1. FOREIGN CAPITAL IN BRAZIL

Foreign capital in Brazil is governed by Laws Nos. 4131 (the Foreign Capital Law) and 4390 of September 3, 1962 and August 29, 1964, respectively. Both laws are regulated by Decree No. 55762 of February 17, 1965, and have been amended.

According to Law 4131/62, foreign capital is considered to be "any goods, machinery and equipment that enter Brazil, with no initial disbursement of foreign currency, for the production of goods and services, as well as any funds brought into the country for investment in economic activities, provided that in both cases they belong to individuals or legal entities resident, domiciled or headquartered abroad."

There are two official exchange markets in Brazil, both of which are subject to the Central Bank of Brazil regulations, and operate at floating exchange rates:

(a) the free commercial/financial exchange rate market, which is reserved basically for (i) trade-related transactions (import and export); (ii) foreign currency investments in Brazil; (iii) foreign currency loans to residents in Brazil; and (iv) other transactions involving remittances abroad that are subject to preliminary approval of the Brazilian monetary authorities; and

(b) the tourism exchange rate market, which was initially instituted for the tourism industry, and later expanded to cover certain other transactions. Applicable laws set out the types of transactions that qualify for this market.

While both markets operate at floating rates freely negotiated between the parties, the key distinction between them is that (i) the commercial/financial exchange market is restricted to transactions that in certain cases require preliminary approval of the Central Bank; and (ii) the tourism exchange market is open to transactions that do not require such approval.

Exchange transactions are effected by means of exchange contracts, and may be divided into transactions entailing the inflow of foreign capital, and transactions entailing the outflow of foreign currency.

Effective from February 1, 1999, the exchange positions on the free and floating exchange rate markets were unified for financial institutions, according to Central Bank Resolution No. 2588 of January 25, 1999. Resolution 2588/99 may be viewed as the Central Bank's first step towards unification of the free and floating exchange rate markets.

1.1 Restrictions on Foreign Investment

Participation of foreign capital in the following activities is prohibited:

- nuclear energy;
- health services;
- the ownership and management of newspapers, magazines and other publications, and of television and radio networks;[1]
- the ownership of property in rural areas and of businesses abutting on international borders;
- post office and telegraph services;
- domestic airline concessions; and
- the aerospace industry.

There are also certain restrictions on participation of foreign capital in financial institutions, which can, however, be lifted in the national interest. Supplementary legislation must still be enacted to regulate this matter, including for insurance companies.

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[1] *Constitutional Amendment Bill ("PEC") No. 203/95 was approved in the first round of voting of the House of Representatives plenary session on December 11, 2001. This bill seeks to change the wording of article 222 of the Federal Constitution. Under this article's proposed wording, it will be mandatory that at least 70% of the voting capital of newspaper and radio broadcasting companies belong, directly or indirectly, to native Brazilians or persons naturalized for over 10 years, foreigners being entitled to hold up to 30% of the capital of such companies.*

As a result of the constitutional reform mentioned below, Brazilian companies, even when controlled by aliens, can acquire, commercially exploit and lease rural land.

Effective from March 31, 2000, foreign investments in the domestic securities market are channeled through a single fixed- and variable-income investment system, where foreign funds remitted by non-resident investors can be invested in the financial and capital market instruments and vehicles available to resident investors.

The 1995 constitutional reform had the following main effects on the economic sector: (a) it eliminated the concept of *Brazilian company with domestic capital*, and reestablished the traditional concept of Brazilian company as a company that is organized pursuant to Brazilian law, and headquartered and managed in Brazil; (b) it allowed private companies to operate telecommunications, sound or sound/image broadcasting services either directly or through concession, authorization or licensing; (c) it eased the government monopoly, allowing private capital to be contracted to prospect for, research, refine, trade or transport petroleum and explore gas pipelines; (d) the various Brazilian states were allowed to operate, either directly or via concession, piped gas services; and (e) constitutional restrictions on offshore companies engaging in cabotage (coastal navigation) services were lifted. Ordinary law must now be enacted to regulate these various areas.

Brazilian companies may request and obtain a permit to operate in the mining sector, even when controlled by a foreign company.
Law 9074/95 provided that the Concessions Law (Law 8987/95) applies to the participation of private companies in the generation and transmission of electric power as well as in the operation of customs posts and terminals, highways and dams.

1.2 Registration of Foreign Capital

Foreign capital must be registered with the Central Bank through the Electronic Registration System – Foreign Direct Investment (*Registro Declaratório Eletrônico – Investimento Externo Direto* – RDE-IED) Mode.

The registration of foreign capital is required when the commercial/financial exchange rate is to be used for the remittance of profits abroad, the repatriation of capital, and the registration of reinvestments.

Investments will always be registered in the foreign currency in which they are actually made, or in Brazilian currency, if the funds are derived from a non-resident account properly kept in Brazil.

1.3 Currency Investments

No preliminary official authorization is required for investment in currency. The investment to subscribe for capital or to buy a stake in an existing Brazilian company will be remitted to Brazil through any banking establishment authorized to deal in foreign exchange. However, to close the corresponding exchange transaction, the Brazilian investee-foreign investor identification number must be duly entered in the RDE-IED Mode.

Registration of the investment must be effected within 30 days after the date of the corresponding event, on the basis of the information provided by the representative of the Brazilian investee and/or foreign investor through the RDE-IED Mode.

Registration of foreign investments originating from a non-resident account properly maintained in Brazil will be made in Brazilian currency. Transactions relating to such investments will be made through the non-resident account, and the corresponding investment registration will be updated through the RDE-IED Mode.

1.4 Investment by Conversion of Foreign Credits

Conversion into investment of foreign credits duly registered in the RDE-IED Mode is not conditional on the Central Bank's preliminary authorization. After the credit characteristics and the creditor's statement

consenting to such conversion are provided to the investee, a token currency exchange transaction must be entered into, representing the purchase and sale of foreign currency.

Conversion into investment of credits not registered in the RDE-IED Mode requires the Central Bank's preliminary authorization.

1.5 Investment by Import of Goods without Exchange Cover

Investment by import of goods without exchange cover as contribution to corporate capital does not require the preliminary approval of the Central Bank.

The goods, machinery and equipment must be intended for production of goods or rendering of services. In the cases of both imports of used goods and imports backed by tax incentives, such goods must have no Brazilian counterpart. Second-hand goods must be used in projects fostering the economic development of Brazil.

Once the imported goods have been cleared by customs, the Brazilian company will have 90 days to register the corresponding investment through the RDE-IED Mode.

With respect to intangible goods, registration of the foreign investment will require the Central Bank's preliminary approval.

1.6 Remittance of Profits and Treaties to Avoid Double Taxation

There are usually no restrictions on the distribution and remittance of profits abroad. Profits and dividends declared and distributed as from 1996 are exempt from income tax.

Brazil has signed double taxation treaties with the following countries: Germany, Argentina, Austria, Belgium, Canada, China, South Korea, Denmark, Ecuador, Spain, the Philippines, Finland, France, the Netherlands, Hungary, India, Italy, Japan, Luxembourg, Norway, Portugal, the Czech Republic, Slovakia and Sweden.

1.7 Reinvestment of Profits

According to the Foreign Capital Law, reinvestments are profits "made by companies established in Brazil and allocated to persons or companies resident and domiciled abroad, which have been reinvested in the company that produced them or in another sector of the domestic economy."

Should the foreign investor decide to reinvest rather than remit profits, such profits must be registered as foreign capital, along with the original investment, through the RDE-IED Mode.

1.8 Repatriation

Foreign capital registered with the Central Bank may be repatriated at any time without preliminary authorization. Remittances in excess of the registered amount will be considered capital gains for the foreign investor, and are thus subject to 15% withholding income tax.

1.9 Remittances Abroad

Remittance of funds abroad in foreign currency at the commercial/financial exchange rate is restricted when such funds are not registered with the Central Bank, since the remittance of profits, repatriation of capital, and registration of reinvestment are all based on the amount of foreign investment registered.

The international transfer of funds in Brazilian currency between residents (including subsidiaries of foreign companies) and non-residents, provided that the transactions are carried out through banks authorized to deal in foreign exchange in Brazil, does not require prior approval.

Local currency transferred abroad is converted into foreign currency through a number of mechanisms, one of them being interbank transactions on the tourism exchange market.

The remittance of foreign currency abroad for investment purposes (up to US$ 5 million per year) is free from registration requirements. Transactions in excess of such value require preliminary approval of the Central Bank. In any event, it is required that remittances be made on the tourism exchange market, and carried out through banks authorized to deal in foreign exchange in Brazil. Certain formalities have to be complied with.

1.10 Transfer Abroad of Investments in Brazil

The equity interest owned in a Brazilian company by a foreign investor may be sold abroad, with no tax implications in Brazil, irrespective of the price paid. In this case, the foreign purchaser, by its Brazilian-resident representative, must enter its data in the RDE-IED Mode for subsequent registration of its acquisition. The foreign seller must concurrently update its registration with the Central Bank through the RDE-IED Mode to reflect cancellation of the amounts relating to the equity interest sold. This registration is essential to allow the new investor to remit/reinvest profits and to repatriate capital through the commercial/financial exchange rate.

1.11 Foreign Loans

Pursuant to Central Bank Resolution No. 2770 of August 30, 2000 and Circular No. 3027 of February 22, 2001, the financial conditions underlying a foreign loan transaction between persons or companies resident or domiciled in Brazil and persons or companies resident or domiciled abroad must be submitted to the Central Bank for registration, as this transaction entails the inflow of foreign capital into Brazil. Registration is made in the RDE-IED Mode, specifically through the Financial Transactions Registration Mode (*Módulo de Registro de Operações Financeiras* – ROF). The Central Bank's preliminary approval is not required for such registration, which is automatically granted—provided that the general conditions of the transaction are in accordance with the Central Bank rules. Noncompliant applications will be submitted for review to the Foreign Capital and Currency Exchange Department (DECEC), which will have five days to determine whether any changes are necessary. If DECEC fails to express its views within such five-day period, Registration will be deemed to have been granted. The ROF is valid for sixty consecutive days. Should there be no influx of funds during such period, the ROF will be automatically cancelled. Loan repayments made after the ROF's 120-day validity period will hinge on the Central Bank authorization.

2. TYPES OF BUSINESS ORGANIZATIONS

The setting up of a foreign branch to operate in Brazil is subject to the provisions of Decree-law No. 2627 of September 26, 1940 (articles 64 to 73) and DNRC Normative Ruling No. 81 of January 5, 1999.

The foreign company must submit an application to the Brazilian Government, which must be approved by presidential decree. A certificate of the decree and other pertinent documents will then be published in the Official Gazette, and a copy filed at the appropriate commercial registry. Only after all formalities have been completed will the branch be allowed to start up its activities. The foreign company must also empower a representative—who need not be Brazilian, but must be resident in Brazil—to act on its behalf.

As the procedure is lengthy, and the red tape and expenses involved are greater than for setting up a Brazilian company, the establishment of a branch in Brazil is not recommended, except in very special circumstances.

Brazilian law provides for several forms of business organizations, with the most widely adopted being the *sociedade por quotas de responsabilidade limitada* (*limitada*) and the *sociedade anônima* (joint-stock company). Both types of companies are basically accorded the same tax treatment.

2.1 Limitadas

Limitadas are governed by Decree No. 3708 of January 10, 1919,[2] and are similar to limited-liability companies, limited partnerships and closely-held companies under the English and United States laws.

A *limitada* is required by law to have at least two partners, who, with few exceptions, need not be Brazilian nationals, and can be either individuals or legal entities. In fact, the partner need not even be resident in Brazil.

When the capital is not yet fully paid up, the liability of the partners is limited to the total capital of the company. Once the capital is paid up, liability is limited to the amount of each partner's ownership interest.

The articles of association of a *limitada* must state its name; the period for which the *limitada* is established; the company's core activities; its principal place of business; the name and particulars of each partner; and the amount of the quota capital and its apportionment.

Holdings in a *limitada* are reflected in the company's articles of association, since the quotas in which the company's capital is divided are not represented by certificates as in the case of shares. The articles of association must therefore be amended whenever quotas are assigned, transferred, or increased, so as to accurately reflect the ownership of the company's capital.

There is no requirement as to the minimum capital that must be paid up on initial subscription or subsequent capital increases, except for certain types of companies for which the law provides for a minimum capital requirement.

The *limitada* may be managed by all the partners, by some partners, or by only one partner. The articles of association must state who is to be the managing partner. Should the managing partner be a legal entity or an alien resident abroad, the delegation of administration and management powers to one or more individuals resident in Brazil is required. The partners can, however, retain control over certain decisions by reserving certain rights in the articles of association.

The *limitada* need not publish its accounts, amendments to its articles of association, or other corporate documents. This entails less expense and the right to maintain a certain degree of confidentiality as to company affairs. The articles of association are, however, still public, meaning that third parties may obtain copies by application to the commercial registry or civil registry of legal entities with which the articles of association and their amendments must be filed.

[2] Approved by Senate on March 29, 2000, Senate Bill No. 680/00, which introduced certain changes in the rules governing limitadas, was referred to the Plenary Session of the House of Representatives on April 6, 2000. One of the changes is the mandatory disclosure of financial statements by limitadas. Moreover, recently-enacted Law 10406/02 (the New Civil Code) included a book entitled "Corporate Law", which has a chapter on limitadas. The New Civil Code will come into force on January 11, 2003.

2.2 Brazilian Joint-stock Companies

The *sociedade anônima* is the corporate form which most closely resembles a joint-stock company or corporation. It is governed by Law No. 6404 of December 15, 1976, as amended by recently-enacted Law No. 10303 of October 31, 2001 (the Corporation Law).

A joint-stock company must in principle have at least two shareholders, who are liable only to the extent that the capital stock for which they have subscribed remains unpaid.

A joint-stock company may be formed by public or private subscription. In either case, all the shares must be subscribed for by at least two shareholders, and a minimum of 10% of the capital must be paid up. The paid-up capital must be deposited with a commercial bank until all formalities for incorporation of the company have been completed.

The formation of a company by public subscription entails: preliminary registration of the share issue with the Brazilian Securities Commission (CVM); the intermediation of a financial institution; approval of the company's incorporation by a general meeting called by the incorporators at the close of the subscription period; and appraisal of any assets contributed to the company in lieu of cash payments for the shares.

Formation by private subscription may take place at a general meeting of the incorporators, or by a public deed of incorporation published simultaneously with subscription for the shares. If any of the shares are paid up other than in cash, a general meeting must be called to value the assets contributed.

All documents relating to the formation of the company must be filed at the commercial registry, and subsequently published in the Official Gazette and in another widely circulated newspaper released where the company has its principal place of business.

This type of company may be either publicly- or closely-held. A publicly-held company must be registered with CVM, along with the securities it issues, which may be traded on the stock exchange or on the over-the-counter market. The securities of a closely-held company are not available to the general public.

The capital may be either subscribed or authorized. In the case of a company with subscribed capital, the company's bylaws state the amount of capital actually subscribed for by the shareholders, although this capital need not necessarily be paid up. The bylaws of a company with authorized capital establish the limit up to which the capital actually subscribed for by the shareholders may be increased without the obligation of executing an amendment to its bylaws. The limit on authorized capital may also consist of a number of shares, rather than an amount expressed in cash.

The company capital is divided into several kinds of shares, all of which have different advantages, rights or restrictions attributed to them.

Common shares in a closely-held company may belong to different classes, depending on:

- their nonconvertibility into preferred shares;
- the requirement that the shareholder be Brazilian; or
- the right to vote separately for election of certain officers of the company.

Preferred shares in a publicly- or closely-held company may belong to one or more classes, and carry rights and/or privileges that may include the right to elect certain members for the company's administrative bodies, even should the preferred shares be granted no other voting rights.

