

**BrazilTradeNet**

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# Investments in Brazil Step-by-Step



Ministry of Foreign Relations  
General Department of Trade Promotion



Ministry of Foreign Relations  
General Department of Trade Promotion  
Trade Promotion Programs Division

## **Acknowledgement**

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## 1. Foreign Capital

### 1.1. General considerations

Foreign capital refers to the goods, machinery and equipment that enter Brazil and are meant for the production of goods and services, as well as financial or monetary resources brought to Brazil to be invested in economic activities, as long as they belong to individuals who live abroad or to companies which have their headquarters abroad.

### 1.2. How to register foreign capital

The company receiving the foreign investment must first register with the Data Processing Department of the Central Bank of Brazil, in order to receive a password which will enable it to electronically declare the direct foreign investments. Since September 4, 2000, the Central Bank of Brazil has been accepting only those declarations made through the Internet, at [www.bcb.gov.br](http://www.bcb.gov.br).

To receive the password, it is necessary to submit the Registration Request form duly filled in, with the notarized signatures of the company's legal representatives, together with the documents which attest to the powers of those signing them (articles of incorporation, by laws, minutes of the general shareholders meeting or meeting of quota holders conferring the signing powers and, as the case may be, the power of attorney).

Having completed the procedures above, the person must access the *Banco Central do Brasil* site, under the option "*Sisbacen-Data Processing*", item "*Access to Sisbacen via Internet*" and download, then run, the program "*PASCW10 – Sisbacen via VPN*". Using it, the registration of the foreign capital can be processed. After this operation, the person will receive a registration identification number, equipped with which he may go to the Central Bank to complete the foreign exchange operation.

### 1.3. Remittance of profits

There are no restrictions on the distribution of profits and their subsequent remittance abroad. As of January 1, 1996 profits generated are exempt from

Federal withholding taxes. Profits remitted must be declared using the same program *PASCW10*, via Internet. The person will then receive a number which is to be taken to the Central Bank.

### 1.4. Reinvesting profits

If the investor opts to reinvest profits rather than sending them abroad, these may be registered as foreign capital (as in the case of the initial investment, via Internet), thus increasing the basis for calculation for future divisions of capital for taxation purposes.

### 1.5. Repatriation

Foreign capital registered at the Central Bank may at any time be sent back to the country of origin, no previous authorization being necessary. Capital repatriated in an amount greater than the amount registered will be considered to be a capital gain on the part of the foreign investor and will be subject to withholding tax at the rate of 15%.

In the specific case of repatriation of capital, it is important to observe that the Central Bank of Brazil usually examines the net worth of the company involved, based on its balance sheet. If the net worth is negative, the Central Bank of Brazil may consider that there was a dilution of the investment, thus denying permission for repatriations in an amount proportional to the negative results verified.

### 1.6. Restrictions on remittances abroad

Remittances of currency abroad may be restricted when there is no corresponding registration at the Central Bank of Brazil, since the remittance of profits, the repatriation of capital and the registration of reinvestments are all based on the amounts registered as foreign investment.

Source: Central Bank of Brazil

## 2. How to Open your Company

### 2.1. Legal ways to start a business

**Individual businessman:** One who exercises economic activities professionally, involving the production and circulation of goods and services. Made up of a single individual who gives his name to the firm, being responsible for all the company's acts. This type of legal entity applies to industrial, commercial and service activities; however, it may not encompass the exercise of the intellectual, scientific, literary or artistic professions.

**Simple partnership (S/S):** A Simple partnership is a form of organization utilized by those partnerships which do not exercise business activities or whose object is the exercise of the intellectual, scientific, literary or artistic professions, except if the exercise of the profession does not constitute an element of the company, as well as cooperatives. The Simple partnership has its documentation registered at the Office of the Civil Registry of Legal Entities. In this type of partnership the partners are jointly and severally responsible for the company's debts, should the company's assets be insufficient to pay them.

**Private limited company (LTDA):** This form of organization requires the formation of a company by at least two partners. It is organized in the form of a Business Partnership, and may be governed, additionally, by the provisions applicable to corporations, or, in the case of omission in its bylaws, by the rules applicable to Simple Partnerships. A private limited company may engage in commercial, industrial and service activities and has its bylaws registered with the Board of Trade. Shares represent the participation of each partner in the company's capital, with the partners' liability limited to the value of their shares or quotas.

**Corporation (S/A):** To establish a firm of this kind, at least two stockholders, the partners, are needed, whose responsibility is limited to the issued cost of subscribed or acquired capital. The capital stock of the company is divided in shares, and the firm must necessarily aim at profits. It is always regarded as a trading company, no matter what its objectives are. Before starting this type of company, an economic and financial viability study must be made, in order to gain information into the company's proposed basic structure and the reasons that lead to the conclusion that it can be successful. Capital may consist of cash or assets.

The company may be considered "open" or "closed", depending on whether or not the securities it issues are traded on the Stock Exchange or on the over-the-

counter market. Open-capital public limited companies trade their stock on the Stock Exchange and the closed-capital ones do it through financial institutions. The open-capital company must be registered with the Securities Commission, the federal agency in charge of regulating and auditing such firms. Both types require registration with the local Junta Comercial (board of trade).

**Cooperatives:** Are constituted in the form of a Simple Partnership by at least 20 members who unite, voluntarily, through the creation of a democratic and collective partnership. They differ from the other types of partnerships in being, at the same time, an association of individuals and also a business, in which the members themselves are the owners of the company. In order to request the services of a professional belonging to a cooperative, no matter the area, the company can make the request directly to the chosen segment.

### 2.2. How to register a business

#### 2.2.1. Individual businessman

See below the documents and taxes- together with the official entities that request them - which are required of sole proprietors who want to start a business. The total cost of the taxes can be obtained directly from the entities that charge them. Most of the required forms to be filled out (including fiscal books) can be bought in stationery shops.

Some of the required procedures for opening a business can be found on the Internet. On the site of the *Receita Federal* (the federal tax-collecting agency) they can download the *Programa CNPJ*, a program which allows them to fill out several forms electronically.

