884).

Successor Not Liable for Tax Penalty

A fine of a punitive nature cannot be demanded from the successor of the taxpayer, as the law holds the successor liable only for the payment of taxes owed by the taxpayer and fines levied for default (Decision of the 5th Panel of the Federal Court of Appeals on Civil Appeal No. 83.982).

Period of Service of Employee-Director

For purposes of calculating the indemnity due an employee for indirect termination, the period during which he held a position of director is included in his period of service. His salary is considered to be the highest remuneration he received as an employee in the position he held or, if such position has been abolished, the remuneration that he would have received for an equivalent position (Decision of the 1st Panel of the Federal Supreme Court on Extraordinary Appeal No. 101.060).

Transfer of Goods - ICM Tax

The remittance of goods from one commercial establishment

to another of the same taxpayer within the same state does not give rise to liability for the tax on the circulation of goods (ICM) (Decision of the 7th Chamber of the Second Instance Court of São Paulo on Appeal No. 29.353).

Excess Remuneration for Directors

Any excess remuneration for directors cannot be considered as a profit distribution as it is not a profit but an expense (Decision of the 4th Panel of the Federal Court of Appeals on Civil Appeal No. 55.400).

PINHEIRO NETO - ADVOGADOS
SÃO PAULO, BRAZIL

COLOMBIA

The following is a brief summary of recent legal developments in Colombia regarding activities of foreign enterprises and individuals.

I. GOVERNING LAW IN LOAN AGREEMENTS

Decree 222 of 1983, adopted pursuant to Law 19 of 1982, which governs public sector contracts, opened up the possibility of foreign law and jurisdiction in public sector loan agreements where the agreement in question is to be "verified" outside of Colombia (section 239). This departure from recent Colombian policy remained somewhat obscure, as it failed to specify when a contract is "verified". There was some speculation that the restrictive terms of the Decree meant that foreign law could be stipulated only in connection with bond issues and not with regular unsecured agreements.

Decree 2875 of October 13, 1983, has clarified the position in a manner favorable to foreign law. Section 2 of the decree is of sufficient importance to be quoted *in extenso*:

For the purposes of section 239 of Decree 222 of 1983, it is understood that the execution of loan agreements is verified in such country where the essential obligations of the parties are to be undertaken, that is to say the provision of funds by the lender and repayment by the borrower.