New companies may issue nonvoting preferred shares up to 50% of the company's total capital stock. If provided for in the company's bylaws, nonvoting preferred shares of a company already established may represent up to 2/3 of its capital stock. Holders of preferred shares will be accorded the following privileges, on a cumulative or non-cumulative basis: (i) priority in the distribution of fixed or minimum dividends; or (ii) priority in capital reimbursement, at or without a premium. In order to be traded on the securities market, preferred shares without voting rights or with restricted voting rights must confer on their holders at least one of the following privileges: (i) payment of dividends corresponding to at least 25% of the

average profits at year-end; or (ii) payment of dividends at least 10% higher than those paid to common shares; or (iii) the right to be included in a public offer for disposal of control, receiving dividends at least equal to those paid to common shares.

Shares need not have a par value, and may be represented by certificates.

Shares may be paid up in cash or in assets capable of being valued in cash. Appraisal of the assets is mandatory, and the appraisal report must be approved by the shareholders in a general meeting.

Shares in a publicly-held company may only be transferred after 30% of their issue price has been paid. The company may not purchase its own shares except in the circumstances provided for by law.

The bylaws of a closely-held company may restrict the circulation of shares, provided they do not prevent their transfer. Should such restrictions be imposed by means of an amendment to the bylaws, they will only apply to the shares of those holders who expressly agreed with them.

Other securities that may be issued by a joint-stock company are participation certificates, subscription warrants, and debentures. The rules relating to the ownership and circulation of shares are also applicable to these securities, although they do not form part of the capital.

2.3 Participation Certificates

Participation certificates are nonpar securities issued exclusively by closely-held companies, and confer on their holders the right to participate in up to 10% of annual profits. These securities carry none of the rights attributable to the shareholders, except for the right to oversee the acts of the company's senior managers. The bylaws may provide for the redemption of participation certificates by capitalization of a reserve especially created for this purpose.

2.4 Subscription Warrants

A company with authorized capital may issue negotiable securities called *subscription warrants*. These securities entitle their holders to subscribe for shares when the capital is increased, subject to the conditions stated on the certificates.

2.5 Debentures

Debentures are securities that give their holders credit rights against the issuing company. Debenture holders may be paid in cash, assets or rights. The credit rights held by debenture holders against the company must be stated in the respective indenture, and certificate, if any. This certificate must specify the respective face value, rights and guarantees attaching to debenture holders, as well as the maturity date. Also, it is possible to provide for a monetary adjustment based on an exchange rate variation clause. Debentures may be converted into shares, and will be necessarily guaranteed by the issuing company. The total amount of debentures issued and outstanding, unless otherwise permitted by law, may not exceed the capital of the company.

2.6 Shareholders' Rights

Shareholders have the following basic rights:

- participation in the company's profits;
- participation in the distribution of the company's assets if the company is wound up;
- overseeing the management of the company's affairs;
- priority in the subscription for shares, participation certificates, convertible debentures and subscription warrants; and
- withdrawal from the company in the circumstances stipulated by law.

The Corporation Law was recently amended, providing that any disputes between the shareholders or

between the shareholders and the company may be resolved by arbitration.

Shares in the same class confer equal rights on their holders.

Each common share carries one vote at general meetings of the company. No shareholder is entitled to plurality vote. Holders of preferred shares may enjoy any of the rights attributed to the common shares—including the right to vote—but their rights may be restricted, provided that they are not deprived of their basic rights. Preferred shares without voting rights, or with restricted voting rights, acquire full voting rights if the company fails to distribute the fixed or minimum dividends within the period stipulated in the bylaws (not exceeding three consecutive years), and keep this right until the company pays these dividends.

2.7 Shareholders' Agreements

Filing at the company's headquarters of any shareholders' agreement regarding the purchase and sale of shares, the right of first refusal, and the exercise of voting rights or control enables the shareholders to enforce the terms of such agreement.

2.8 Decision-making and Monitoring Bodies

The decision-making and monitoring bodies of a company are: the Shareholders' General Meeting, the Board of Directors (*Conselho de Administração*), the Executive Committee (*Diretoria*), and the Audit Committee (*Conselho Fiscal*).

2.9 General Meetings

General Meetings are attended by stockholders; they are called and instated pursuant to applicable laws and the company bylaws, with authority to resolve on all transactions related to the company's object, as well as to pass any resolutions deemed advisable for its protection and development. Such powers, however, are limited to the company's business purpose, applicable laws and the bylaws.

Annual General Meetings have the purpose of verifying the management accounts; examining, discussing and voting on financial statements; electing senior managers and members of the Audit Committee; resolving on the allocation of the net profits for each fiscal year as well as on the distribution of dividends; and approving monetary adjustment of the company's capital stock. All other cases require an Extraordinary General Meeting.

Special General Meetings may be called to discuss specific subjects related to holders of preferred shares, debentures, participation certificates or subscription warrants.

2.10 Management Bodies

Pursuant to law, the shareholders have the choice of dividing the corporate management body into two parts: the Board of Directors and the Executive Committee. Should the company choose not to have a Board of Directors, the Executive Committee will perform all administrative functions, outline the overall policy for the company business, and implement it in compliance with the company's bylaws. Unlike the members of the Executive Committee, the members of the Board of Directors may reside abroad, provided they appoint an attorney-in-fact residing in Brazil with powers to receive service of process in lawsuits filed on the basis of corporate legislation, for at least three years after expiration of the Board members' term of office.

In the event a Board of Directors is instated, the Executive Committee will have to comply with its decisions. The officers (*diretores*) will have the freedom necessary to carry out their duties.

The establishment of the Board of Directors is mandatory for publicly-held and authorized capital companies and for banks.

2.11 The Board of Directors

The Board of Directors acts as an interface between the General Meeting and the Executive Committee. It has full authority to establish the economic, corporate and financial policies to be followed by the company, and to supervise on a permanent basis the Executive Committee members.

Board members are elected by General Meetings, which may also dismiss any or all of them.

The bylaws establish the number of Board members (at least three), how to replace them, their term of office (which will not exceed three years, re-election being permitted), as well as the rules concerning the call, instatement and operation of the Board of Directors.

2.12 The Executive Committee

The Executive Committee will consist of two or more officers, who can be elected and dismissed at any time by the Board of Directors. The officers are directly subordinate to the Board of Directors, and subject to the General Meeting only if there is no Board of Directors. The officers will represent the company in its dealings with third parties.

The bylaws will establish the number of officers permitted, the manner of their replacement, their term of office (which will not exceed three years, re-election being permitted), and the assignments and powers of each officer.

Officers will perform their duties separately, according to their assignments and powers, but in keeping with the other officers, and will not be held liable for any obligations assumed on behalf of the company as regards routine acts necessary for the company's management.

2.13 The Audit Committee

The Audit Committee may be either permanent or officiate in a specific financial year. Should the Audit Committee not be permanent, it may be instated, at the stockholders' discretion, at a general meeting.

The Audit Committee will be responsible for supervising the senior managers and providing information in this respect to the General Meeting. The Audit Committee may request that the senior management appoint experts to verify facts that need to be clarified for the senior managers to discharge their duties. Should the company have independent auditors, the Audit Committee members may request that they provide clarifications or information, or verify specific facts. It thus plays an important role in defending the company and its stockholders, by examining the management acts in such a way as to ensure that they perform their legal and corporate duties.

The Audit Committee's duties can be neither delegated nor attributed to any other body of the company.

2.14 Liability of the Senior Management

The members of the Audit Committee, Board of Directors and Executive Committee will be liable for any damage resulting from omission in performing their duties and from acts performed negligently or in bad faith, or that violate the law or the company's bylaws, and may be held liable in the criminal sphere. They will not be held liable, however, for unlawful acts carried out by other members, except if they act in collusion with such members or actually participate in such act. If the Brazilian Securities Commission deems it necessary, an administrative proceeding may be opened to verify any irregularities involving publicly-held companies.

2.15 Transformation

A company may be transformed from one type to another, without dissolution or liquidation. For example, a joint-stock company can be transformed into a *limitada*, or vice versa. Stockholders' approval must be unanimous, unless otherwise provided for in the bylaws. Dissident shareholders have the right to withdraw from the company.

It is often advantageous to incorporate a company as a *limitada*, as this is simpler and less expensive than the incorporation of a joint-stock company. The company could then be easily transformed into a joint-stock company at a later stage.

2.16 Mergers, Consolidations and Spin-offs

Mergers, consolidations or spin-offs may be effected between companies of the same or different types.

A merger entails the absorption of one or more companies into another, which then succeeds to all rights and obligations of the absorbed companies, which consequently cease to exist.

In a consolidation, two or more companies unite to form a new company, and the original companies cease to exist. The new company will then succeed to all the rights and obligations of the original companies.

Spin-off entails the transfer of part or all of a company's assets and liabilities to one or more companies already established or formed for this purpose, dividing the company's capital in the event of partial spin-off. Should all the company's assets and liabilities be transferred, the company will be extinguished. The rights and obligations of the spun-off company are absorbed proportionately by the companies receiving the net worth transferred.

The proposal for merger, consolidation or spin-off of one or more companies must be explained and justified in a protocol of justification signed by the senior managers of the companies involved. The protocol must then be approved by a general meeting of the partners of these companies. Shareholders dissenting from the decision of the general meeting approving the merger, consolidation or spin-off should have the right to withdraw from the company.

Appraisal of the net worth of the company or companies to be merged, consolidated or spun off is mandatory, and must be approved by the partners in a general meeting.

2.17 Wholly-owned Subsidiaries

A wholly-owned subsidiary is a company whose total corporate capital is owned by another company. This is the only way that a single shareholder can own the total corporate capital of a company. The owner of the subsidiary must be a Brazilian company. Incorporation by public deed is required.

2.18 Joint Ventures

Joint ventures are not specifically defined by Brazilian legislation. In Brazilian business practice, a joint venture is a company stemming from the agreement of two or more parties to carry out a business enterprise jointly. This can be accomplished by forming a new company or by subscribing for or acquiring shares or quotas in an already-existing company. A joint venture may take the form of any of the business organizations recognized under Brazilian law.

3. FINANCIAL INSTITUTIONS

Financial institutions in Brazil are governed by Laws Nos. 4595 of December 31, 1964 (the Banking Law) and 4728 of July 14, 1965 (the Capital Market Law).

Private financial institutions include commercial banks, investment banks, multiservice banks, credit, financing and investment companies, securities dealerships, and brokerage companies.

The incorporation of private financial institutions is subject to certain restrictions, such as a mandatory preliminary authorization of the Central Bank of Brazil. Article 52 of the Constitutional Temporary Provisions Act (ADCT), which is attached to the Federal Constitution of October 5, 1988 ("Article 52 of ADCT"), regulates foreign participation in the Brazilian Financial System, determining that no increase in such foreign participation will be permitted unless it is recognized as being in the national interest under a presidential decree. There is, however, no limitation on the setup of representative offices in Brazil.

All corporate documents, amendments to the bylaws, capital increases and other nonroutine corporate acts of financial institutions must be approved by the Central Bank.

The share capital and net worth of financial institutions must always meet the minimum capital and debt-to-equity ratio requirements imposed by the Central Bank for each type of financial institution.

Pursuant to Resolution No. 2099 of August 17, 1994, as amended, the Central Bank adopted the capital adequacy principles spelled out in the Basle Convergence Agreement, providing that financial institutions must have minimum capital standards, ratably to the risks associated with their operations. The minimum capital to be set aside by Brazilian financial institutions is currently set at eleven percent (11%).

3.1 Commercial Banks

Commercial banks are financial institutions that are allowed to offer banking services. Their main business is the receipt of cash deposits from the public, and the making of short-term loans. Provided applicable requirements are satisfied, commercial banks may also be authorized to deal in foreign exchange.

3.2 Investment Banks

Investment banks specialize in medium- and long-term financing for the supply of capital, and investment of third-party funds. Investment banks may also deal in foreign exchange, provided the necessary requirements are fulfilled and Central Bank authorization is granted.

3.3 Credit, Financing and Investment Companies (*Financeiras*)

Financeiras, as these companies are commonly known, specialize in financing retail sales of goods and services, and acquisition of working capital.

3.4 Securities Dealerships

Securities dealerships underwrite securities for resale or distribution on the market. They are also authorized to manage third-party funds.

3.5 Brokerage Companies

Brokerage companies have exclusive rights to deal in authorized securities and other commercial instruments on the stock exchange. They may also act as intermediaries in auctions held in connection with debt/equity conversions.

3.6 Multiservice Banks

Multiservice banks are entities that may upon authorization exercise all the functions of commercial banks, investment banks, credit, financing and investment companies, real estate credit companies, and leasing

companies. The activities related to each type of company are carried out by separate departments of the bank. Each department is subject to the same legal and regulatory provisions applicable to the corresponding institutions. Multiservice banks must have at least two departments, one of them being mandatorily a commercial or investment department.

3.7 Leasing Companies

Leasing companies are subject to the same basic rules governing financial institutions in general.

Leasing operations are restricted to leasing companies; multiservice banks; investment, development and savings banks (provided they have a specialized leasing department); and, in the case of real estate leasing operations, to real estate credit companies, and savings and loan associations.

3.8 License to Operate for Financial Institutions

The Central Bank sets forth the procedures for obtaining a license to operate for financial institutions. It may also provide for special requirements for each type of institution.

Should the interested party not comply with the requirements within the time frame set by the Central Bank, the application will lapse.

As a prerequisite for obtaining a license to operate as a financial institution, a company must comply with the provisions of both the Corporation and Banking Laws.

The Central Bank grants licenses to operate on a non-negotiable, non-transferable and free-of-charge basis, subject to the following conditions: (i) the data record of the senior managers and controlling companies must be free and clear of any restriction; (ii) the paid-up capital must correspond at least to the limit established for financial institutions pursuant to applicable regulations; (iii) the direct and indirect controlling companies must evidence that their economic and financial condition is compatible with the proposed undertaking; and (iv) the controlling companies must provide evidence of the origin of the funds to finance the proposed undertaking.
At least 50% of the capital subscribed for must be paid up in cash, and deposited with the Central Bank before receipt of the license to operate.

3.9 Agencies/Branches

The setting up of a permanent agency/branch of a Brazilian financial institution requires preliminary authorization from the Central Bank. An authorized agency/branch must initiate its business activities within 360 days of official publication of the authorization, notifying the Central Bank that it has done so on the date it opens, under penalty of automatic cancellation of the respective authorization.

Acquisition of a stake in the capital of foreign entities by financial institutions based in Brazil is also subject to the Central Bank preliminary approval.

The procedure for setting up in Brazil a branch or agency of a foreign-based financial institution is subject to the same requirements set forth in Article 52 of ADCT, i.e. establishment of any such branch or agency must be recognized as being in the best interests of the country, and conditioned to a presidential decree. Pursuant to Normative Ruling No. 81 of January 5, 1999 (“IN 81/99”) issued by the National Trade Registration Department (DNRC), the foreign company must also file at DNRC an application for a license to set up a branch in Brazil, subject to approval of the Ministry of Development, Industry and Foreign Trade.

The original documents attesting to the setting up of the branch must be notarized and legalized at a Brazilian consulate, translated by a certified translator, registered at a registry of deeds and documents, and then submitted to the Central Bank for approval.

Representative offices of a financial institution which has no branch or agency in Brazil must request preliminary authorization from the Central Bank to operate in Brazil.

Only individuals or companies based in Brazil may act as representatives of a foreign-based financial or similar institution.

The representative will act solely as a liaison between the financial institution's principal place of business and its clients, and will not undertake any business inherent exclusively to financial institutions. Should the representative exceed these limits, accreditation may be cancelled by the Central Bank, without prejudice to the applicable criminal sanctions.

4. BRAZILIAN CAPITAL MARKET[3]

The Brazilian securities market is regulated and monitored by the Brazilian Securities Commission (*Comissão de Valores Mobiliários* - CVM), a regulatory agency similar to the United States Securities and Exchange Commission – SEC.