#### Step 1

#### Entity in charge:

*Junta Comercial* (Board of Trade)

#### Required documentation and procedures:

- request business-name search by means of the form *Pedido de Busca* (search request);
- fill out 4 copies of the *Formulário de Firma Individual* (Sole Proprietorship form);
- fill out the *Requerimento Padrão da Junta* (a standard form required by the board of trade), which is specific for individual businessman (blue cover),

- and the *protocolo* (a registration document);
- fill out the form *Comunicação de Enquadramento como Microempresa* (a formal notification that the company is categorized as a micro business) or the form *Empresa de Pequeno Porte* (small business), submitted in 3 copies (depending on the categorization of the business under the one type or the other);
- fill out 3 copies of the *Ficha de Cadastro Modelo 1* (a registry filing card);
- two certified copies of the proprietor's CPF and RG (personal identity documents);
- proof of address (IPTU of business headquarters - both sides);
- proof of payment of taxes (GARE, code 370-0 and DARE, code 6621 - the amount to be paid can be ascertained from the *Junta Comercial*).

## Step 2

### Entity in charge:

*Receita Federal* (Federal Revenue Service)

### Required documentation and procedures:

- fill out 2 copies of the DBE (Basic Entry Document) to request registration in the CNPJ (National Registry of Legal Entities), signed by the legal representative of the business (signature must be certified by a notary public). The document is issued automatically by the Programa CNPJ of the Federal Revenue Service;
- fill out the FCPJ (registry file card for legal entities) and the FC (complementary file card for legal entities) on a diskette of the *Programa CNPJ*, a program provided by the Revenue Service;
- In the case of proxy-signed DBEs, enclose copy of proxy document, either certified by a notary public or together with the original. In this case, the FCPJ should be filled out with the legal proprietor's CPF;
- the original or certified copy of the incorporative/deliberative act of the enterprise, duly registered with the proper office, must be presented;
- a certified copy of the partners' CPF and RG;
- a certified copy of the partners' proof of residence;
- a certified copy of the IPTU of the firm's headquarters;
- proof that all partners have filed their income tax declarations with the Revenue Service and proof that they have done so in the last five years. In case they are exempt, they should submit a Declaration of Exemption, with their signatures certified by a notary public;
- pay tax at a bank, using the DARF form, code 6621.

## Step 3

### Entity in charge:

*Secretaria da Fazenda* (Treasury Office)

### Required documentation and procedures:

- fill out 5 copies of the *Declaração Cadastral* - DECA (registry declaration);
- fill out the *Declaração para Codificação de Atividade Econômica* - DECAE (declaration for the codification of the business);
- fill out the codification sheet that comes with the DECAE;
- bring a certified copy of proprietor's CIC and RG;
- bring all documentation which has been registered with the *Junta Comercial* (official board of trade);
- bring Fiscal Books Model 1 (Industry) and Model 1A (Commerce);
- bring a certified copy of the firm's IPTU (current year), both sides;
- bring a certified copy of the lease/rental contract - which should have been registered in a notary public office - or proof of property ownership;
- firm owner's proof of residence (original document);
- proof of payment of the registration fee by way of the GARE-DR, code 67-3. Amount due can be ascertained at the Secretary's Office.

## Step 4

### Entity in charge:

City Administration Office

### Required documentation and procedures:

- fill out 2 copies of the *Guia de Dados Cadastrais* (registry-data guide) in order to obtain the CCM (taxpayers register);
- original and copy of the CNPJ;
- original and copy of the registered Company Charter;
- a certified copy of the proprietor's CPF and RG;
- a certified copy of the firm's IPTU (current year), both sides;
- a certified copy of the lease/rental contract, which should have been registered with a notary public;
- Fiscal Books, Models 51 and 57;
- fill out the *Declaração de Microempresa* (a declaration that the firm fits into the micro-business category), if such is the case;
- when the CCM is granted, the City will issue a guide for payment of the location, installation and operation tax (TLIF);

- when the documentation above has been secured, the firm should apply for the “*Alvará de Funcionamento*” (permit to start the business activity) at the proper City Administration Office.

### 2.2.2. Simple partnership (S/S)

See below the documents and taxes - together with the respective entities that request them - that are required for opening a Simple Partnership. The tax amount to be paid can be obtained by inquiring at the proper entity office. Most of the required forms (including fiscal books) can be bought at stationery shops.

Some of the required procedures for opening a business can be found on the Internet. On the site of the *Receita Federal* (the federal tax-collecting agency) they can download the *Programa CNPJ*, a program which allows them to fill out several forms electronically.

#### Step 1

##### Entity in charge:

*Cartório de Registro Civil de Pessoa Jurídica* (Notary office for the registry of legal entities)

##### Required documentation and procedures:

- choose a name for the firm and request name search. This procedure requires payment of a tax;
- secure 4 copies of the Company Charter, with all pages initialed by the partners and witnesses, with signatures certified by a notary public;
- if the activity of the business requires the presence of a skilled professional (a lawyer, for example) the contract must be registered with the “*Conselho Regional da Categoria*” (the regional council of the profession in question, such as the OAB -Brazilian Lawyers Organization - in the case of lawyers) before they are registered with notary office for legal entities;
- bring along certified copies of the CPF and RG of the partners;
- bring certified copy of partners’ proof of residence;
- pay tax charged by the notary public office for going public.

#### Step 2

##### Entity in charge:

*Receita Federal* (Federal Revenue Service)

##### Required documentation and procedures:

- fill out two copies of the DBE (Basic Entry Document) to request registration with the CNPJ (National Registry for Legal Entities), which must be signed by the legal representative of the enterprise and certified by a notary public. The document is issued automatically by the *Programa CNPJ* of the Federal Revenue Service;
- fill out the FCPJ (registry file card for legal entities), the QSA (a document listing the names of partners or administrators) in case the firm is a partnership, and the FCPJ (registry file card for legal entities) on a diskette of the *Programa CNPJ* of the Federal Revenue Service; provided by the Federal Revenue Service;
- in the case of proxy-signed DBEs, enclose a copy of the proxy document, either certified by a notary public or together with the original. In this case, the FCPJ must be filled out with the CPF of the person responsible for the firm;
- partners of foreign nationality or living abroad must present a certified copy or a copy and the original of the proxy document giving power of attorney to those who will represent them in Brazil. When such a document is issued abroad, the local Brazilian consulate must certify the legal domicile of the grantor, and the document must be translated by an official translator;
- bring the original or certified copy of the incorporative/deliberative act of the enterprise, duly registered with the proper office;
- bring a certified copy of the CPF and RG of partners;
- bring a certified copy of the partners’ proof of residence;
- bring a certified copy of the IPTU of the company’s headquarters;
- bring proof that all partners have filed their income-tax declarations with the Revenue Service and proof that they have done so in the last five years. If they are exempt, they must submit a Declaration of Exemption, with their signatures certified by notary public;
- pay tax at bank, using the DARF form, code 6621.