Securities comprise (a) stocks, participation certificates and debentures, as well as the corresponding coupons and warrants; (b) depositary receipts; and (c) other securities created or issued by joint-stock companies, as defined by the Brazilian Monetary Council (*Conselho Monetário Nacional* - CMN).

A company is considered to be publicly held when its securities are listed for trading on stock exchanges or on the organized or non-organized over-the-counter markets.

Trading on the organized over-the-counter market is characterized by electronic trades of securities. This is the so-called "electronic trading system", which operates as an access market in which trades are supervised by a self-regulatory entity, whose operations are conditioned to the CVM preliminary approval.

Trading of securities on the non-organized over-the-counter market is conducted directly by investors, with an institution duly accredited by CVM serving as intermediary. Such institution is required to inform CVM of all such trades.

A company interested in offering its stock to the public must apply to CVM for registration as a publicly-held company. There are three types of registration: (a) for trading on the non-organized over-the-counter market; (b) for trading on the organized over-the-counter market; or (c) for trading on stock exchanges. A company registered in the over-the-counter market is not authorized to trade on stock exchanges.

CVM Ruling 202/93 regulates the CVM registration procedures to be observed by publicly-held companies. Law 6385/76, in turn, provides for the securities market and creates the CVM, also defining (cf. article 19, paragraph 1) *placement* as the sale, sale commitment, offer, or underwriting, as well as the acceptance of a securities sales or underwriting order placed by the company itself, its incorporators or like individuals and entities, i.e. the controlling shareholder or entities controlled by the company, and joint obligors for the securities that will be placed on the market.

Publicly-issued securities require the disclosure of lists, sales or underwriting reports, brochures, prospectuses or notices to the public; the search for underwriters or prospective investors through employees, agents or brokers; and/or trading of such securities in stores, offices or establishments open to the public, or use of public communications services.

Finally, publicly-held companies must pay a monitoring fee charged by CVM.

4.1 Acquisition of Control

In spite of being quite unusual in Brazil, an investor may also acquire the control of a publicly-held company pursuant to a public offer to all shareholders. This is a voluntary proceeding, initiated by the interested investor. There are specific rules to be complied with: (i) the offer will be effected with a financial institution acting as underwriter; (ii) the offer will be irrevocable for an established period; and (iii) the investor will state a minimum and maximum number of shares it will purchase. CVM has regulated public offers assuring equitable treatment to minority shareholders. Acquisition of the control of a publicly-held company was recently regulated by Law 10303, and is still subject to CVM's prior authorization.

4.2 Disclosure Requirements

The senior management of publicly-held companies must provide the public with any information regarding material acts and facts occurring during the course of business that could considerably influence (a) the quotation of securities issued by the company; (b) the investors' decision to trade them; or (c) the investors' decision to exercise rights inherent to such securities.

[3] *See MERCOSUL Directives CMC/DEC 8/93 and 13/94.*

Under Brazilian legislation, the senior management may exceptionally refrain from disclosing any act or fact which, if revealed, could put the company's lawful interests at risk. Such information must be promptly disclosed, however, if it goes beyond the control of the senior management or in the event the company's shares show unusual oscillations; in the event of a leak, the procedure to be followed is full disclosure.

The transaction that results in the disposal of a controlling interest in a publicly-held company must be reported to CVM and the stock exchanges or organized over-the-counter markets where the corresponding securities are traded, coupled with a press release in this respect.

5. EUROBONDS

Bonds are debt instruments payable to the bearer and issued on the international market by Brazilian joint-stock or limited liability (*limitada*) companies. Issue of these bonds—which are usually unsecured and similar to promissory notes from a legal viewpoint—is conditioned to the Central Bank preliminary approval. These bonds are called Eurobonds when they are issued on the European market.

Corporate authorization for the issue of bonds will be granted in accordance with the provisions of the bylaws or articles of association of the issuing company.

Under Brazilian law, the financial conditions of the issue must be submitted to and registered with the Central Bank. Closing of the corresponding currency exchange transaction relating to the foreign loan and consequent inflow of funds into Brazil is conditioned to the granting of the Financial Transactions Registration (ROF) by the Central Bank. To apply for registration, the following information must be provided: (i) the parties to the transaction; (ii) the financial conditions and payment term for the principal, interest and charges; and (iii) a statement issued by creditor or a document stating the transaction conditions, as well as a statement issued by guarantor, if any. Once these procedures have been observed, the ROF will be automatically issued.

Remittance of interest on Eurobonds will be subject to 15% withholding income tax. The withholding income tax paid in Brazil on remittance of interest may qualify as a tax credit, which will be subject to offsetting in the event of existence of a double taxation treaty signed between the Brazilian government and the government of the country in which the interest recipient is domiciled.

The withholding income tax applying to offshore remittances of interest on Eurobonds is increased to 25% if the holder of such Eurobonds is domiciled in a country where income is not taxed or otherwise subject to taxation at a maximum rate lower than 20% (“Tax Havens”).

6. AMERICAN DEPOSITARY RECEIPTS - ADR

American Depositary Receipts (ADR) are negotiable certificates issued on the United States markets, representing a certain number of securities (usually shares); these ADR, issued by a Depositary Institution abroad, are backed by securities deposited with a specific custodian in Brazil.

ADR are afforded the same treatment as securities issued on the United States markets, and as such are freely traded on stock exchanges and the over-the-counter markets in the United States.

Similar depositary receipts are issued and traded in Europe as well, under the name of International Depositary Receipts (IDR) or Global Depositary Receipts (GDR).

According to an ADR/IDR facility, the underlying securities are held in custody by the ADR/IDR issuer (usually a commercial bank, the Issuing Bank) with an institution headquartered in Brazil and authorized by the Brazilian Securities Commission (CVM) to render custodian services for a specific DR facility (the Custodian Institution).

In general terms, there are two types of ADR: sponsored and unsponsored receipts.

Issuers need not disclose any information on the securities underlying an unsponsored ADR. These ADR are issued by one or more depositary banks in keeping with market demand, but without any formal agreement with the company in this respect. All expenses incurred with ADR trading and management are borne by the investor. In view of this, and as there is no actual control over ADR and the ensuing costs, unsponsored ADR are rarely placed on the market.

Sponsored ADR are broken down into levels I, II and III. Sponsored ADR facilities are subject to a number of United States Securities and Exchange Commission - SEC requirements and local stock exchange rules, as well as to the United States Generally Accepted Accounting Principles (US GAAP). In practice, these formalities vary in accordance with the target ADR level. Sponsored ADR are issued by an Issuing Bank chosen by the securities issuer, as per a deposit or service agreement signed between these parties. Sponsored ADR have the following advantages, among others: (a) full control over the ADR facility; (b) listing of the receipts on a United States stock exchange; and (c) potential leverage of fresh funds.

ADR facilities offer a number of benefits to issuing companies and investors. Basically, the advantages to the issuing company are both financially- and business-oriented by nature. The company's business often expands with the promotion of its products, as a result of the issuing company's promotion on the United States financial market. The issuing company's financial benefits, in turn, comprise: (a) a market expansion for its securities; (b) an increase in its shareholding structure; (c) resulting increase and stabilization of stock prices with a growing market demand for its securities; (d) creation of a mechanism for access to the foreign capital market; and (e) an improved image for the issuing company on the United States financial market and, as a consequence, on the international market at large, thus facilitating future fund-raising efforts abroad.

For investors, ADR offer a good number of advantages. Major investors are constantly trying to diversify their investment portfolios worldwide, mainly if such investments might offer a higher yield than the domestic market. A number of cumbersome barriers usually make these foreign investments unattractive to investors, such as: (a) currency exchange expenses ; (b) scant data on the reliability and reputation of foreign companies involved in the transaction; and (c) divergent market practices.

ADR overcome most of these obstacles. These receipts—traded on the United States market—offer prospective investors good liquidity and the following advantages: (a) United States dollar quotations, and payment of dividends in United States dollars; (b) compliance with United States market requirements; (c) no restrictions on foreign investments; and (d) investors' access to exchange arbitrage with the domestic and foreign market quotations for the securities underlying the ADR.

ADR facilities offer two important advantages to investors as regards arbitrage, as set forth by Brazilian law: the *flowback* and *inflow* mechanisms.

Flowback is the investor's right to convert its ADR into the corresponding stocks or securities represented by such receipt, for further trading on the Brazilian market. This is a mechanism required under the SEC regulations and vital to foreign investors, as it allows for exchange arbitrage with the foreign and domestic quotations of the same stock or security. Foreign investors will be entitled to redeem or cancel ADR for the following purposes:

(a) to transfer the corresponding shares or securities on the Brazilian market, followed by offshore remittance of the proceeds; and

(b) to withdraw the shares or securities from the Custodian Institution, with the owner becoming an investor pursuant to the terms and conditions of other types of foreign investment on the stock exchange.

Inflow allows the investor to purchase on the Brazilian market shares or securities of a company that has an ADR facility and, by delivery of the shares to the Custodian Institution, to obtain new ADR that are issued overseas by the Issuing Bank. In addition to permitting, just like flowback, exchange arbitrage with share quotations on the domestic and foreign markets, inflow avoids a self-defeasing facility. This is because, should there be no inflow, the arbitrage dealings made during the life of the facility by the flowback mechanism would gradually reduce the quantity of ADR on the offshore market until they are completely phased out.

7. PORTFOLIO INVESTMENTS

Any foreign investors that are interested in trading shares directly on the Brazilian stock exchanges may now avail themselves of a new mechanism that revamped the rules on foreign investments in the Brazilian financial and securities markets (foreign portfolio investments), effective March 31, 2000.

The new foreign portfolio investment regulations are an offshoot of the currency deregulation phased in by the current BACEN management in the sway of the foreign currency policy changes introduced in January 1999. Such regulations are a response to government awareness that stronger competition among the capital markets worldwide has urged for the adoption of investment mechanisms that focus on the elimination of barriers to currency flows, as well as on the reduction in transaction costs and in operational and bureaucratic restrictions.

This new set of rules comprises CMN Resolution No. 2689 and Central Bank Circular No. 2963, both issued on January 26, 2000, in conjunction with CVM Ruling No. 325 of January 27, 2000.

The major innovation introduced by these new regulations is the development of one single mechanism for fixed or floating income investments, by which the foreign funds brought by a non-resident investor into Brazil may be invested in equities and securities mechanisms already available to resident investors. As a result, non-resident investors were accorded the same registration codes and treatment available to resident investors for investments in the fixed and floating income markets, and may now freely migrate from one investment mechanism to another.

As yet another innovation, portfolio investments are now open to non-institutional legal entities and individuals based abroad. Under these new regulations, *non-resident investor*, whether acting as an individual or on a collective basis, means the individual or legal entity, fund or other investment pool with residency, headquarters or domicile abroad. As a result, foreign-based individuals and non-institutional entities are allowed to make direct investments in Brazil, without being subject to the eligibility requirements (e.g., minimum asset requirements) set out in CVM Ruling No. 169.

Under the erstwhile regulations, futures trades (in the options, forward and futures markets) were limited to those intended to hedge cash positions up to their respective limits (that is, exclusively for hedging purposes), whereas the adoption of position strategies intended to generate preset earnings was prohibited. Heeding an age-long call from foreign investors, the new regulations put an end to restrictions on the trades in derivatives, and investors may now hold uncovered positions.

Non-resident investors are only required to trade in derivatives or other futures positions on stock exchanges, futures and commodities exchanges, or organized over-the-counter markets, or else through registration, clearing and custodial systems recognized by the Brazilian authorities, such as the Securities Registration and Clearing System managed by the Securities Custodial and Clearing Center (*Central de Custódia e de Liquidação Financeira de Títulos* – CETIP), or the Special Custodial and Clearing System (*Sistema Especial de Liquidação e de Custódia* – SELIC) managed by BACEN.

Furthermore, CMN Resolution No. 2687 was issued on January 26, 2000, authorizing non-residents to trade in forward, futures and options contracts on agribusiness commodities. This Resolution sets out specific rules for this type of investment, namely, the commodities and futures exchanges themselves are responsible and liable for the closing of currency exchange contracts on behalf of the counterparties; moreover, non-resident investors are subject to the same registration requirements and position limits as those valid for Brazilian residents. As for the trades in derivatives having agribusiness commodities as their underlying assets, the prohibition related to position strategies aimed at the generation of a preset income remains in effect.

Non-resident investors must meet the following basic requirements:

(i) one or more nominees must be appointed under a mandate;

(ii) one person must be appointed to be held accountable for the investor's tax obligations;

(iii) a form must be filled out as per the attachment to CMN Resolution No. 2689 ("Form");

(iv) a custodial agreement must be entered into with a CVM-accredited institution; and

(v) the CVM registration must be obtained.

By the same token, the new regulations innovated in dispensing with the contracting of a local managing institution to manage the non-resident investor portfolio, as this duty was assigned to the investor's representative. Such representative will have to make necessary disclosures to CVM and BACEN upon request, as well as to keep updated records and certify the signature of a non-resident investor, among other duties. For its part, the investor only has to retain one or more custodian institutions, considering the obligation to have assets and securities—as well as other financial transactions carried out by a non-resident investor—registered, held in custody or maintained in a depositary account with an institution or entity authorized by BACEN or CVM to render such services, as the case may be. Accordingly, the regulations on foreign portfolio investments replaced the managed portfolio model by the trading portfolio model, also in response to the market suggestions.

An important characteristic that was maintained is that there are no portfolio diversification requirements, meaning that the foreign investor, if it wishes, can invest 100% of its portfolio in the securities issued by one same publicly-held company. However, all trades involving publicly-held companies authorized to trade on the securities market should be carried out on the stock exchange, thus proscribing the private trade of securities.
In addition, trades cannot result in the direct or indirect acquisition of a controlling interest or in an increased stake in a controlled or associate company, nor in the acquisition of securities from closely-held companies.

The capital gains earned by non-resident investors from trades in stocks issued by publicly-held companies are not subject to income tax. Any positive results obtained on stock, commodities, futures, or like exchanges are considered *capital gains*.

However, the same does not apply to income, which is taxed:

(i) at 10%, when arising from investments in floating-income funds (which are now admitted under the new regulations), swaps and other futures transactions off the stock exchanges; and

(ii) at 15% in other cases, including fixed-income investments and interest on net equity.

This favorable treatment is not available for investments sourced in countries where income is either not taxed or subject to taxation at a maximum rate below 20% (the so-called "Tax Havens"), which are subject to the same rules as those applying to persons resident and domiciled in Brazil.

In addition to income tax, non-resident investments are subject to the Provisional Contribution on Financial Investments (*Contribuição Provisória sobre Movimentações Financeiras* – CPMF) at 0.38%, as well as to the Tax on Financial Transactions (*Imposto sobre Operações Financeiras* – IOF) on the Brazilian currency value of the exchange contract entered into upon the currency inflow, at a rate currently set at 0% (which may be changed by the Minister of Finance at any time up to 25%).

8. INSURANCE COMPANIES

Article 192 of the Federal Constitution states that insurance companies require preliminary governmental authorization to operate, and establishes that the granting of such authorization and participation of foreign capital in insurance companies will be regulated by supplementary legislation. The incorporation and operation of insurance companies in Brazil are governed by Decree-law 73/66, as regulated by Decree 60459/67, both amended, as well as by specific provisions of the Civil and Commercial Codes, and regulations issued by the specific bodies indicated below.

The Brazilian Private Insurance System consists of the Brazilian Private Insurance Council (CNSP), the Private Insurance Authority (SUSEP), IRB - Brasil Re S.A. ("IRB"), insurance companies, special savings companies (*companhias de capitalização*), open-end private pension entities, and insurance brokerage companies duly authorized and accredited to operate by the competent authorities.

The incorporation of an insurance company is subject not only to the requirements usually applying to the incorporation of joint-stock companies in general, but also to specific procedures.

Authorization for a company to operate as an insurance company is granted under an ordinance issued by the Minister of Finance. To obtain such authorization, the incorporators must submit a written application to CNSP, through SUSEP, together with proof of proper incorporation of the company under the law, proof of the deposit at Banco do Brasil S.A. for the paid-up portion of the capital stock, and a copy of the company's bylaws.

The Minister of Finance, acting as the president of CNSP, will grant the authorization to operate by means of an ordinance, stating the different types of insurance that can be offered by the insurance company, and other requirements for the company to engage in this activity. If the insurance company is established on a permanent basis, all such requirements must be stated in the bylaws.

As from publication of such ordinance, the company has 90 days to offer proof to SUSEP (i) that it has subscribed for the required amount of IRB's shares; (ii) that it has made all the necessary registrations and published all acts required by law to start operations; (iii) that it has complied with the requirements, if any, set forth in the ordinance that authorized its operation; and (iv) that it has complied with all SUSEP requirements.

After the insurance company has offered proof that all the formalities set forth in items (i) to (iv) above were satisfied, the Minister of Finance will issue the letter patent, which must be registered at SUSEP and filed at the proper Commercial Registry. The filing certificate must be published in the Official Gazette of the Federal Executive.
Any proposal for amendment to the bylaws, consolidation, merger or any other similar transaction carried out by an insurance company must be previously submitted to CNSP and SUSEP, and then to the Minister of Finance for approval. Should a company have insufficient capital resources or technical reserves, or poor financial standing, SUSEP may appoint an inspecting director to act within the company.

CNSP Resolution 23/92 establishes minimum capital requirements for insurance companies according to the field of activity, at least 50% of which must be paid up upon incorporation, in cash or federal government bonds.

There is no legal restriction on foreign participation in insurance companies under Brazilian law. Such stand is reinforced by Federal Attorney's Office Opinion GQ 104 of June 5, 1996. In this sense, foreign participation is allowed in Brazilian insurance companies, which must, however, observe the rules mentioned above for their establishment and operation.

All applications for the transfer of share control of insurance companies must be examined by SUSEP in advance.

Insurance companies are not subject to the ordinary rules of bankruptcy, and may not apply for *concordata* (a court-approved arrangement with creditors). Discontinuance of insurance companies' activities may be

voluntary or compulsory in any of the events spelled out in article 96 of Decree-law 73/66 and/or article 72 of Decree 60459/67

There is a special liquidation procedure for insurance companies as provided for in Decree-law 73/66 and Decree 60459/67. If liquidation procedures are not specified, the provisions of the bankruptcy laws will apply insofar as they are not inconsistent with the provisions of any such decrees. The liquidation proceedings are always carried out by SUSEP, which will appoint the liquidator, the latter being entitled to a commission equal to 5% of the assets ascertained upon completion of the proceedings. The SUSEP Superintendent will subsequently determine the amount payable to the liquidator and employees in charge of the liquidation works.

Another special requirement to keep in mind is that foreign insurance brokers may only be represented in Brazil by brokers registered with SUSEP.

Brazilian companies can only take out reinsurance through IRB, which currently holds the reinsurance monopoly in Brazil. The Brazilian government has already started the privatization of IRB pursuant to Law 9932/99, which repealed article 81, main section of Decree-law 73/66, under which reinsurance monopoly was established in Brazil. Enforceability of Law 9932/99 was stayed, however, by an injunction granted by the Federal Supreme Court under Direct Actions for Unconstitutionality Nos. 2244 and 2223, which are still pending judgment.

9. INTELLECTUAL PROPERTY

9.1 Industrial Property

Until May 14, 1997, industrial property was governed by Law No. 5772 of December 21, 1971 (Industrial Property Code - CPI), which covered patents of invention, utility models, industrial designs and models, industrial, trade and service marks, and advertising slogans.

As from May 15, 1997, Law No. 9279 (Industrial Property Law) took effect. The main features of this new law include the granting of patents to medicines, chemical, pharmaceutical and food products. An additional feature is the recognition given to well-known ("notorious") trademarks.

The Brazilian Institute of Industrial Property (INPI) is the government entity in charge of industrial property rights, and formal examination of applications for trademark registrations, advertising slogan registrations, and issuance of letters patent.

In relation to international protection of industrial property, Brazil is signatory to the Paris Convention (Stockholm Revision), the Patent Cooperation Treaty (PCT), and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS").

9.1.1 Patents

As provided for in article 8 of the Industrial Property Law, the essential requirements for the granting of a patent in Brazil are: absolute novelty, utility, and nonobviousness. A patent is considered to be new when its subject matter is not included in the prior art concept. *Prior art* constitutes everything that has become accessible to the public through a written or oral description or by use or any other means, including the contents of patents in Brazil and abroad before filing a patent application, with the exception of cases where priority was previously applied for or a priority claim was evidenced pursuant to the Paris Convention.

A patent application that has been properly filed in countries that are members of the Paris Convention may be filed in Brazil within the terms set out in the Industrial Property Law. These terms are one year for invention and utility model patents, and six months for industrial design patents.

Letters patent may be issued for the protection of inventions, utility models, and registration of industrial designs. The protection granted by a patent extends for 20 years, in the case of inventions; for 15 years for utility model patents; and for 10 years for industrial design patents, always as from the date the application is filed at INPI.

Procedures for the issuance of a letter patent are lengthy and time-consuming. An application must be submitted to INPI, containing the inventor's claims, a full description of the invention and its drawing (when applicable), and proof of compliance with all legal requirements. Once the application has been presented, a preliminary formal examination takes place, and a certificate of filing is issued. The application will be kept confidential for 18 months, and will thereafter be officially published. The inventor has 36 months to request a formal examination of the application. Failure to request this formal examination will cause the application to be considered withdrawn. The letter patent will be issued after granting of the patent application, which may be cancelled at any time by the courts.

Commercial use of the patent must be initiated within three years of the date of issue of the letter patent, under penalty of compulsory licensing or forfeiture. Forfeiture of a patent may also occur if its use is interrupted for a period of two or more consecutive years; if the inventor fails to pay the required annuities to INPI; if the inventor expressly waives his privilege; or if the patent is administratively cancelled or judicially annulled.

The Industrial Property Law provides for practices that constitute patent infringement, which is subject to penalties varying from three (3) months to one (1) year of imprisonment.

This law determines that the manufacture of a product or use of any means or processes covered by a patent, without authorization of the respective patent owner, will constitute a patent infringement.

9.1.2 Trademarks

The system for protection of trademarks in Brazil is based on the right of attribution, and all rights stem from registration of the trademark in Brazil. No protection whatsoever is accorded an unregistered owner, even if it has been using a trademark for years.

However, if the foreign owner of a trademark unregistered in Brazil is able to prove that its trademark is well-known worldwide, it is possible to claim the international protection granted by article 6 *bis* of the Paris Convention, which establishes that the signatory countries must deny applications for registration or cancel registrations of a trademark that reproduces a well-known trademark registered in another signatory country. In order to qualify for the benefit of article 6 *bis* of the Paris Convention, the owner must apply for registration of its trademark in Brazil.

Application may be made to register a trademark either as a foreign or a Brazilian trademark. A foreign trademark is registered under the Paris Convention, which establishes an exclusive priority period of six months from the date of application in the country of origin for its owner to apply for registration of this same trademark in other countries which are signatories to the Paris Convention.

In order to file such application in Brazil, it is necessary to submit to INPI a certified copy of the application for trademark registration in the country of origin, or the certificate of registration.

Registration of a trademark in Brazil may be applied for either by a Brazilian or foreign company.

If a trademark registration is applied for in Brazil by a foreign company without the priority claim established in the Paris Convention, it will be considered a Brazilian trademark and, therefore, the benefit of such Convention will not be granted.

Brazilian law requires that the field of business of the trademark owner in Brazil be related to the goods or services covered by such trademark. In order to apply for registration of a trademark in Brazil, an affidavit stating that the applicant is a company duly organized under the laws of its country to operate within its field of business is required.

Registration of a trademark protects it for ten years. This protection may be extended for successive ten-year periods.

The use of a trademark is essential to its protection in Brazil. A trademark will forfeit if it is not used for five years from the date of its registration, or if its use is interrupted for more than five consecutive years. Use can be proved by the trademark owner in Brazil or by the licensee that actually uses it.

9.1.3 Technology Transfer Agreements; Trademark and Patent License Agreements

Technology transfer agreements in Brazil are subject to registration at INPI. After approval of the Industrial Property Law, several requirements for approval of agreements of this kind were eliminated, streamlining the approval procedures. Among other changes, the list of mandatory clauses that the agreements should contain was eliminated.

Currently, INPI review of agreements that involve licensing of industrial property rights (trademarks and/or patents), transfer of technology, technical assistance and similar services will be limited to examination of the aspects intrinsic to the documents submitted for its review, the tax and exchange control legislation, as well as aspects related to abuse of economic policy or unfair competition practices.

INPI approval of such agreements is not only essential for registration thereof at the Central Bank of Brazil, which will allow remittance of the remuneration abroad, but also for the deduction of fees paid by the technology licensee or recipient as operating expenses. Furthermore, INPI approval of patent license agreements is necessary, together with actual use by the licensee, to evidence commercial use of the licensed patent and to avoid its forfeiture, as well as to enforce them upon third parties.

Other valid documents evidencing the transfer of technology and conditions governing such transfer (invoices, for instance) may also be submitted to INPI for approval, thus permitting remittance of funds abroad and deduction, for tax purposes, of payments relating to the transfer.

Generally, technology transfer agreements must clearly state their object and the industrial property rights involved, and describe in detail how such transfer will actually be made.

License agreements must state the conditions for actual use of patents regularly applied for or granted in Brazil; the registered trademark in Brazil or the application for registration; the acquisition of know-how and technology not protected by industrial property rights; and the access to techniques, planning and programming methods, research, studies and projects intended for execution or rendering of specialized services.

Trademark and patent license agreements must also state whether the license is exclusive and remunerated, and whether sublicensing is permitted. The term of the agreement must not exceed the validity period of the trademark or patent registration. Trademark and patent license agreements will only entitle the owners to collect royalties if the requirements mentioned above are met.

Contracts for rendering of technical and scientific assistance services must state the time required to perform the specialized services, the number of technicians required, their specialization and training programs, and respective remuneration.

Remuneration for the technology to be transferred may be established at a global price, a price per item sold, a percentage of the profits, or a percentage of the net sales, less taxes, fees and other charges agreed to by the parties.

9.1.4 Informatics

In October 1984, Congress approved Law No. 7232 (the Informatics Law), establishing the principles, objectives and guidelines for the Brazilian Informatics Policy, and empowering the federal government to impose restrictions on the manufacture, operation, marketing, and import of computer goods and services; this was the start of a protectionist policy known as *market reserve*.

Although the Informatics Law did not expressly establish a market reserve, the federal government used to monitor imports of computer goods and services, as well as examine and decide on plans for development and production of such goods.
Companies not considered *domestic* (or *national*) pursuant to article 12 of the Informatics Law could only manufacture computer goods and qualify for the benefits granted by the law if their plans were approved by the Brazilian Informatics and Automation Council (CONIN).

Under article 12 of the Informatics Law, a *domestic company* was defined as one organized under the laws of Brazil, and headquartered in this country. Additionally, to qualify as a domestic company, its decision-making as well as technological and capital control had to be exclusively in the hands of individuals resident and domiciled in Brazil. At least 70% of the total capital stock should be held by Brazilians, and no voting rights should be granted to foreign stockholders.

On October 24, 1991, Law No. 8248 was enacted, introducing several modifications in the regulations of computer science field in Brazil, and amending the Informatics Law.

The first important modification introduced concerns the definition of a *domestic company* for the purposes of manufacturing and marketing of computer goods in Brazil. The new law defines a Brazilian company as a legal entity incorporated and headquartered in Brazil, actually controlled—directly or indirectly—by individuals domiciled and resident in Brazil, or by a government-owned company.

Law 8248/91 clearly states that as from October 29, 1992 no special control of imports of computer goods or restrictions on approval of manufacturing plans would be in force. This should mean the end of market reserve, although a few incentives were left in effect until 1997 to *domestic companies*.

On the other hand, Law 8248/91 also provides for certain benefits applicable to any company producing computer products, such as:

- exemption from the Tax on Manufactured Products (IPI) until October 29, 1999 with regard to products manufactured following certain criteria;
- deduction of all research and development expenditures up to the limit of 50% of the income tax owed by the company; and
- deduction of up to 1% of the income tax owed by legal entities investing in domestic computer companies.

Law 10176/01 currently regulates the percentage reductions in the IPI rates assessed on computer goods, and extends the IPI exemption until December 31, 2000.

Last year, the IPI exemption was converted into a gradual reduction by 95% until December 31, 2001. The IPI reduction percentage is currently at 90%. IPI will be phased out on December 31, 2009.

9.2 Copyrights

Copyrights in Brazil are regulated by Law No. 9610 of February 19, 1998, under which all creative works of inspiration howsoever expressed are protected as intellectual property.

The author of a work or, in the absence of proof to the contrary, the person claiming to be the author or whose name is included in the registered work, is treated by Brazilian law as owner of the copyright.

In addition, any person who adapts, translates, compiles or edits a work that is no longer under copyright may claim the copyright to the work, but he cannot prevent the publication of another adaptation, translation, compilation or edition of the same work unless the new version is derived from his own.

Not only individuals, but also corporations are allowed to own the copyright to a work. However, a corporation must hold such rights always with the author's approval.

Registration of an intellectual work in Brazil is optional, and not essential for its protection. Nevertheless, in order to secure the copyright, the author may register his intellectual work with the following bodies, depending on its nature:

- at the Brazilian National Library;
- at the School of Music of the Federal University of Rio de Janeiro;
- at the School of Fine Arts of the Federal University of Rio de Janeiro;
- at the Brazilian Film Institute; or
- at the Federal Council of Engineering, Architecture and Agronomy.

Any other work that cannot be classified within any of the above categories may be registered at the Brazilian Information Center of the National Copyright Council.

Proceedings in the civil and criminal courts may be brought against anyone who infringes another's copyright. The civil courts prohibit publication of a work which infringes copyright, and can also award damages to the owner of the copyright. Copyright infringement can also be punished as an offense by the criminal courts.

9.2.1 Software

Protection of software in Brazil is regulated by Law No. 9609 of February 19, 1998, which provides mainly for: (a) protection of software as intellectual property; (b) the rules for marketing software, creating mechanisms for government agencies to oversee these marketing activities with a view to protecting Brazilian software; and (c) penalties of a criminal nature, for cases of infringement of software copyrights and certain marketing rules.

The rights to a software are protected for 50 years as from January 1st of the year following its publication, or if not published, following its creation in each country. As with copyrights, software owners that reside outside Brazil are ensured protection in Brazil, provided that their country of origin offers reciprocal treatment, granting both Brazilians and aliens resident in Brazil a protection equivalent in extent and time.

The protection of software rights does not depend on registration, and the author need not register such work. Registration, however, can be made at the Brazilian Institute of Industrial Property (INPI).

Infringement of software copyright is a criminal offense, which subjects the offender to detention from six months to two years, plus a fine.

Unless the parties agree otherwise, the employer or service principal retains the rights to any software developed during the life of any employment agreement or relationship, or during a research or development, when such activity is carried out by the employee, civil servant or individual expressly hired to render these services, or when it results from the nature of the work for which he was hired.

However, if the software is not developed under the aegis of any employment or services agreement, and without the use of any resources, know-how, materials, facilities or equipment belonging to the employer or service principal, the software rights will belong to the employee, civil servant or service contractor.

Rights to technological modifications or derivations that belong to the author—provided this has been contractually stipulated—will be established pursuant to this contract.