#### Step 3

##### Entity in charge:

City Administration

##### Required documentation and procedures:

- fill out 2 copies of the *Guia de Dados Cadastrais* (registry-data form), in order to obtain the CCM (taxpayers register);
- bring original and copy of the CNPJ;



- bring original and copy of the registered Company Charter;
- bring certified copy of the partners' CPF and RG;
- bring certified copy of the firm's IPTU (tax base year), both sides;
- bring certified copy of firm's headquarters' lease/rental contract, certified by a notary public;
- bring Fiscal Books, Model 51 and 57;
- when the CCM is granted, the City will issue a guide for payment of the installation, operation and location tax (TLIF);
- when the documentation above has been secured, the firm should apply for the "*Alvará de Funcionamento*" (permit to start operating) at the proper City Administration office.

### 2.2.3. Private limited company (LTDA)

See, below, the documents and taxes - together with the respective entities that request them - that are required for opening a Private Limited Company. The tax amount can be obtained by inquiring at the proper entity office. Most of the required forms (including fiscal books) can be bought at stationery shops.

Some of the required procedures may be completed through the Internet. On the site of the *Receita Federal* (the federal tax-collecting agency) they can download the *Programa CNPJ*, a program which allows them to fill out several forms electronically.

#### Step 1

##### Entity in charge:

*Junta Comercial* (Board of Trade)

##### Required documentation and procedures:

- request business-name search by means of the form *Pedido de Busca* (search request). This procedure requires payment of a tax;
- 3 copies of the Company Charter, with all pages initialed by the partners and witnesses plus the signature of a lawyer;
- fill out 2 copies of the *Ficha de Cadastro Modelo 1* (registry file card, Model 1), with data on the proposed enterprise;
- fill out 2 copies of the *Ficha de Cadastro Modelo 2* (registry file card, Model 2) for each stockholder, manager, delegate and/or proxy;
- fill out the *Requerimento Padrão da Junta* (the brown-backed standard form required by the board of trade) plus the *protocolo* (registration document);

- fill out 3 copies of the form *Comunicação de Enquadramento como Microempresa* (a document that states the firm fits the micro-business category) or *Empresa de Pequeno Porte* (small business), whichever type fits the firm's category;
- bring along certified copies of the CPF and RG of the partners and of all other persons who filled out the Registry File Card, Model 2;
- bring certified copy of partners' proof of residence;
- bring certified copy of the IPTU of the company's headquarters;
- pay tax at the bank by means of the GARE, code 370-0 and of the DARE, code 6621. To find out amount to be paid, contact the Junta Comercial (Board of Trade).

#### Step 2

##### Entity in charge:

*Receita Federal* (Federal Revenue Service)

##### Required documentation and procedures:

- fill out 2 copies of the DBE (Basic Entry Document) to request registration with the CNPJ (National Registry for Legal Entities), which must be signed by the legal representative of the enterprise and certified by a notary public. The document is issued automatically by the Programa CNPJ of the Federal Revenue Service;
- fill out FCPJ (registry file card for legal entities), the QSA (a document listing the names of partners or administrators) and the FCPJ (registry file card for legal entities) on a diskette of the Programa CNPJ provided by the Federal Revenue Service;
- in the case of proxy-signed DBEs, enclose a copy of the proxy document, either certified by a notary public or together with the original. In this case, the FCPJ must be filled out with the CPF of the person responsible for the firm;
- partners of foreign nationality or living abroad must present a certified copy or a copy and the original of the proxy document giving power of attorney to those who will represent them in Brazil. When such a document is issued abroad, the local Brazilian consulate must certify the legal domicile of the grantor, and the document must be translated by an official translator;
- bring the original or certified copy of the incorporative/deliberative act of the enterprise, duly registered with the proper office;
- bring a certified copy of the CPF and RG of the partners;
- bring a certified copy of the partners' proof of residence;
- bring a certified copy of the IPTU of the company's headquarters;
- bring proof that all partners have filed their income-tax declarations with

- the Revenue Service and proof that they have done so in the last five years. If they are exempt, they must submit a Declaration of Exemption, with their signatures certified by notary public;
- pay tax at a bank, using the DARF form, code 6621.

### Step 3

#### Entity in charge:

*Secretaria da Fazenda* (Treasury Office)

#### Required documentation and procedures:

- fill out 5 copies of the *Declaração Cadastral* - DECA (registry declaration);
- fill out the *Declaração para Codificação de Atividade Econômica* - DECAE (declaration for the codification of the type of business);
- fill out the codification sheet that comes with the DECAE;
- bring Fiscal Book, Model 6;
- bring Company Charter duly registered with the *Junta Comercial* (Board of Trade), both the original document and a certified copy;
- bring the CNPJ (legal-entity registry document), both the original and a copy;
- bring a certified copy of the RG and CPF of the partners;
- bring a certified copy of the partners' proof of residence;
- bring a certified copy of the IPTU of firm's headquarters or the lease/rental contract certified by a notary public;
- secure an "*Alvará da Vigilância Sanitária*" (permit given out by the public-health department), when the business activity involves retail of food products;
- secure a permission from Cetesb (Environmental-Sanitation Technology Company), in the case of an industry;
- pay tax at a bank, using the GARE-DR form, code 167-3.

### Step 4

#### Entity in charge:

City Administration

#### Required documentation and procedures:

- fill out 2 copies of the *Guia de Dados Cadastrais* (registry-data form), in order to obtain the CCM (taxpayers register);

- bring original and copy of the CNPJ;
- bring original and copy of the registered Company Charter;
- bring certified copy of the partners' CPF and RG;
- bring certified copy of the firm's IPTU (tax base year), both sides;
- bring certified copy of firm's headquarters' lease/rental contract, certified by a notary public;
- bring Fiscal Books, Model 51 and 57;
- when the CCM is granted, the City will issue a guide for payment of the installation, operation and location tax (TLIF);
- when the documentation above has been secured, the firm should apply for the "*Alvará de Funcionamento*" (permit to start operating) at the proper City Administration office.

### 2.2.4. Corporation (S/A)

See, below, the documents and taxes - together with the respective entities that request them - that are required for opening a Corporation. The tax amount can be obtained by inquiring at the proper entity office. Most of the required forms (including fiscal books) can be bought at stationery shops.

Some of the required procedures may be completed through the Internet. On the site of the Receita Federal (the federal tax-collecting agency) they can download the Programa CNPJ, a program which allows them to fill out several forms electronically.

#### Step 1

#### Entity in charge:

*Junta Comercial* (Board of Trade)

#### Required documentation and procedures:

- request business-name search by means of the form *Pedido de Busca* (search request). This procedure requires payment of a tax.
- 3 copies of the Constitution Writing, with all pages initialed by the partners and witnesses plus the signature of a lawyer and the Statute of the Public Limited Company;
- fill out 2 copies of the *Ficha de Cadastro Modelo 1* (registry file card, Model 1), with data on the proposed enterprise;
- fill out 2 copies of the *Ficha de Cadastro Modelo 2* (registry file card, Model 2) for each stockholder, manager, delegate and/or proxy;

- fill out the *Requerimento Padrão da Junta* (the brown-backed standard form required by the board of trade) plus the protocolo (registration document);
- fill out 3 copies of the form *Comunicação de Enquadramento como Microempresa* (a document that states the firm fits the micro-business category) or *Empresa de Pequeno Porte* (small business), whichever type fits the firm's category;
- bring along certified copies of the CPF and RG of the partners and of all other persons who filled out the Registry File Card, Model 2;
- bring certified copy of partners' proof of residence;
- bring certified copy of the IPTU of the company's headquarters;
- pay tax at the bank by means of the GARE, code 370-0 and of the DARF, code 6621. To find out amount to be paid, contact the Junta Comercial (Board of Trade);

## Step 2

### Entity in charge:

*Receita Federal* (Federal Revenue Service)

### Required documentation and procedures:

- fill out 2 copies of the DBE (Basic Entry Document) to request registration with the CNPJ (National Registry for Legal Entities), which must be signed by the legal representative of the enterprise and certified by a notary public. The document is issued automatically by the *Programa CNPJ* of the Federal Revenue Service;
- fill out FCPJ (registry file card for legal entities), the QSA (a document listing the names of partners or administrators) and the FCPJ (registry file card for legal entities) on a diskette of the *Programa CNPJ* provided by the Federal Revenue Service;
- in the case of proxy-signed DBEs, enclose a copy of the proxy document, either certified by a notary public or together with the original. In this case, the FCPJ must be filled out with the CPF of the person responsible for the firm;
- in the case of QSA, it must be listed the biggest shareholders with the right of vote, limited to 12 and also all the directors and administrators;
- partners of foreign nationality or living abroad must present a certified copy or a copy and the original of the proxy document giving power of attorney to those who will represent them in Brazil. When such a document is issued abroad, the local Brazilian consulate must certify the legal domicile of the grantor, and the document must be translated by an official translator;
- bring the original or certified copy of the incorporative/deliberative act of the enterprise, duly registered with the proper office;

- bring a certified copy of the CPF and RG of the partners;
- bring a certified copy of the partners' proof of residence;
- bring a certified copy of the IPTU of the company's headquarters;
- bring proof that all partners have filed their income-tax declarations with the Revenue Service and proof that they have done so in the last five years. If they are exempt, they must submit a Declaration of Exemption, with their signatures certified by notary public;
- pay tax at a bank, using the DARF form, code 6621.

## Step 3

### Entity in charge:

*Secretaria da Fazenda* (Treasury Office)

### Required documentation and procedures:

- fill out 5 copies of the *Declaração Cadastral* - DECA (registry declaration);
- fill out the *Declaração para Codificação de Atividade Econômica* - DECAE (declaration for the codification of the type of business);
- fill out the codification sheet that comes with the DECAE;
- bring Fiscal Book, Model 6;
- bring Company Charter duly registered with the *Junta Comercial* (Board of Trade), both the original document and a certified copy;
- bring the CNPJ (legal-entity registry document), both the original and a copy;
- bring a certified copy of the RG and CPF of the partners;
- bring a certified copy of the partners' proof of residence;
- bring a certified copy of the IPTU of firm's headquarters or the lease/rental contract certified by a notary public;
- secure an "*Alvará da Vigilância Sanitária*" (permit given out by the public-health department), when the business activity involves retail of food products;
- secure a permission from Cetesb (Environmental-Sanitation Technology Company), in the case of an industry;
- pay tax at a bank, using the GARE-DR form, code 167-3.

## Step 4

### Entity in charge:

City Administration

**Required documentation and procedures:**

- fill out 2 copies of the *Guia de Dados Cadastrais* (registry-data form), in order to obtain the CCM (taxpayers register);
- bring original and copy of the CNPJ;
- bring original and copy of the registered Company Charter;
- bring certified copy of the partners' CPF and RG;
- bring certified copy of the firm's IPTU (tax base year), both sides;
- bring certified copy of firm's headquarters' lease/rental contract, certified by a notary public;
- bring Fiscal Books, Model 51 and 57;
- when the CCM is granted, the City will issue a guide for payment of the installation, operation and location tax (TLIF);
- when the documentation above has been secured, the firm should apply for the "*Alvará de Funcionamento*" (permit to start operating) at the proper City Administration office.

**2.2.5. Cooperatives**

Below are the documents and fees – with the respective agencies that require them - that are necessary for the opening of a Cooperative. The costs of such fees for services should be required with the agencies that are responsible for them. Most of the necessary forms (including fiscal books) can be bought in newsstands.

Some of the procedures for the opening of a company are available on the Internet. On the site of the *Receita Federal* (the federal tax-collecting agency) they can download the *Programa CNPJ*, a program which allows them to fill out several forms electronically.

**Step 1****Office in Charge:**

*Junta Comercial* (Board of Trade)

**Necessary documents and procedures:**

- request search of the company name through the Request for Search form,
- fill in the Brown Cover Form;
- take 3 copies of the articles of association;
- fill in the Ficha de *Cadastro Modelo 1* – two copies- with information on the cooperative being constituted;

- fill in Ficha de *Cadastro Modelo 2* – two copies- for each member of the administrative council and/or board;
- take a notarized copy of the identity card of each member of the administrative council and/or board;
- take a declaration confirming no criminal record, if that is not in the body of the minute, for each member of the administrative council and/or board;
- pay the fees in a bank (GARE code 370-0 and DARF code 6621 – request the costs of such fees at Board of Trade).