According to the Software Law, the following situations will not infringe software copyright:

- reproduction of a copy that has been legally acquired, provided it is essential to proper use of the software;
- partial quotation for educational purposes, provided the author and the software quoted are mentioned;
- similarity of two copies, provided this similarity stems from functional features in software application, from compliance with legal and regulatory precepts or technical standards, or a limitation of alternative forms for its expression; and
- integration of software and its basic features into an application or operating system, as may be technically indispensable to the user's needs, provided it is used exclusively by whoever undertook this integration.

9.3 Cultivar Protection

Law No. 9456 of April 27, 1997 afforded protection to cultivars as intellectual property rights. Any new cultivar as well as other cultivars are eligible for protection, subject to the conditions set out by law. The term of protection is 15 years, except for grapevines, fruit trees, forest trees and ornamental trees (18 years). Cultivars must be registered with the Brazilian Cultivars Protection Service - SNPC, reporting to the Ministry of Agriculture and Supplies. Both individuals and legal entities that file for protection of cultivars in the countries with which Brazil has an agreement or in an international organization to which Brazil is a party, producing the same effect as filing in Brazil, will be assured priority rights for up to 12 months.

10. CORPORATE TAXES

10.1 Income Tax

Generally speaking, corporate income tax is levied at 15% on the book taxable income assessed at the end of each tax period. A surtax will apply at 10% on any portion of the annual book taxable income above R$ 240.000,00 (US$ 1.00 is approximately equal to R$ 2,40). The book taxable income is determined by deducting such expenses and costs as were needed to produce the year's income from the gross earnings derived from the company's core and non-core businesses. Some of these expenses and costs are not deductible by virtue of either their nature or the amount involved. There are also certain items that are considered tax-exempt when determining a company's book taxable income.

Brazilian legislation imposes on legal entities the taxation on worldwide income, in lieu of the territorial taxation principle effective until 1995.

There are certain ceilings on setoff of tax losses. The net profits adjusted by additions and exclusions can only be reduced by 30%, including for tax losses accrued up to December 31, 1995. The four-year statute of limitations for setoff of tax losses was revoked. Operating losses can only be offset against operating profits.

Profits and dividends from Brazilian sources generated as from January 1, 1996 are no longer subject to 15% withholding income tax upon distribution or payment, as they are tax-exempt.

Branches of foreign companies in Brazil pay income tax at the standard rate of 15% and the abovementioned surtax. In addition, their profits are automatically deemed to be at the disposal of the parent company, irrespective of whether or when offshore remittances are made.

A holding company is subject to the taxation system applicable to the corporations mentioned above. Income tax is payable only on direct income earned by the holding company, i.e. income from its business activities, since indirect income (i.e. profits earned by subsidiaries), has already been subject to corporate income tax.

Companies under Brazilian or foreign control are subject to the same taxation.

10.2 Social Contributions

Brazilian companies (including financial institutions) must pay the Social Contribution on Net Profits (CSL). The CSL tax base is the net profit adjusted by the additions, exclusions and offsettings provided for in the tax legislation. This tax base may be reduced by offsetting the negative tax base ascertained in past periods for CSL, up to 30%.

Since September 28, 1999, the CSL tax base is subject to the worldwide taxation principle (*princípio da universalidade*), i.e. profits, income and capital gains earned abroad by Brazilian companies are subject to CSL.

CSL is currently assessed at 9% for all legal entities, including financial institutions. Effective from January 1, 2003, the CSL rate will return, in principle, to 8%. Since 1997, CSL assessments do not qualify as deductible expenses when determining the book taxable income (the corporate income tax base).

Based on Constitutional Amendment No. 20 of December 16, 1998, Law No. 9718 of November 17, 1998 established that all companies (including financial institutions) are subject to the Profit Participation Program and Civil Servants' Investment Program contributions (PIS/PASEP) and to the Social Security Financing Contribution (COFINS). Effective from February 1, 1999, these two social contributions (PIS/PASEP and COFINS) will be levied on the company's billings, which is defined as the gross income (i.e., the overall income earned by the legal entity, whatever the activity or accounting classification adopted).

As for the PIS/PASEP and COFINS tax base valid for financial institutions, the tax rules list a series of financial items that are excluded from such tax base.

Effective from February 1, 1999, companies (including financial institutions) must pay PIS/PASEP at the rate of 0.65%. The PIS/PASEP contributions qualify as deductible expenses when determining the tax base of corporate income tax and CSL.

As from February 1, 1999, the COFINS rate was increased from 2% to 3% for all companies (including financial institutions). The COFINS values paid to the public coffers will qualify as expenses deductible from the tax base of corporate income tax and CSL.

There is as well a social security contribution that is levied on the payroll at an average rate of 30%. This contribution is paid by the company.

Finally, the Provisional Contribution on Financial Transactions (CPMF) is assessed on financial transactions carried out by individuals and legal entities, at the rate of 0.38%.

TAXES	TAX BASE	RATE
Corporate Income Tax – IRPJ	book taxable income	15%
IRPJ Surcharge	book taxable income	10% on any portion in excess of R$ 20.000,00 per month
Social Contribution (nondeductible)	adjusted net profit	9% (all companies, from Feb. 1, 2000 through Dec. 31, 2002)
COFINS (deductible)	billings	3% (all companies as from Feb. 1, 1999)
PIS/PASEP (deductible)	billings	0.65%
Withholding Income Tax	income and capital gains earned by nonresidents from Brazilian paying sources	15% or 25% (depending on the nature of the revenue)
Tax on Manufactured Products (IPI) (Federal)	sales price at the time of exit from the industrial establishment or import	variable as per the product classification
Tax on Distribution of Goods and Services (ICMS) (State)	sales price at the time of exit from the establishment, import, transportation, power supply and telephone services	7% to 33%
Tax on Services	the invoiced price	0.25% to 10%
	settlement of exchange contracts for import of services[(1)]	0%
	cash loans	0% to 15%
	investments in privatization funds	0%
Tax on Financial Transactions	investments in bonds and securities	0%
	exchange transactions for inflow of foreign currency intended for investments in fixed-income funds, interbank transactions carried out between financial institutions abroad and banks authorized to deal in exchange in Brazil, and formation of short-term cash in Brazil by residents abroad	0%
CPMF	financial transactions	0.38%

(1) *The IOF rate was reduced to zero as well for: (i) payments under technology transfer agreements registered at INPI; (ii) remuneration paid on software; and (iii) leasing remittances, provided that they have Central Bank registration.*

10.3 Sales Taxes

Sales taxes are payable on goods and services. There are two different types of sales taxes, depending on the nature of the transactions: the Tax on Manufactured Products (IPI) and the Tax on the Distribution of Goods and Services (ICMS).

IPI is a federal tax levied on the domestic manufacture of products and the import of foreign products. It is payable by the respective manufacturers and/or the importers of foreign products.

IPI payments for raw materials, semi-finished products and packaging materials may be used as tax credits.

IPI rates vary according to the nature of the products, ranging from 0% to 15%. Higher rates apply to nonessential products such as cigarettes, liquor and cosmetics, among others.

ICMS is a state tax similar to IPI. ICMS is payable at all stages of the chain of sales, from the manufacturer to the end consumer. ICMS is collected/paid by the manufacturer and/or the trader. ICMS rates are the same for all goods, but vary from one state to another.

Exemptions, reductions and tax incentives in respect of ICMS are granted or cancelled by means of conventions between the states.

Both ICMS and IPI are assessed on added value. There are, however, some exceptions, such as the case of intrastate transactions involving transfers of goods between premises belonging to the same taxpayer.

10.4 Tax on Services

The Tax on Services (ISS) is a municipal tax payable on any kind of service performed by companies or by self-employed professionals. ISS varies from 0.25% to 10% (with a few exceptions), and is assessed on the cost of services.

State ICMS is assessed on communication and interstate and intrastate transport services, even if the transactions and payments originate abroad. ICMS rates vary from state to state.

10.5 Tax on Financial Transactions

The Tax on Financial Transactions (IOF) is a federal tax levied on:

- credit transactions made by financial institutions;
- exchange transactions made by institutions authorized to deal in exchange;
- insurance transactions made by insurance companies;
- transactions relating to securities, when carried out by institutions authorized to operate on the securities market; and
- transactions relating to intercompany loans, and loans between companies and individuals.

IOF rates vary according to the type of transaction involved, and are lowered or increased with some frequency, depending on the legal circumstances.

10.6. Contribution on Economic Activities

The Contribution on Economic Activities is another tax payable in Brazil. The Federal Government has instituted over the years the assessment of this contribution on various sectors of the Brazilian economy.

Contributions on Economic Activities are now assessed on offshore remittances of royalties payable for the licensing of copyrights, trademarks and patents, technical services, technical assistance, administrative assistance and related services. As a rule, in any such case the Contribution on Economic Activities is due by the Brazilian company and levied on the amounts remitted abroad at a rate capped at 11%. These contributions are not subject to the provisions of international double taxation treaties.

Contributions on Economic Activities are also assessed on the sale of fuels and telecommunications services.

The tax rules governing such contributions vary according to the specific feature of each transaction. Since the Contribution on Economic Activities has been recently instituted by the Federal Government, its collection is subject to discussion in court.

10.7 Investment Incentives

There are several situations in which a company or its stockholders can obtain tax incentives from government agencies. These incentives consist of a continually-changing package of subsidized financing, tax credits and tariff exemptions. Most of these incentives are available to both domestic and foreign-controlled companies, but certain incentives are restricted to Brazilian-controlled companies. These tax incentives were created to promote the economic development of certain areas of the country, or to channel private capital to specific fields of activity.

Investment projects are approved on a case-by-case basis by the relevant agency. Approval is usually conditioned to a considerable degree of governmental control over the investment project. Incentives include an exemption from the income tax and other indirect taxes for a specific period of time, subsidized credit from governmental development banks, and the privilege of importing capital goods duty-free, or at sharply reduced tariff rates.

Currently, investment incentives in general are subject to reevaluation and further studies by the government authorities so that future incentives may be actually directed to less developed areas and to activities that will foster the Brazilian economy and development.

10.8 Manaus Free-trade Zone

The Manaus Free-trade Zone (ZFM) was created and regulated by Law No. 3173 of June 6, 1957 and Decree-law No. 288 of February 28, 1967, respectively. ZFM is administered by the Manaus Free-trade Zone Authority - SUFRAMA.

ZFM is an import free-trade area, and offers special tax incentives. It was conceived to maintain an industrial, trade and agribusiness center in the Amazon region, with economic conditions that will foster Amazon development, thereby overcoming certain local difficulties as well as the great distance between the production site and consumers.

Special ZFM tax incentives are guaranteed under the Constitution until 2013.

10.8.1 Company Establishment

In order to set up in ZFM, a company must submit an industrial project schedule to SUFRAMA. If approved by the SUFRAMA Board of Directors, the company will send SUFRAMA the definitive industrial and architectural plans.

In order to augment the domestic content in goods produced by companies in ZFM, the government has adopted a basic production process (PPB), featuring a detailed description of the various phases of assembly, preparation and transformation of inputs from subsets to end products; the entire manufacturing process for the product should be fully illustrated. This is to avoid having ZFM become a simple warehouse for the assembly of imported products, which products would then be eligible for tax exemptions by the government.

Upon approval of three projects, the company is able to start up its ZFM activities and then qualify for special tax incentives.

10.8.2 Tax Incentives

The companies set up in ZFM are eligible for exemption from or reduction in the following taxes:

(i) import duty (II) on products intended for ZFM consumption. Reduction in the import duty rates for inputs used for products manufactured in ZFM when they are shipped to other points in Brazil;

(ii) Tax on Manufactured Products (IPI) on foreign products intended for consumption or manufacture in ZFM, and on goods produced in ZFM intended for consumption in ZFM or elsewhere in Brazil;

(iii) income tax (IR) for ten years for undertakings approved by the Amazon Development Authority;

(iv) Tax on Distribution of Goods and Services (ICMS) for products from other states that are slated for consumption or manufacture in ZFM. Additionally, the companies will have an ICMS credit with regard to products from other Brazilian states, and refund of a variable ICMS payment for industrial undertakings approved by the Amazonas State Finance Office; and

(v) Tax on Services (ISS) for companies providing services under projects approved by the Manaus City Hall.

The companies qualified by the Amazon Development Office (ADA) will have access to funding from the Amazon Investment Fund, as well as the granting of plots of land with full infrastructure for industrial use.

10.8.3 Current Panorama

ZFM currently encompasses some 600 projects approved by SUFRAMA (480 of which have already been implemented), and an agribusiness district of some 589,334 *hectares,* all of which account for approximately 130,000 jobs in the Amazon region.

ZFM has been notable in the last few years for creating special advantages to attract foreign investment or encourage the formation of joint ventures, thereby promoting the development of the Western Amazon region.
In keeping with the new federal industrial and foreign trade policy, ZFM has become an effective export and international purchasing center.

10.9 Foreign Trade System

Foreign trade in Brazil comes under federal government control. In the case of imports, controls are intended, in general, to stabilize the balance of payments at times of economic crisis, as well as to protect and stimulate the growth of Brazilian industry and to encourage foreign investments, with due regard for the WTO rules.

However, the Brazilian market is being increasingly opened to foreign products, with the intent of modernizing the economy. In order to reach this target, the federal government is working to reduce import controls and duties.

Entry of foreign goods into Brazil for domestic consumption is subject to prevailing MERCOSUL and Common External Tariff (TEC) guidelines, based on the Common MERCOSUL Nomenclature (NCM).

Most import duties range from 0% to 35%, but the federal government has implemented an import policy that is intended to reduce such rates to an average 14%. Import duty is calculated on the price at which the goods are offered for sale on the wholesale market in the exporting country, plus the cost of insurance and freight (c.i.f.).

It should be stressed, however, that increases in import duty are specifically excluded from application of the rule that no tax may be levied unless the law came into force before the beginning of the relevant tax year (the ex-post-facto rule). In other words, the federal government may change import duty rates at any time. Consequently, this is one of the basic mechanisms of the federal government for controlling imports.

Furthermore, subject to certain exceptions, the import of products comparable to locally manufactured products may not be eligible for certain tax or currency exchange advantages (i.e. exemptions or reductions). The responsibility for ascertaining whether a comparable domestic product exists lies with the Brazilian Foreign Trade Department (SECEX), which normally consults the domestic manufacturers. Domestically manufactured products are considered to be comparable to foreign goods if they are capable of replacing the imported products in terms of quality, price and delivery terms.

Imports are also subject to IPI and ICMS. Under specific conditions, some imported goods are eligible for tax exemptions, reductions and incentives in respect of IPI and/or ICMS.

On the other hand, since increasing exports is high on the list of government priorities, there is less control on exports, and it is intended to guarantee minimum prices for locally manufactured products and to protect the domestic consumer by preventing the export of scarce products that might cause problems of supply and demand. The exporters of manufactured goods are entitled to export incentives, represented by financial and tax incentives, such as IPI and ICMS immunity for all manufactured products. They also qualify for maintenance of ICMS and IPI credits ensuing from the purchase of raw materials and inputs used in the manufacturing process, which can be deducted from the taxes due on business transactions on the domestic market.

These are the main tax incentives available, but there are many others offered in accordance with the government interest in the development of certain economic and social areas.

As to imports and exports, 1991 witnessed the emergence of MERCOSUL, the common market joining Argentina, Paraguay, Uruguay and Brazil for trade purposes.

MERCOSUL has considerably raised Brazilian foreign trades, with Argentina now being the second largest market for Brazilian goods, and Brazil the largest market for Argentinean goods. MERCOSUL internal trade was in the order of US$ 20 billion in 1998.

MERCOSUL, however, will not alone suffice to stimulate the integrated development of the member countries, and will have to be supplemented by increased foreign investment. Economic, political and legislative stability and, especially, a less heavy tax burden, are all prerequisites for attracting more investment.

As already mentioned, Brazilian imports are subject to import duty, IPI and ICMS. MERCOSUL member countries, however, all adopted common tariff rates for import duty (see Chapter 18 for further MERCOSUL information).