**Step 2****Office in Charge:**

*Receita Federal* (Federal Revenue Service)

**Necessary documents and procedures:**

- fill in the Basic Document of Entry (DBE) to request the register in the National Registry of Legal Entity (CNPJ), two copies, with a notarized signature of the Legal Representative of the company (the document is automatically issued by the *Programa CNPJ* from the Federal Revenue Service);
- fill in the Cadastral Card of Legal Entity (FCPJ) and the Complementary Card of Legal Entity (FC), in a floppy disk, through the Programa CNPJ provided by the Federal Revenue Service;
- if the DBE is signed by a proxy, enclose a notarized copy of the power of attorney or a copy together with the original document. In this case, the FCPJ must be filled in with the CPF (individual tax payer identity card) of the one in charge;
- take the original document or a notarized copy of the constitutive/deliberative act of the company, duly registered with the pertinent agency;
- take the minute of the general assembly of the founder members or the public deed, registered at the Board of Trade;
- take the statute, except if it has been transcribed in the minute or public deed, registered at the Board of Trade.

**Step 3****Office in Charge:**

Organization of the Cooperatives of the State

## Necessary documents and procedures:

- fill in and take the Petition, Registration Card and Nominative List.

### 2.3. How to avoid problems when choosing the business location

- Check legality of chosen site with the Realty Register Office;
- check whether there are any city property-tax payments overdue;
- if renting the property, secure a rental contract and have it registered with the Civil Registry Office for Legal Entities;
- check with the pertinent city administration office whether the chosen site is sanctioned for the kind of business that is planned for it;
- in the case of businesses located in a partner's own place of residence, note that specific legislation on such cases rules that: 1) the area occupied by the business should be independent and separated from the area used as residence (annex building, garage, etc.); 2) a written statement must be submitted to the City avouching that there is no physical link between the business area and the area used as residence; 3) a drawing or plan showing the business and residential areas of the place must also be submitted.

### 2.4. How to obtain the business permit

According to the pertinent legislation, no single piece of property may be occupied or used for the installation and operation of any industrial, commercial or service activity without a permit given out by the city. To secure the permit, the following documents must be presented:

- a declaration stating that the property is in accordance with the regularity document submitted, and that it is in adequate sanitary and habitable condition;
- IPTU (property-tax document). Property must be sanctioned for commercial use;
- a copy of the CCM (a register of city-tax payers);
- proof of payment of the Location, Installation and Operation Tax (TLIF);
- the legal permit to move into the property ("*habite-se*");
- the following may also be eventually required: approval from the Sanitation Engineering Department, Operation Permit from Cetesb, an up-to-date inspection document from the Fire Brigade, security-check documents, permit to install tanks and pumps and personal identity documents (RG and CPF) of all the partners of the business.

## 3. Labor Legislation

### 3.1. Types of contracts

#### 3.1.1. Temporary contracts

Temporary work is that rendered by an individual to a company to meet the transitory needs of substitution of regular and permanent personnel or due to an extraordinary increase in workload. The time period is determined by the employer and may only be extended once, for a period of time inferior or equal to the previous one.

#### Rights of the temporary employee

The following rights are guaranteed to the temporary employee:

- remuneration equivalent to that received by other employees in the same category at the employing company, on an hourly basis, the minimum regional wage being guaranteed in any case (R\$ 240,00 as of April 1, 2003, which will remain in effect for a period of one year);
- a working day of 8 hours with no more than two hours overtime, to be paid with an additional 20% (twenty per cent) added to the hourly rate;
- proportional vacation time;
- paid weekly rest days;
- extra pay for night shift;
- severance indemnity for dismissal without good cause or at the end of the term of the contract, corresponding to 1/12 (one twelfth) of the wages received;
- social security protection as provided for in the organic law governing Social Security;
- registration of the work contract as a temporary employee in the employee's employment booklet (CTPS).

#### 3.1.2. Fixed term contracts

It is a contract which has predetermined starting and ending dates and may last for a maximum of two years. After the end of a fixed term contract, the company must wait 6 months between the end of such a contract and the beginning of a new fixed term contract with the same employee; otherwise, the contract shall be interpreted as an indefinite term contract.

### Rights of the employee under a fixed term contract

- Provisional Measure dated March 28, 2002, which will remain in effect for a period of one year);
- the employee is entitled to a 13th salary at a rate equivalent to 1/12 of his monthly salary per month worked;
- the right to vacation is the same as for an indefinite term contract. As these are normally short or medium-term contracts, at termination the employee receives his vacation proportionally, plus one third;
- provisional stability is ensured to the pregnant employee, the shop steward, as well as his deputy, to employees who participate on the Board of the Internal Committee for the Prevention of Accidents - CIPA and to employees who have suffered work-related accidents, when any of these instances occur. Such stability is terminated at the end of the contract term;
- the period of work under a fixed term contract is taken into account for retirement purposes, as provided for in the new labor law. Other social security rights are also guaranteed;
- the Government Severance Indemnity Fund for Employees - FGTS is deposited monthly at a rate of 8%.

#### 3.1.3. Indefinite term contracts

This type of contract is the one normally used for hiring employees. It is also used when one fixed term contract is signed followed by another one without the required six-month interval.

### Rights of the employee under an indefinite term contract

- Minimum wage;
- work week of up to 44 hours;
- salary may not suffer reduction;
- unemployment insurance;
- 13<sup>th</sup> salary;
- profit sharing;
- paid overtime;
- annual vacation;
- maternity leave;
- paternity leave;
- prior notice for termination;
- retirement;
- labor accident insurance;
- Government Severance Indemnity Fund for Employees (FGTS);

- provisional stability for the Board members of Committees for the Prevention of Accidents, employees who have suffered work-related accidents and for pregnant employees.

### 3.2. "Bank of hours"

The "bank of hours" is a more flexible system of compensation for overtime work hours, but which demands authorization through collective bargaining agreements, enabling the company to adjust employee working hours to its production needs and service demands, and it encompasses all types of contracts.

It may be used, for instance, at slow times so that the company can reduce the normal work day during a certain period of time without reducing salaries and a "credit balance of hours" remains set aside to be used when production improves or activities pick up, provided this occurs within a period of 120 days, except as otherwise negotiated (in the collective bargaining agreement). If the system starts being used during a period of high productivity in the company, the working day is extended (by a maximum of two hours a day) during such period. In this case, overtime will not be paid, but rather offset by a corresponding number of days off. Or, the working day may be reduced until the balance of extra hours is entirely offset.

The system may vary depending on the terms of the collective bargaining agreement, but the limit shall always be 10 working hours daily, and in any 120-day period, the sum of the weekly hours may not exceed the maximum allowed by law. For each 120-day period, the compensation system is restarted, with the formation of a new "bank of hours".

In addition, the offsetting of the overtime worked must occur during the term of the contract, i.e. in the event of termination of the contract (whatever the type), without the overtime worked having been offset, the employee is entitled to the payment of such hours, plus the additional amount specified in the collective bargaining agreement for overtime, which in no case may be less than 50% of the normal hourly rate.

### 3.3. Labor and Social Security Charges

#### INSS (National Institute for Social Security)

Employer: Variable rate, with a maximum of 28,8% of total payroll. Companies operating under the *SIMPLES*.

**Employees: (Rules for all the companies)****Discount of:**

- 7,65% for salaries of up to R\$ 468,47
- 8,65% for salaries of up to R\$ 468,48 until R\$ 600,00
- 9,00% for salaries of up to R\$ 600,01 until R\$ 780,78
- 11,0% for salaries of up to R\$ 780,79

**Government Severance Indemnity Fund for Employees (FGTS)**

Rate of 8% of the monthly remuneration paid to each employee.

**Employee's Profit Participation Program (PIS)**

Rate of 0,65% on gross revenues. Companies which have opted for the *SIM-PLES* system are not subject to the charge.

**Union Contribution**

Deducted from employees: one day's wages annually. Trade Association: see rate in progressive table at the respective union headquarters.

**Prior Notice**

Amount corresponding to one month's wages.

**Vacation Due**

Salary for the month in which the employee takes his vacation, to be paid in advance, plus 1/3 (one third) bonus.

**Proportional Vacation Time**

1/12 of the employee's monthly salary for each month worked or fraction thereof greater than 15 days, to be calculated as of the day of admission to the completion of one year, and thus successively.

**13<sup>th</sup> Salary**

Amount corresponding to one month's wages, 50% of which is to be paid by November 20 of each year, the remaining 50% to be paid by December 20 of the same year.

**Proportional 13<sup>th</sup> Salary**

1/12 of the employee's salary for each month worked or fraction thereof greater than 15 days, to be calculated as of January 1 of the corresponding year to December 31 of the same year.

## 4. Foreign Labor

Foreigners who must reside in Brazil for work purposes require an authorization which must be granted by the Ministry of Labor and which is required by Brazilian consular authorities in accordance with the legislation in force.

### 4.1. Types of Visas

#### 4.1.1. Visa for short- term business travel

Visitors coming to Brazil with a visa for short-term travel may not, under any circumstances, be paid any type of remuneration. The visa may be obtained at the Brazilian Consulate in the jurisdiction where the applicant resides, and it is not required for all countries. The visa application should contain information regarding the objective of the trip, the names, addresses and telephone numbers of commercial contacts in Brazil, arrival date and probable departure date, and a guarantee of moral and financial responsibility by the applicant during his/her stay in Brazil.

This visa may be valid for a period of up to 90 days from the date of first arrival in Brazil and may be used for multiple entries into the country during this period. An extension for an additional three months may be obtained through the Federal Police if requested before the expiration date.

#### 4.1.2. Temporary work visas

There are various types of visas for individuals coming to Brazil for work purposes, and the individual must obtain a Work Permit from the Brazilian authorities. Following approval of the request, the authorization will be published in the Federal Official Gazette and the respective consulate will be notified. At this point, the foreign candidate may apply for his visa.

#### 4.1.3. Temporary visas for professionals

This type of visa is offered to individuals who come to Brazil for a period of up to two years and may be extended for an additional two years. This visa is available to foreigners who will be temporarily employed by a Brazilian company which requires know-how not available in Brazil.

#### 4.1.4. Foreign journalist visa

This is a visa for foreign journalists who are working on a temporary basis in Brazil. In this case, the candidate may not be paid a salary in Brazil.

#### 4.1.5. Permanent working visa

Those who will be transferred permanently to Brazil in order to work for a branch or subsidiary of a foreign company as a director or manager may request a permanent working visa. In this case, the company must have registered with the Central Bank a foreign investment in Brazil of at least **US\$ 50 \* thousand**. If a person works in Brazil for a period of four years or more on a temporary basis – regardless of whether the company is Brazilian or foreign – he/she may apply for a change in his/her status to permanent. The company must make this request to the Ministry of Justice. To obtain a permanent working visa for someone who is not already working in Brazil on a temporary basis, the application to the Ministry of Labor must be filed first.

\* National Council of Immigration, Resolution Normative n° 60, of October 06, 2004

### 4.2. Registration on entering Brazil

Foreigners living in Brazil, immigrants and temporary residents who come for work purposes – except for short-term business trips – must register with the Federal Police within 30 days of their arrival in Brazil and present their passports.

### 4.3. Preparatory travel for temporary or permanent work purposes

Those needing to travel to Brazil on business before obtaining a work permit and the appropriate visa may request a short-term business visa. However, they may not be paid a salary in Brazil until after the authorization and the visa are obtained.

### 4.4. Work by spouse and children

Spouses and children accompanying foreigners will come with the same type of visa, but will not be able to work in Brazil unless the visa is modified to a permanent resident visa. If the applicant is married to a Brazilian or is the parent of a Brazilian child, he/she may request a permanent visa at the Brazilian Consulate before coming to Brazil, or at the Ministry of Justice if he/she is already in Brazil. A foreigner who adopts a Brazilian child also has the right to a permanent visa.



#### 4.5. Employment booklet for foreigners

The CTPS - Employment Booklet will be supplied to the foreigner upon presentation of the necessary documents. Those interested in applying for an employment booklet must appear personally at a Regional Labor Office (DRT), Regional Sub-Office or the service branch closest to their homes.