Finally, in order to engage in imports, companies must be registered with the SECEX Register of Exporters and Importers. Any applicant complying with the necessary requirements will be registered. In exceptional cases where a company is shown to be involved in certain acts, SECEX may cancel or suspend registration (for up to two years), or may even refuse an application for registration.

11. BANKRUPTCY

Bankruptcy is a collective enforcement proceeding for the relief of all creditors of the debtor. During the bankruptcy proceedings, the bankrupt's debts are ascertained, its assets collected and sold, and the respective proceeds distributed to the creditors in accordance with the classification of claims and equitable treatment principle.

According to Decree-law No. 7661 of June 21, 1945, a bankrupt is defined as any person or legal entity engaging in business which, without a relevant reason pursuant to law, fails to pay a liquidated debt on the due date as evidenced by an instrument that entitles the creditor to institute an action to enforce payment. Nonpayment of such debt is evidenced by protest of the enforcement instrument. The bankruptcy petition may be filed by creditors, successors to the debtor, partners or shareholders.

Bankruptcy is also declared if the debtor: (i) when enforced, does not make payment, does not make a deposit, or does not set aside assets for attachment within the statutory period; (ii) carries out disorderly liquidation of its assets, or uses ruinous or fraudulent means to make payments; (iii) calls a meeting of creditors and proposes extension of the payment term or forgiveness of credits, or assignment of assets; (iv) carries out unequivocally or attempts to carry out, in order to protract payments or defraud creditors, a simulated business deal or disposal of part or all of its assets to a third party, whether or not creditors; (v) transfers to a third party its commercial establishment without the consent of all creditors, unless it keeps sufficient assets to pay its liabilities; (vi) gives a guarantee *in rem* to any creditor without keeping unencumbered assets to honor its debts, or tries to do so, revealing its intention by means of unequivocal acts; and (vii) absents itself without leaving someone to represent it in managing the business with sufficient resources to repay the creditors; abandons the establishment; hides itself or tries to hide itself, by leaving secretly its domicile or principal place of business.

A debtor must petition for voluntary bankruptcy when, without legal justification, it fails to pay a liquidated debt at maturity; a liquidated debt is treated as such when its amount has been established beyond any question, and there are no doubts as to its existence.

Once the petition in bankruptcy has been filed, the debtor may avoid bankruptcy by depositing the amount of the credit that substantiated such petition within the time frame allowed for presenting a defense. Declaration of bankruptcy may also be avoided if the debtor files for preventive *concordata* (preventive debt rehabilitation) before being served process. The court order of bankruptcy will, *inter alia*, appoint a trustee in bankruptcy—who has basically the same duties as the receiver in *concordata*—and will set a maximum time limit of 20 days for the creditors to prove their claims.

Foreign creditors participate in the distribution of the assets of the bankrupt estate on an equal footing with Brazilian creditors. Foreign currency claims in bankruptcy or *concordata* proceedings are converted into Brazilian currency at the rate of exchange in effect on the date the bankruptcy was decreed or processing of the *concordata* was determined by court decision, and it is only at the value so established that the claim will be considered.

Once bankruptcy has been decreed, any actions and executions instituted against the debtor by each of the creditors will be stayed, and the creditors must file their claims in the bankruptcy proceedings.

After the bankruptcy proceedings (to which all of the debtor's assets are subject) have been instituted, the debtor forfeits the right to dispose of its assets, which will then be administered by the trustee. Bilateral contracts previously entered into by the bankrupt party may only continue to be performed at the discretion of the trustee, if this is of interest to the bankrupt estate. The trustee will prepare a report substantiating the facts and circumstances that triggered declaration of bankruptcy of the debtor, providing any signs of bankruptcy offenses, in which case the debtor or its senior managers may be criminally prosecuted.

The discharge of the bankruptcy consists of realization of the assets and payment of the liabilities, or, in other words, the sale of the debtor's assets and the payment to its creditors from the sale proceeds. Except in the case of *force majeure*, the bankruptcy proceedings should be formally terminated by a court order two years after the date on which the bankruptcy was declared.

Apart from the other methods of discharging debts referred to in the law, the debtor's liabilities are automatically discharged five years after termination of the bankruptcy proceedings, provided that the debtor has not been convicted of any bankruptcy offense; if it has been so convicted and imposed a penalty of imprisonment, its liabilities will only be discharged after ten years.

11.1 Reorganization (*Concordata*)

There are two types of *concordata*: the preventive and suspensive *concordata*. A *concordata* petition can only be filed by a debtor that: (i) has registered or filed the documents and books necessary for the regular exercise of its business at the commercial registry; (ii) has not failed to file for bankruptcy within the statutory period; (iii) has not been convicted of any bankruptcy offense, theft, robbery, fraud, contraband or other similar crime; and (iv) has not petitioned for *concordata* within the previous five years or has not failed to comply with the terms of an earlier *concordata*. Moreover, neither financial institutions nor airlines or firms that are part of the airline infrastructure may file for *concordata*; this also applies to insurance companies and cooperatives.

The preventive *concordata* seeks to avoid declaration of bankruptcy of the debtor, granting it a reduction in the amount of unsecured credits claimed against it or extension of the payment term. To qualify for this benefit, the debtor must have carried on business regularly for more than two years; it must possess assets the value of which exceeds one-half the amount of its unsecured liabilities; it must not be bankrupt or, if it has been previously declared bankrupt, it must have discharged its liabilities; and it must not have any document protested for failure to pay. There are, however, numerous court rulings admitting processing of *concordata* for debtors whose bills were protested a few days before distribution of the *concordata* petition.

During the preventive *concordata* proceedings, the debtor administers its assets, and continues to run its business under the supervision of a receiver who will be appointed by the court from among the major creditors. The debtor may not, however, dispose of permanent assets or give guarantees *in rem* without the prior authorization of the court. Secured creditors are not subject to the *concordata* and can regularly enforce their credits.

The suspensive *concordata* seeks to avoid bankruptcy so that the debtor may resume its activities. In this case, a bankrupt debtor must offer the ordinary creditors the minimum payments prescribed by law, and evidence payment to creditors not subject to the *concordata*; a novation instrument may be entered into with the creditors holding a guarantee *in rem*. The rules for preventive *concordata* also apply to suspensive *concordata* insofar as appropriate.

In spite of the many special features that distinguish *concordata* proceedings, they are quite similar to bankruptcy proceedings, especially in regard to the proof of claims. Should the debtor fail to comply with its obligations in the proceedings, the *concordata* may, at any time, be converted into bankruptcy.

It is important to clarify that credits subject to *concordata* will be monetarily adjusted, and interest will be calculated at a rate of no more than 12% per annum on the obligations then due, at the court's discretion, from the date of distribution of the petition for *concordata*. The creditors are listed by the debtor, and will be automatically included on the general list of creditors. Should some creditors be omitted or even not agree with the amount mentioned by the debtor, they have 20 days from the date of publication of the public notice to the creditors to either file or challenge their claims.

12. ENVIRONMENT

The Federal Constitution assigns a special chapter to environmental protection, which safeguards Brazilian citizens' right to a balanced environment, and imposes on the public authorities and the community as a whole the duty to defend and preserve the environment. Article 23 confers jointly on the federal government, the states, the municipalities and the Federal District the authority and duty to protect the environment, to take action against pollution in any of its forms, and to protect Brazilian fauna and flora.

Law No. 6938 of August 31, 1981, as amended, institutes the Brazilian environmental policy, as well as its purposes, regulations and enforcement. Law No. 7347 of July 24, 1985 regulates the adoption of public actions to verify damages to the environment, consumers, other assets and rights. Both laws stipulate an obligation to indemnify for any individual or legal entity directly or indirectly responsible for environmental damage, notwithstanding any verification of actual fault or prior administrative penalties (strict liability).

Within their respective spheres of authority, governmental agencies are entitled to apply administrative penalties to any party that breaches environmental laws, by imposing warnings, fines, shutdown, and loss or limitation of rights, fiscal incentives and benefits.

Besides administrative sanctions, the offender is held liable in the civil sphere for any damage caused to the environment (payment of an indemnity or reparation of the damage), as well as in the criminal sphere (payment of fines and/or imposition of penalties restricting rights or liberty – detention or confinement). Determination of civil liability does not necessarily depend on guilt, since mere proof of the act or omission, the damage caused, and the relationship between such act or omission and the damage will suffice.

Law No. 9605 of February 12, 1998 consolidated not only the administrative penalties, but also the criminal sanctions applying to practices and activities that cause damage to the environment, which until then had been sparsely contemplated by different legal writings dealing with environmental protection.

The initiative for bringing suit for damages caused to the community lies with the public prosecutors and also foundations, independent agencies and associations created for protection of the environment (including nongovernmental organizations).

13. LABOR LAWS - GENERAL ASPECTS

Brazilian labor law defines an *employee* as the person who renders services on a regular basis to, and under the direction of, an employer in return for compensation. Subordination is the essential requirement to characterize an employee, and, consequently, an employment bond.

A self-employed worker is one who renders services on an independent basis, both as to work conditions and performance. He acts for himself, determining his own tasks, developing his own business, and assuming the risks of his activities as his own master, since there is no subordination relationship, and he is not subject to the authority of any third party.

According to Brazilian labor law, an employer is a company or sole proprietorship that takes the risk for its economic activity, hires, pays salaries, and sets out the guidelines for the services provided by the employee.

The rights and duties of employers and employees are set out in the Consolidated Labor Laws - CLT, in collective bargaining agreements and collective labor conventions, as well as in some specific laws on certain matters. Certain classes of employees, such as civil servants, domestic servants and rural workers, however, are excluded from the scope of the Consolidated Labor Laws, as they are subject to specific regulations.

13.1 Employment Contract

A formal agreement is not required for employment under Brazilian law. Oral employment is fully valid. In any event, however, it is essential that the employment contract be recorded in the Work and Social Security Card – CTPS of the employee. The law sets forth various rights that are inherent to an employment relationship without the need for these rights to be repeated or specified in a written contract.

As a general rule, an employee is contracted for an undetermined period of time, and contracts for a determined period of time constitute an exception to this rule. The latter contract will only be valid when (i) the nature of the services justifies establishment of a predetermined period of time; (ii) the nature of the company's activity is temporary; or (iii) it is a probation contract. In general, contracts for a determined period of time cannot exceed 2 years. Probation contracts cannot exceed 90 days.

No indemnity is payable to an employee on termination of his employment after expiration of a determined-term contract, except the ratable 13th salary, vacation, 1/3 vacation bonus and FGTS, as per items (iii), (iv), and (v) below. However, if during the contract the employee is dismissed without good cause by the employer, he will be entitled to an indemnity of half the salary due him during the unexpired portion of the contract. If it is the employee who terminates the contract, he must indemnify the employer for any loss resulting from this breach of contract.

13.1.1 New Types of Employment Contract

With a view to reducing unemployment, Law 9601/98 created a new type of contract for a determined period of time, which does not depend on the existence of the three features mentioned in the legislation, and reduces the labor charges usually assessed on employment contracts in general. This new type of contract may only be entered into with the mandatory participation of the labor union, and is formalized through a collective bargaining agreement or collective labor convention, in which all the employment conditions must be set out, including the indemnity payable in the event of early termination. Companies cannot use this type of contract to replace employees hired for an undetermined period of time.

The part-time employment contract, in turn, was created and authorized by Provisional Measure in 1999. The part-time employment contract differs from the other types of employment contracts as it allows that an employee be employed for a maximum workweek of 25 hours. The compensation payable to a part-time employee is proportional to the full workweek of employees who perform the same activities. Brazilian law provides for the same basic rights to part-time employees, with the exception of overtime work (which, in principle, may not be done) and vacation period (which cannot exceed 18 days).

13.2 Basic Rights of Employees

Only general labor rights are described in this item. Specific legislation and collective labor conventions for distinct professional categories may ensure employees other or broader rights.

(I) Salary and Compensation

Under Brazilian labor law, any individual rendering any kind of service is entitled to compensation, which may be paid monthly, fortnightly, weekly or even per piece or task, depending on the conditions established for the employment. The compensation paid to an employee may never be less than the minimum wage established by the Government throughout the Brazilian territory or less than the lowest wage floor (*piso salarial*) established in the collective labor convention for each professional category.

The compensation includes—in addition to cash payment, or wage—food, housing or any other benefits the company provides habitually to the employee by express or tacit agreement.

After having been granted, these benefits are in general considered part of the employment contract, and cannot be reduced or abolished. This is because any changes in employment contracts that adversely affect the employee, even with his consent, are prohibited and may be deemed to be legally null and void.

(II) Weekly Remunerated Rest Period (DSR)

All employees have a right to one day's remunerated rest period, which should preferably fall on a Sunday. In the case of employees who receive their compensation monthly, payment of the weekly remunerated rest period will already be included in the monthly compensation.

(III) Vacations

Every employee, upon completing one year's service with the same company (the "reference period"), is entitled to 30 days' vacation if he has not been absent from work more than five unjustified times during the period. Salary in relation to the vacation period must be paid at the latest two days before the start of the vacation period. Vacation should be granted in the year following the reference period, which is called vesting period, under penalty of the employer's being required to pay double vacation.

(IV) One-Third Bonus on Vacation

As from enactment of the 1988 Federal Constitution, workers acquired the right to receive a one-third bonus in addition to the normal monthly compensation, at the time of annual vacations.

(V) 13th Salary

In December of each year, the employer will pay the employee an extra compensation, known as 13th salary, corresponding to the salary for said month plus the annual average of other monies habitually paid to the employee during the year. When taking a vacation at any time of the year, the employee may request an advance equal to half of his 13th salary.

(VI) Prior Notice

An employment contract for an undetermined period may be terminated at any time without good cause, upon prior notice given by one party to the other. If it is the employer that decides to terminate the employment contract without good cause, it must give the employee at least 30 days' prior notice, and during such period the employee is entitled to reduce the workday by two hours or to be released from work for seven consecutive days, without prejudice to payment of the employee's compensation. The employer may release the employee from work during the prior notice period by paying the respective indemnity. Lack of prior notice by the employer entitles the employee to a payment corresponding to such period.

(VII) Health Hazard Allowance and Risk Premium

In the case of employment in activities considered by law to be hazardous, an additional monthly allowance to compensate for such health hazardous work conditions to which the employee is exposed will be paid by the employer. Such allowance will be equivalent to 10%, 20% or 40% of the minimum wage, depending on the hazard degree.

In the case of dangerous activities, such as those involving contact with explosives, flammable materials and electricity, an additional payment in compensation for the risks involved will be paid by the employer at 30% of the employee's salary.

(VIII) Workday

As a rule for all employees, the maximum workday is eight hours and the maximum workweek is forty-four hours, with one-hour break for meal and rest. There must be a minimum rest period of eleven consecutive hours between workdays. Some distinct professional categories, called *categorias profissionais diferenciadas*, are eligible for a special workday system.

Work performed beyond the time limits provided under the law is treated as overtime. The minimum compensation for overtime is 50% higher than the normal hourly rate. No overtime payments will apply to employees engaging in external activities which cannot be subject to fixed workhours, or to managers (i.e., the employees in management positions, including officers and heads of a department or branch).

Night work is performed between 10:00 p.m. and 5:00 a.m. Work performed between these hours entitles the employee to a compensation at least 20% higher than the normal hourly rate, and this payment may be added to overtime.

In 1999, a Provisional Measure created an offsetting system known as "*Banco de Horas*", by which an extra pay may be eliminated if a collective labor convention or collective bargaining agreement provides that the overtime worked on one day is to be offset by a reduction in the hours worked in another day, provided that the hours worked during a maximum period of one year will never exceed the total number of hours per week permitted under the law nor the maximum limit of ten hours per day.