#### 4.6. Foreign labor in Brazil

##### 4.6.1. Documents required for foreigners having a permanent visa

- One recent photograph measuring 3 cm X 4 cm, white background;
- original identity card for foreigners – CIE. The period of validity of the Employment Booklet (CTPS) will be the same as that of the CIE;
- if the CIE is the old type and renewal has been applied for with the Federal Police, the original receipt from the renewal application plus a notarized copy of same must also be presented;
- if the party has no CIE to present, it will be necessary to present the original receipt from the application for the CIE with the Federal Police, the results of the identification data check performed by the National Registration System for Foreigners (SINCRE) and the original passport with the respective visa granting permanent resident status. In this case, the period of validity of the CTPS will be a maximum of 180 days and may be renewed for the same period of time.

##### 4.6.2. Documents required for foreigners having temporary work visas

- One recent photograph measuring 3 cm X 4 cm, white background;
- original of the Federal Official Gazette (with approval of the petitioner's application by the General Coordinator of Immigration);
- original passport with the respective visa and registration with the Federal Police;
- original receipt from the Federal Police;
- original of the identification check [SINCRE] (issued by the Federal Police) or visa application duly stamped on the front and back.

Source: Ministry of Labor and Employment

## 5. International Contracts of Intellectual Property

### 5.1. General Aspects

Intellectual property comprises literary, scientific and artistic property, being subordinate to the civil laws. On the other hand, industrial property is subject to commercial laws. The National Institute of Industrial Property (INPI) is a governmental agency in charge of the rights of the industrial property, as well as the formal exam of patent applications and concession and the registration of trademarks.

### 5.2. Trade Marks

#### 5.2.1. Validity Terms

The validity term of the trademark registration is ten years, as from the date of concession. This term can be extended, upon request of the title-holder, for equal or successive periods, otherwise, the registration will be terminated and the trademark will become, theoretically, available. If the application for an extension has not been made until the final deadline of the registration validity, the title-holder will be able to do it within the six following months as long as he/she makes an additional payment.

#### 5.2.2. Obligations of the title-holder

The title-holder of a trademark registration has the obligation to use it so as to keep it in force. The deadline for the beginning of its use is of five years as from the registration concession date and the use of the trademark cannot be interrupted for more than five consecutive years. The registration of a Brazilian trademark may be applied for anyone interested, Brazilian or foreigner. Upon application of a trademark registration in Brazil, it is necessary to present evidence of the legal situation of the title-holder in relation to the laws of his/her country, to give proof of his/her field of business.

#### 5.2.3. Procedures

Firstly, it is advisable to carry out a previous search of the trademark in order to know if there already exists any mark deposited or registered in the same field.

The procedure, however, is not compulsory. The application of registration of the trademark is made by means of an appropriate form, in which there will be information about the trademark and the applicant. In order to carry out this search or to make the deposit, the person shall go to the home office of INPI or to one of the branches or Representatives of the agency.

### 5.3. Patents

Any individual or legal entity may place a patent application or registration or industrial design, which is valid only within the territorial boundaries of the country, which concedes this protection.

#### Cannot be patented:

- whatever is against the moral and good manners (inventions against religious cults and to feelings worthy of respect and veneration), to the public order (inventions against the laws and public safety) and to public well-being (inventions with the exclusive aim against health);
- matters related to the transformation of the atomic nucleus (only the equipment, machinery, devices and the like and, eventually extractive processes, which do not alter or change the physical-chemical properties of products or matters can be patented);
- the whole or part of living beings, except for the transgenic micro-organisms, which fulfil the three requirements to be patented - novelty, inventive activity and industrial application – and which are not a mere discovery.

#### 5.3.1. Previous search

Before placing a patent application, it is advisable, however, not compulsory, to make a search of previous registrations, which might be Individual or Isolated. In order to carry out an Individual search, the interested him/herself shall go to the home office of the INPI (Praça Mauá, 7, 7<sup>th</sup> floor, Rio de Janeiro), where the Patent Bank is located. He will be given the deadline of three days in order to make the search and the information found shall be short-listed in the Descriptive report of the Patent Application. In case the person cannot make the search personally, he/she may choose the Isolated Search, which will be made by the INPI itself and charged according to the quantity of documents researched. More information will be obtained in the INPI web site in the item Products and Services of Technological Information.

### 5.3.2. Validity Term

An invention patent lasts for a period of 20 years and the one referring to the usefulness model, for a period of 15 years, as from the deposit date. The registration of industrial design lasts for a period of 10 years as from the deposit date, renewable for three successive applications of five years each until the achievement of the maximum period of 25 years.

### 5.3.3. Obligations of the title-holder

In order to keep the patent, the title-holder shall pay the annual fees, quinquennium and extensions and start to explore the patented object — within three years from the date of its concession — and not to interrupt the use of the product for more than a year.

### 5.3.4. Procedures

In order to protect an invention, one shall go first to the National Institute of Industrial Property (INPI), where an application shall be made, which after being analysed by a patent analyst might become a Patent or Registration, with validity in all national territory. The application shall be made with the following documents: own application, descriptive report, claims, drawings and summary. The INPI will require three copies of the application, and the user shall keep one to himself/herself. They shall be preceded of a special form and of a payment slip, which shall be paid at an authorised bank. The forms are distributed at the front desk of INPI or in one of the branches or Representatives, and in the INPI web site . At the front desk, the person will receive a receipt of delivery and shall return to follow the application copy, which can also be made by the telephones (0\*\*21) 206-3314 and (0\*\*21) 206-3592 or through e-mail [patente@inpi.gov.br](mailto:patente@inpi.gov.br).

### 5.3.5. The patent application

The INPI issued several Normative Acts regulating how to make the Patent applications. They can be acquired personally or from the web site , in Legislation. For the correct filling of the documents, which are part of the Patent application, certain procedures shall not be forgotten. Information about similar processes, and the existence of previous applications (Brazilian or not) must be mentioned in the Descriptive Report, as well as all the details, which are necessary to enable a technician in the area to reproduce the object. The Descriptive Report must begin with the application title and mention the materials involved and ways of utilising the product. All the references to the drawings shall also be there.

The application object needs to be described in the Claims Chart, which shall be started with the title — or by part of it chosen to describe the invention — and display the phrase “characterised by” followed by the technical characteristics of the model, mainly those which do not exist in previous registrations.

The Summary shall have 50 to 200 words and describe the object. In case of doubt, it is possible to contact the Patent Board of Directors and obtain technical guidance through the telephones (0\*\*21) 206-3797 and (0\*\*21) 206-3313, at the INPI home office, Praça Mauá, 7, Rio de Janeiro, in room 1017 or through the e-mail: [patente@inpi.gov.br](mailto:patente@inpi.gov.br).