(IX) Unemployment Compensation Fund - FGTS

According to the Federal Constitution, the FGTS system became automatic and compulsory for all employees hired after October 5, 1988. Under the FGTS system, every month the employer deposits the equivalent of 8.5%* of each employee's compensation for the previous month in a blocked bank account in the name of the employee.

An FGTS-opting employee unfairly dismissed is entitled to withdraw the total FGTS deposits made by the employer in his FGTS account, plus interest, monetary adjustment and a 50%* fine figured on the total amount deposited. Collective employment contracts may provide for an additional indemnity.

(X) Social Security

Every employee must be officially enrolled at the Social Security System. Social security in Brazil is sponsored by monthly contributions from employees, employers and the State. After a certain period of enrollment and contributions, the employee is entitled to receive social security benefits under the pertinent law.

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* *There are suits underway at the Federal Supreme Court (STF) challenging the constitutionality of Supplementary Law 110/01, which increased the FGTS rates.*

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13.3 Suspension of an Employment Contract

The suspension of an employment contract occurs when the duties inherent thereto are not enforced, there being no compensation and computation of the length of service. Typical examples are: non-remunerated leave of absence, and the participation in strikes, without wages.

In 1999, a Provisional Measure provided for another event of suspension of employment contract. Under this new rule, an employment contract may be suspended for a period of two to five months, provided that the purpose of such suspension is to allow the employee to participate in a professional training course or program offered by the employer for a period equal to that in which the contract is to be suspended, as provided for in a collective labor convention or collective bargaining agreement and subject to the employee's formal agreement.

13.4 Termination of an Employment Contract

The termination of an employment contract may occur, as a general rule, either by decision of the employer (dismissal) or by decision of the employee (resignation). In the case of dismissal of an employee, it may be either for good cause or by unfair dismissal.

(I) Dismissal for Good Cause: The dismissal of an employee for good cause may only occur where the dismissal results from one or some of the following material acts on the part of the employee:

(a) dishonesty;

(b) improper conduct or lack of self-restraint;

(c) regularly doing business on his own account or for the account of a third party without the employer's permission, or when the activity competes with the employer's business or adversely affects the quality of the employee's work;

(d) criminal sentencing of the employee under a final and conclusive judgment, provided that execution of the penalty has not been suspended;

(e) sloth in the execution of his duties;

(f) intoxication during working hours;

(g) violation of trade secrets;

(h) any act of indiscipline or insubordination;

(i) abandonment of employment;

(j) any act of violence or any act injurious to the honor or reputation of any person, except in legitimate cases of self-defense, or defense of third-party interests;

(k) any act of violence or any act disparaging to the honor or reputation of the employer or superiors, except in legitimate cases of self-defense, or in defense of third-party interests;

(l) constant gambling; or

(m) acts contrary to national security where these are duly proved in an administrative proceeding.

If the employee is dismissed for good cause, he will be entitled only to the compensation corresponding to the days already worked during the month ("outstanding salary"), accrued vacation and the additional one-third bonus in respect of the accrued vacation.

(II) Dismissal without Good Cause (Unfair Dismissal): If the employment contract is terminated without good cause by the employer, the employee shall have the following rights:

(a) outstanding salary for the days worked during the month;

(b) 30 days' prior notice;

(c) ratable 13th salary (calculated on the salary earned during the last month of employment);

(d) vacation or double vacation, if any;

(e) one-third vacation bonus ; and

(f) release of the FGTS deposits, with a fine of 50% on the total amounts deposited in the employee's FGTS account, during the employment contract.

The individual employment contract and collective labor convention may provide for other benefits, which must also be considered in the event of termination of the contract.

(III) Resignation: A resigning employee is entitled to all the monies listed above, except for prior notice and release of the FGTS deposits plus a 50% fine. When an employee resigns prior to completing one year's employment with one same employer, the employee will have no rights to ratable vacation pay.

In any of the abovementioned events of termination of employment contract, and providing that the employee has worked with one same employer for more than one year, it will be necessary to provide for homologation of termination of the employment contract at the employee's labor union or at the Regional Labor Office. If the employee is a manager or an officer, there may be other steps to be taken outside the labor area for termination of his employment contract, such as cancellation of powers of attorney or formalization of an instrument of replacement of delegate manager, and so on.

All severance pay must be settled by the employer within ten days of the resignation or prior notice, where such period is indemnified. If the employee is kept on the job during the prior notice period, the severance pay must be settled on the first business day after the end of the notice period. Failure by the employer to respect these deadlines will give rise to a fine for the employer, equivalent to the employee's one-month compensation.

13.5 Temporary Work

Under the Brazilian law, the purpose of temporary work is to meet the company's seasonal service needs, whether to stand in for a company's regular and permanent staff, or to provide additional services required by the company. Temporary work cannot exceed 90 days.

13.6 Foreign Workers - Job Opportunities

Like many other countries, Brazil has taken steps to preserve job opportunities for its citizens. According to the principle of *proportionality*, all industrial or commercial firms with more than three employees are required to ensure that at least two-thirds of their personnel be Brazilians. This proportion applies to both the number of employees and to the payroll, i.e. two-thirds of the wages must be paid to Brazilian employees by any company in Brazil.

Likewise, under the law, a Brazilian worker may not be paid a wage lower than an alien for performing the same work, and whenever it is necessary to lay off workers, an alien must be laid off before a Brazilian performing the same work.

13.7 In-house Job Accident Prevention Commission – CIPA

CIPA is mandatory for all companies whose staff is composed of more than 50 employees, and its purpose is the prevention of occupational accidents and diseases, by way of control of the risks existing in the work environment, conditions and organization. CIPA is composed of the employer's representatives appointed by the employer itself, and of the employees' representatives elected by the other employees by secret ballot.

The number of CIPA representatives depends on the number of the company's employees and the degree of occupational risk. The employees' representative in CIPA cannot be dismissed from the date his candidature is recorded until one year after the end of his term of office.

13.8 Unions

Unions are organized by categories: the professional category, which represents the employees' interests, and the economic category, which represents the interests of employers. The representation of each union is limited to a certain municipal, state or national territory. No union may act within a territory smaller than the area of a municipality. Only one union per category is permitted within the same territory.

Union membership is mandatory and, as a general rule, is defined according to the main economic activity of the company and the place where it is situated. The representation authority of unions does not depend on the voluntary association of companies or employees. Companies and employees must pay annual dues to their associations and unions, respectively.

Collective bargaining agreements are established through voluntary negotiations between the company and the union representing its employees.

Collective labor conventions are mandatorily negotiated by professional unions and employers' associations for a certain category with a view to establishing the collective work conditions applying to such category. Collective labor conventions are binding upon the company and all the union member and non-member employees.

If the unions fail to reach an out-of-court agreement as to the terms of the collective labor convention, the Labor Court will establish the conditions applicable to the categories involved by way of judicial proceedings known as labor disputes.

13.9 Employees' Participation in Corporate Profits

Law No. 10101 of December 20, 2000 established the participation of employees in corporate profits or results as a means to encourage productivity, seeking a better integration between capital and work. Law 10101/00 provides that companies may establish a Plan for employees' participation in profits or results, by way of negotiations between the employee and the employer, with mandatory participation of the professional union.

Subject to the formalities set forth in the aforesaid Law, payments by way of participation in profits may not be made at intervals shorter than six months. These payments are deductible from the company's income tax, and do not have any effects on labor-related payments, such as 13th salary, vacation pay or FGTS.

13.10 Social Charges

Social charges are intended to sponsor the Brazilian Social Security Institute (INSS) and entities engaging in the promotion of social services and welfare, or in the formation of professionals and assistance to workers. Under the law, all companies must pay contributions to such entities, according to the respective field of activity (industrial, commercial or services). These contributions are paid to the INSS and correspond to the following percentages on payroll:

(a)	Brazilian Social Security Institute (INSS)	20%
(b)	Industrial Workers' Social Service (SESI) or Commercial Workers' Social Service (SESC) or Transportation Social Service (SEST)	1.5%
(c)	Brazilian Industrial Apprenticeship Service (SENAI) or Brazilian Commercial Apprenticeship Service (SENAC) or Brazilian Transportation Service (SENAT)	1.0%
(d)	Brazilian Institute for Rural Settlement and Agrarian Reform (INCRA)	0.2%
(e)	Brazilian Service Center for Small Businesses and Small-Size Companies (SEBRAE)	0.3% to 0.6%
(f)	Education Allowance	2.5%
(g)	Workers' Accident Insurance (SAT)	1.0%, 2.0% or 3.0%
Total		26.8%, 27.8% or 28.8%*

* Taking into account the maximum value of the SEBRAE contribution.

14. IMMIGRATION CONTROL

Law No. 6815 of August 19, 1980 (the "Foreigners' Statute") regulates the entry and stay of aliens in Brazil, their identification, placement, the development of professional and other activities, acquisition of Brazilian nationality, extradition, expulsion and deportation, and further sets out the reciprocal rights and duties of the alien and the Brazilian Government.

Brazil's immigration policy is coordinated by the Brazilian Immigration Council, a body of the Ministry of Labor and Employment. The entry of an alien into Brazil hinges on obtainment of a visa. There are seven types of visa envisaged in the law:

- transit;
- tourist;
- temporary;
- permanent;
- courtesy;
- official; and
- diplomatic.

The granting of any kind of visa is conditional upon the national interest, and possession or ownership of assets in Brazil does not entitle the alien to obtain any type of visa or authorization to remain in Brazil. A visa merely affords the alien a provisional right to entry. Entry and stay in Brazil may be refused for any of the reasons specified in the legislation on the issue of visas, or at the discretion of the Ministry of Justice. Refusal of entry may be extended to all members of a family should one of them be considered undesirable.

14.1 Temporary Visas

A temporary visa is issued to an alien who intends to come to Brazil on a temporary basis, with no change of domicile. It is issued to persons wishing to come to Brazil in the following circumstances:

- on a cultural trip or study mission;
- on a business trip;
- as an entertainer or sportsman;
- as a student;
- as a scientist, teacher, technician or other professionally qualified person, contracted to work for a local organization or to render services for the Brazilian Government;
- as a foreign correspondent for newspapers, magazines, radio, television or foreign news agencies; and
- as a missionary.

Aliens on business trips, entertainers and sports figures may remain in Brazil for up to 90 days. Such period may be extended up to 90 days, at the discretion of the Brazilian immigration authorities.

Aliens on a cultural mission, scientists, teachers, technicians, and foreign correspondents may remain for the duration of the mission or work contract, or for the time it takes for their respective services to be rendered, subject, however, to the maximum period of stay stipulated by law. Temporary visas may be renewed for another equal period.

An alien who intends to engage in any remunerated activity in the Brazilian territory must fill in the proper form applying for a temporary or permanent visa, and must then submit it to the proper government entity. Temporary visas will only be granted to foreign entertainers, sports figures, scientists, technicians, teachers and professionally qualified persons who meet the requirements of the Brazilian Immigration Council and have a work contract approved by the Ministry of Labor and Employment, unless they are visiting Brazil to render services to the Brazilian Government. The alien must also produce evidence as to having the means to support himself and his family while in Brazil. An alien's absence from Brazil for less than 90 days will not affect the processing or approval of any application made for extension of the temporary visa if such application is filed in due time.

Temporary visa holders are entitled to bring their domestic belongings, excluding automotive vehicles, and their professional equipment into Brazil. These goods enter Brazil under a special customs system for temporary admission, for which no import license is required, although certain formalities must be complied with.

Holders of temporary visas are subject to certain restrictions, such as not being permitted to establish themselves as sole proprietorships, nor to become managers, officers or directors of companies. Dependents of temporary visa holders and foreign students may not engage in remunerated activities. Also, aliens who have entered Brazil on temporary visas but with work contracts may only engage in remunerated activity with the companies which contracted them.

The Foreigners' Statute forbids the transformation of a transit, tourist or temporary visa into a permanent one. Exception is made only for foreign scientists, teachers, technicians and missionaries holding temporary visas, as well as for official and diplomatic visa holders.

14.2 Permanent Visas

A permanent visa will be issued to an alien who comes to Brazil with the intention of remaining permanently.

The granting of a permanent visa is conditional upon certain qualifications; the skills offered must be specialized, thereby facilitating an increase in productivity, technology assimilation and attraction of resources to specific sectors of the Brazilian economy, and, of course, must satisfy the Brazilian Immigration Council's selection criteria.

All aliens entering Brazil as permanent residents, on temporary visas in cultural missions, as students, under work contracts, as correspondents or as missionaries must register at the Ministry of Justice within 30 days of arrival. On registration, the alien will receive an identity card. Any subsequent change of address or domicile must be communicated to the police within 30 days. The Foreigners' Statute also provides for third-party supervision of the activities of aliens in Brazil. Commercial registries must provide the Ministry of Justice with the alien's identification data when they register the firm where the alien works. This is mandatory in the case of aliens who are directors, managers, officers or controlling shareholders of corporations. Civil registry offices must also send the Ministry of Justice monthly copies of registrations for aliens' marriages and deaths. Real estate companies, hotels, owners of real property, lessors and managers of buildings must also, upon request, provide the Ministry of Justice with data for identification of aliens who live in or rent Brazilian property. Public and private entities that employ aliens, and educational establishments where aliens are enrolled must do the same. Such step must also be followed by organizations that control and supervise certain professions.

An alien who enters Brazil may leave the country without requiring an exit visa. However, the Ministry of Justice may, at any time, require an exit visa to enable an alien to leave the country. A temporary visa holder who travels outside Brazil may return without an entry visa, provided the original visa is still valid. A foreign permanent resident may leave the country, and return without an entry visa, provided that no more than two years have elapsed since his departure from Brazil.

15. ANTITRUST LAWS

Law No. 8884 was published on June 13, 1994 (the Antitrust Law), and sets forth new antitrust regulations in Brazil, intended to restrain and prevent violations of the economic policy. Since then, the Antitrust Law was amended by Law No. 9069 of June 29, 1995 and by Laws Nos. 9470 of July 10, 1997 and 10149 of December 21, 2000, which gave its current wording.

I. Restraining Control

The Antitrust Law defines the criteria to be adopted to identify violations of economic policy, and provides examples of a number of practices which are considered potential violations, to wit: tie-in sales, refusal to sell, price arrangements between competitors, market division, bid rigging, underselling, dumping, exclusive publicity requirement, imposition of resale prices on distributors, retailers and representatives, retaining of production or consumer goods, overpricing and profiteering. These are mere examples, since any act whatsoever that potentially limits, encourages or injures competition; results in the dominance of relevant markets for goods and services; arbitrarily increases profits; or entails the abuse of dominant position, may be typified as a violation of the provisions of the Antitrust Law.

The Economic Law Office (SDE)—a department of the Ministry of Justice—has been given the authority to investigate any irregularities in the economic sector and open administrative proceedings accordingly. The authority to decide on the proceedings filed by SDE, in turn, is attributed to the Administrative Council for Economic Defense (CADE), which is an independent agency reporting to the Ministry of Justice. CADE decisions are final and unappealable at the administrative level.

Administrative proceedings can be filed *ex officio* by SDE, or through a duly substantiated complaint in writing filed by the Senate, House of Representatives, by a congressional committee or any interested party. During such proceedings, both SDE and CADE may request information from any persons, agencies, authorities or entities, whether public or private. Based on a substantiated decision, SDE may also authorize inspections in the headquarters, establishments, offices, branches or main branches of the investigated company, upon twenty-four (24) hours' prior notice sent to this effect. SDE and CADE may also impose on the offender preventive measures seeking to suppress such violation, as well as levy daily fines, which can be increased up to 20 times, depending on the seriousness of the violation.

In the event of violation, CADE may sentence the company to pay a fine ranging from 1% to 30% of its gross sales for the last fiscal year. If the company's senior manager is also deemed liable for such violation, he may be subject to a fine varying from 10% to 50% of that imposed on the company. In addition to the fine, other penalties may be applied, *inter alia*: compulsory licensing of patents, cancellation of tax incentives and public subsidies, prohibition from contracting with official financial institutions and participating in public bids, company spin-off, transfer of control, or divestiture. Moreover, preventive detention of the senior manager—depending on the nature of the violation—is also set forth in the Antitrust Law, which amended some provisions of the Code of Criminal Procedure.

In order to avoid sentencing, the offender may enter into a cease-and-desist commitment with CADE or SDE, by referendum of CADE, which will suspend the administrative proceedings without implying confession or acknowledgment of the facts investigated. Should this commitment be breached, the offender will be subject to a daily fine and the proceedings will resume. If, on the other hand, this commitment is complied with, the case will be shelved.

CADE, or the Attorney General's Office at CADE's request, will take the decision handed down in the administrative proceeding to the courts for enforcement. Should this decision include affirmative or negative covenants (as for instance, company spin-off, divestiture, and so on), the judge may appoint an intervenor at CADE's request so as to assure compliance with the obligation established in the decision.

II. Preventive Control

In order to avoid economic concentration and restraint on free competition, the following acts must be submitted to CADE for approval: consolidation, merger, purchase and sale of companies or any other form of corporate grouping, whenever the company or group of companies resulting from these transactions

holds a 20% share of a relevant market, or whenever any of the parties has reported annual gross sales of approximately US$ 170 million (R$ 400 million) on its latest balance sheet.

Pursuant to the Antitrust Law and CADE supplementary rules, as well as CADE's former decisions, any transaction falling within the criteria set forth above must be submitted to CADE within 15 business days of its closing. Within this context, *closing* is understood as the signing of the first binding document between the parties. Untimely submission will subject the parties to a fine ranging from US$ 27 thousand (60,000 UFIR) to US$ 2.7 million (6,000,000 UFIR), without prejudice to the filing of administrative proceedings.

The transaction may be approved, even if it entails economic concentration, when its purpose is to increase productivity, improve quality or enhance technological development. CADE will be responsible for establishing the performance conditions under which the transaction will be approved.

A number of changes in the Antitrust Law are being discussed by the legislative and executive branches. Such changes are expected to be implemented as from the second half of 2002, although no official date has been set to this effect.

16. CONTRACTUAL CHOICE OF LAW AND JURISDICTION[4]

The basic principles of private international law were incorporated into Brazilian law by Decree-law No. 4657 of September 4, 1942 (the Law of Introduction to the Civil Code), which, from article 7 onwards, reduces these basic principles to legal rules for internal application.

Most Brazilian jurists believe that the interpretation of article 9 of Decree-law 4657/42 affords leeway for the parties to agree on the applicable law, provided that the foreign law complies with the following conditions: (i) it must conform to Brazilian public policy and good morals; and (ii) it must not encroach on questions of national sovereignty.

On the other hand, article 9 of the Law of Introduction to the Civil Code mandates that, if the parties do not specify the applicable law in the contract, obligations are governed by the law of the country where they are created (*lex loci celebrationis*).

Under Brazilian law, the law of the country where a person is domiciled determines the rules relating to his legal identity, name, capacity, and family rights. This general rule avoids conflict with laws in other countries, and the few existing exceptions are duly specified.

Issues relating to assets and properties are governed by the law of the place where they are situated (*lex rei sitae*). It is the law of the place which has authority to classify property as movable or immovable, and to determine whether an object may be made subject of a right *in rem*. Hence, real property title and ownership, among other factors, are governed by *lex rei sitae*; which also applies to movable property, except for those assets which the owner always carries with him. Ships and aircraft are an exception to the rule, as the jurisdiction over acquisition, mortgage, and other aspects involving such properties rests with the country where they are registered.

If a contract is to be enforced in Brazil, it must comply with the formal requirements prescribed by Brazilian law, should it need to be performed in a special manner. The special features of foreign law only apply as regards extrinsic formal requirements.

The choice of forum rules in Brazilian private international law are to be found in the Law of Introduction to the Civil Code and the Code of Civil Procedure.

The Code of Civil Procedure provides that Brazilian courts have jurisdiction when: (i) the defendant, whatever his nationality, is domiciled in Brazil; (ii) the obligation is to be performed in Brazil; or (iii) the actions result from a fact that occurred or an act performed in Brazil.

Furthermore, Brazilian courts have exclusive jurisdiction: (i) to decide on actions relating to real property located in Brazil; and (ii) to examine and decide on probate proceedings of a deceased person's Brazilian estate, even if the deceased was a foreigner and resided outside the country. If there is exclusive jurisdiction, the Brazilian courts do not recognize or enforce the contents of a foreign court decision.

It should be stressed, however, that the Brazilian courts have exclusive jurisdiction to decide on actions relating to international agreements involving Brazilian federal, state and municipal government entities, which refuse to accept voluntary submission to foreign courts or tribunals.

Brazilian law does not impose any special requirements on a foreign resident bringing an action in the Brazilian courts. Any plaintiff, however, whether Brazilian or foreign, who resides abroad or leaves the country during the course of a lawsuit, must post bond sufficient to cover the costs and legal fees of the other party, unless such plaintiff has real property in Brazil to secure any amounts awarded against it. This bond is dispensed with for execution proceedings based on an extrajudicial execution instrument, or for counterclaims.

Finally, the Law of Introduction to the Civil Code provides that having an action brought before a foreign court does not prevent the Brazilian courts from hearing the same action and any others connected with it.

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[4] *See the Buenos Aires Protocol signed on August 5, 1994 regarding international jurisdiction over contractual matters involving MERCOSUL countries.*

However, foreign rulings must be recognized by the Federal Supreme Court (*Supremo Tribunal Federal* – STF) for enforcement in Brazil, irrespective of the existence of reciprocity on the part of the originating country or a specific international treaty or convention between this country of origin and Brazil.

It should be noted that, when recognizing a foreign ruling, STF will only verify whether the formal procedural requisites have been fully complied with in all instances until final judgment, and whether this judgment is subject to any further appeal.

STF will check whether:

- the foreign decision has been rendered by a competent court;
- the parties have been duly summoned;
- the judgment is final and conclusive, and in proper form for its execution at the place where it was rendered;
- the foreign judgment has been authenticated by the nearest Brazilian consulate and submitted to STF with an official translation thereof; and
- the foreign decision is in keeping with Brazilian sovereignty, public policy, and good morals.

Once the foreign judgment is recognized, it may be enforced before the relevant Brazilian lower court.

Debts denominated in foreign currency may only be paid in Brazilian currency, to be determined at the exchange rate effective on the date of actual payment. Nevertheless, the remittance of proceeds abroad will depend upon the preliminary authorization of the Central Bank of Brazil.

17. ARBITRATION

Law No. 9307, which took effect on September 23, 1996, introduced some significant changes into the concept of *arbitration*, repealing articles 1037 through 1048 of the Brazilian Civil Code and articles 1072 through 1102 of the Code of Civil Procedure.

Although arbitration is not yet a common practice in Brazil, there are signs that it is taking on greater importance in the business context here.

Arbitration allows for resolution of disputes outside the courts, and can only be resorted to in Brazil for settlement of disputes that refer to disposable equity rights.

Arbitration offers many advantages in comparison to court proceedings: it is more expeditious and confidential, and allows the parties to elect expert specialized arbitrators to resolve the dispute.

Under the new law, an agreement to arbitrate comprises an arbitration clause (*cláusula compromissória*) and an arbitration commitment (*compromisso arbitral*).

The arbitration clause is a convention whereby the parties to a contract undertake to submit their controversies to arbitration. This clause is considered independent from the rest of the contract, meaning that defeasance of the contract would not necessarily entail defeasance of the arbitration clause.

Should there be a dispute between parties that have previously stipulated an arbitration clause in the contract, the need to reach an arbitration commitment will depend on the contents and specific nature of such arbitration clause. This commitment can be judicial (via an instrument attached to the case record at court) or extrajudicial (by private written agreement signed before two witnesses or by public instrument), and should include the name, profession, marital status, and domicile of the parties and the arbitrator(s), the issue in dispute, and the venue of the arbitration decision.

The main changes brought about by this new law can be summed up as follows:

(i) An arbitration clause will obligate the parties to refer any dispute to an arbitration tribunal in lieu of the judiciary. This is an affirmative covenant subject to specific performance;

(ii) Arbitration clauses may determine that the arbitration include discovery and be processed according to the rules of an institutional arbitration body or specialized entity;

(iii) If one of the parties were to resist to an arbitration tribunal, the parties will be notified to go before the court, and its decision will be binding as an arbitration commitment;

(iv) Arbitration is deemed instituted when the arbitrator accepts the incumbency;

(v) The arbitration decision produces vis-à-vis the parties the same effects as a decision handed down by the Judiciary Branch, and any finding against either party constitutes a judicial enforcement instrument. Under the new arbitration law, the arbitration decision is not appealable, and there is no longer any need for its recognition by the Judiciary Branch;

(vi) Enforcement of arbitration decisions handed down by a foreign court is solely subject to the Federal Supreme Court recognition, observing the same requisites for recognition of foreign court rulings. The local courts are no longer required to recognize any arbitration decision; and

(vii) Service on a party resident or domiciled in Brazil under the agreement to arbitrate or procedural law of the country where the arbitration has actually taken place (for instance, service by mail) will not be considered an offense to Brazilian public policy.

Within this new context, arbitration has been resorted to in Brazil more frequently as an interesting and alternative way of resolving disputes.

18. MERCOSUL[5]

A short while after creation of the European Coal and Steel Community (1954) and the European Economic Community (1957), Latin America took the first steps towards greater regional integration. The treaty that created the Latin American Free Trade Association (LAFTA), signed in 1960, provided for the establishment of a free-trade zone, by means of periodical and selective negotiations between its member countries. This choice—negotiation between the member countries rather than automatic reduction of import duties—caused the LAFTA trade-opening program to develop reasonably well in its early years, to lose impetus as of 1965, and to almost come to a standstill in the 70's. Thus, despite LAFTA's having stimulated trading between member countries, there was a chasm between its original objectives and the results obtained.

The Latin American Integration Association (LAIA), created in 1980 to replace LAFTA, availed itself of other means to promote integration among member countries. In place of the free-trade zone established by LAFTA, a preferential trade area was established, creating conditions favorable to the growth of bilateral initiatives, as a prelude to the institution of multilateral relationships in Latin America. LAIA thus paved the way for cooperation agreements between countries in the region, which until then had no strong commercial ties. The establishment of a common market, however, was still a long-term objective.

As envisaged by the LAIA system, in 1986 Argentina and Brazil signed twelve commercial protocols: the first concrete step had been taken towards bringing the two countries closer together (this effort had officially started in 1985 under the Declaration of Iguaçu). To supplement and improve their former agreements, Argentina and Brazil signed the 1988 Treaty for Integration, Cooperation and Development that set the stage for a common market between the two countries within ten years. This treaty further established that the trade agreement would be open to all other Latin American countries.

After the adhesion of Paraguay and Uruguay, a new treaty was signed by all four countries on March 26, 1991 in Asunción, Paraguay, providing for the creation of a common market among the four participants, to be known as the Southern Common Market (MERCOSUL).

The objectives of MERCOSUL are:

(i) free transit of producer's goods, services and products between the member countries with the elimination of customs duties and lifting of nontariff restrictions on the transit of goods, among other measures with similar effects;

(ii) fixing of common external tariffs and adopting of a common trade policy with regard to third-party countries or groups of countries, and the coordination of positions in regional and international meetings on commercial and economic affairs;

(iii) coordination of macroeconomic and sectorial policies of member countries relating to foreign trade, agriculture, industry, taxes, monetary systems, currency exchange and capital, services, customs, transport and communications, and any other issues they may agree on, in order to ensure free competition between member countries; and

(iv) the commitment of the member countries to make the necessary adjustments to their laws in pertinent areas to allow for strengthening of the integration process.

Since January 1, 1995, MERCOSUL is:

(i) a free-trade zone, eliminating charges and other nontariff restrictions among the four countries. The special protective tariffs granted to certain items were phased out via the Customs Union Structural Changes System (*Regime de Adequação Final à União Aduaneira*), which established a zero tariff for the last list of Argentinean products in 1998, and for those of Paraguay and Uruguay in 1999;

(ii) a Customs Union under which the common external tariff (TEC) is to range from 0 to 35% for 90% of the products, with a projected common tariff for all MERCOSUL countries by January 2006.

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[5] *See MERCOSUL, published by Pinheiro Neto Advogados.*

The rules established in the trade-opening program will not apply to Partial Agreements for Economic Supplementation Nos. 1 (signed between Argentina and Brazil), 2 (between Uruguay and Brazil), 13 (Venezuela and Brazil), and 14 (Argentina and Brazil), nor to any agricultural and commercial agreements signed within the scope of LAIA that will be governed by the provisions thereof.

The results achieved with MERCOSUL are surprising. Trades between Brazil and the other MERCOSUL member countries reached US$ 20 billion in December 1998, and US$ 6.3 billion in December 2001. Trades between Brazil and Argentina totaled US$ 11.2 billion in 2001.

Given the importance of MERCOSUL for its member countries, in 2000 the Common Market Council (CMC)—MERCOSUL's senior body—issued resolutions for Relaunching of MERCOSUL, confirming all the objectives of this trading block and demonstrating once again its member countries' true interest in developing an increasingly efficient and secure market. This will further strengthen MERCOSUL member countries' presence in the international economic scenario and provide foreign investors with a more secure and stable environment.

As a result of the economic hardship faced by MERCOSUL member countries since early 2001, particularly the Argentina situation, CMC issued Resolution No. 1 of April 7, 2001, allowing Argentina to maintain certain specific import tariffs on an exceptional and temporary basis up to December 31, 2002. Resolution 1/01, adopting a pragmatic and flexible approach, revised some of the deadlines initially set for Relaunching of MERCOSUL. This resolution does not change the member countries' continued commitment to attaining their objective of establishing a Common Market in the region, as agreed in the 1991 Asunción Treaty, and subsequently ratified by the June 2001 communiqué issued to celebrate the 10th anniversary of the treaty in Asunción. Despite the temporary and exceptional benefit granted to Argentina, adoption of the common external tariff constitutes a pillar of the Customs Union.

Individuals and legal entities that are resident or domiciled in the MERCOSUL countries are now authorized to invest on Brazilian stock exchanges. MERCOSUL investors may freely participate in the securities market, without having to operate through an investment fund or portfolio, as is the case of other foreign investors. Likewise, individuals and legal entities that are resident or domiciled in Brazil are authorized to invest on the stock exchanges of other MERCOSUL member countries.

The only applicable restrictions are that the (i) transactions may only be carried out on the spot market; (ii) traded shares and other securities may only be issued in registered form; (iii) the investors must be domiciled or headquartered in the investment's country of origin; and (iv) the transactions will be settled on the financial markets of the countries involved in the transaction.

CONCLUSION

We have striven to provide prospective investors with a practical overview of how companies are formed and how they operate in Brazil.

Brazil offers countless opportunities for prospective foreign investors, in light of its enormous economic potential, its diversified economy, and its huge domestic market, now considerably expanded by joining MERCOSUL. The current governmental policies, targeting modernization of the economy to bring Brazil back into the international economic scenario, have been most successful. Brazil's political and economic stability, together with the progressive opening of its economy, the noteworthy reduction of inflation, privatization, and economic growth have attracted ever-increasing offshore investments.

Pinheiro Neto Advogados provides actual and prospective investors with specialized services in almost all areas of legal practice. Our association with Club de Abogados, especially Club de Abogados – Iberoamerica, and our Cooperation Agreement with Estudio Beccar Varela, Gómez-Acebo & Pombo – Abogados and Vieira de Almeida & Associados in Argentina, Spain and Portugal, respectively, coupled with our network of correspondents throughout Brazil and the world, play a key role in our effort to provide our clients with everything they need for their investments.

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