#### 5.4. Contracts of technology transfer

It is important for the contracts of technology transfer to specify their objects, the industrial property rights involved and the way the transfer will be made. The contracts of commercial exploitation — which should not exceed the validity of the trademark or patent registration — shall say if the licensing or commercial exploitation are of an exclusive nature or if sub-contraction is allowed.

The contracts of technical and scientific assistance shall specify the number of specialists who will be necessary for the fulfilment of the services, the programme, payment and the time required.

The approval application shall be handed in to the National Institute of Industrial Property (INPI) in an adequate form, together with the original contract or equivalent document. The INPI might also ask for some additional documents and in this case the interested has 12 months to attach them, otherwise the process is filed.

#### 5.5. Franchising

The Franchising Brazilian Association (ABF), which is responsible for overseeing the ethical activity in Brazil, organised a code of franchising self-regulation, which offers support and rules for its implementation. Besides the law 8955/94 regulates the relations between franchiser and franchisee, since the initial idea until the establishment of the franchise.

The franchise registration is not compulsory for any governmental institution

so that it can be valid and that it may be executed, although in order to be valid against third parties, the registration at the National Institute of Industrial Property (INPI) is required. If the franchisee is a foreigner, he must register at the Central Bank of Brazil, with the purpose of allowing the payments remittance foreseen in the contract.

## 6. Economic Indicators for Brazil

### 6.1. Gross Domestic Product (GDP)\*

Year	In R\$ Million	Variation (%)*
1996	778.887	2,66
1997	870.743	3,27
1998	914.188	0,13
1999	963.869	0,81
2000	1.086.700	4,36
2001	1.184.769	1,51
2002	—	1,52

Source: Brazilian Institute of Geography and Statistics - New National Accounts System (IBGE/NSCN)

\* GDP – actual variation (discounting inflation for the period)

### 6.2. Inflation rates\*

Year	Rate
1997	5,22%
1998	1,65%
1999	8,94%
2000	5,97%
2001	7,67%
2002	12,53%

\* IPCA (Amplified Consumer Price Index) calculated by the Brazilian Institute of Geography and Statistics - IBGE.

### 6.3. Interest rates\*

Year	Rate
1997	39,87%
1998	29,21%
1999	18,99%
2000	16,38%
2001	19,05%
2002	24,90%

Source: Central Bank of Brazil, Monetary Policy Committee

\* Daily average interest rate, annualized on a 252 working-day basis. Position as of 31 December of each year.

### 6.4. Exchange rates\*

Year	Commercial Dollar*
1997	R\$ 1,0808
1998	R\$ 1,1644
1999	R\$ 1,8514
2000	R\$ 1,8295
2001	R\$ 2,3522
2002	R\$ 2,9309

Source: Central Bank of Brazil

\* Annual average of actual parity real/commercial dollar.

### 6.5. Direct foreign investment in Brazil

Year	Flow (in Us\$ Million)
1997	17,879.00
1998	26,346.00
1999	31,214.00
2000	33,331.00
2001	24,715.00
2002	14,084.00

Source: Central Bank of Brazil, Department of Foreign Capital.

## 7. The Information Technology Industry

### 7.1. Introduction

The intention of Brazilian legislation governing information technology is to institutionalize standards for ratifying and certifying the quality of goods and services, as well as to stimulate international cooperation. One of the principal laws governing the matter is Law 7232, published in October of 1984, which created the National Council of Information Technology and Automation - Conin, and the Special Secretariat for Information Technology - SEI, which are responsible, respectively, for the National Information Technology and Automation Plan and for the prior approval and registration of information technology products produced and sold in the Brazilian market. The Information Technology Center Foundation, CTI was also created in order to offer technological support to Brazilian industry.

Law 9609 promulgated in 1998, also known as the “Software Law”, contains the principal rules for the protection of intellectual property contained in computer programs. The copyright system, regulated by Law 9610 of 1998, establishes the property and moral rights granted to the creators of software.

#### 7.1.1 . Taxes

Computer programs sold in Brazil are subject to the Value-added Tax on Sales and Services (ICMS), whose tax basis is the value of the magnetic media (diskettes, CD-ROMs, magnetic tapes, etc.) and the rate is 18%. When foreign computer programs arrive at Customs, they are subject to Import Duty (II), at a rate of 7,99%, Value-added Tax on Sales and Services (ICMS), at a rate of 18% and Excise Tax (IPI), whose rate depends on the type of product, as defined in the Table of Excise Tax Incidence (TIPI), which may be consulted at the Federal Revenue Service.\* Income tax withholding is at the rate of 15% for any addressee country.

\* The Table of Excise Tax Incidence (TIPI) may be consulted in person at the Federal Revenue Service at the following address: Av. Prestes Maia, 733, Luz, São Paulo. For more information, call (0\*\*11) 3315-2401.

#### 7.1.2. Registration of software

The rights of one who develops a computer program and proves his/her authorship extend for 50 years as of the 1st of January of the year following its

creation. Registration made in Brazil is accepted in any international treaty country, and when a product is registered, its trade name is automatically protected.

The first step in registering software is to acquire the Users Manual, which contains all the information necessary to do so. The manual may be found at the National Institute of Industrial Property (INPI) or at its agencies and state representative offices. If preferred, the information may be downloaded via the Internet from the INPI site.

The company must then contact the National Institute of Industrial Property (INPI) to obtain the value of fees to be deposited for the registration and receive the Fee Payment Form to be paid at the Bank of Brazil. Following payment, a form will be issued for the registration request, which should be delivered, together with the documents, directly to the INPI or sent by mail in tamperproof packaging.

The elapsed time between the filing of the Registration Request and the issue of the Certificate is 90 days. However, a registration number will be given at the time of filing to be used in any communications regarding the program.

### 7.2. The New Information Technology Law

#### 7.2.1. Introduction

Under the new information technology law, companies wishing to establish themselves in the state of São Paulo will continue to enjoy the same benefits as before. Law 10176, enacted January 11, 2001, alters Law 8248, Law 8387 and Decree-Law 288 and makes provisions regarding qualifications and competition in the information technology sector. Incentives for the State were threatened, based on the argument that it was only for this reason that companies were setting up here. However, fiscal incentives are only one of the factors that attract investment. The skilled labor, logistics and infrastructure offered are a few of the many factors that contribute to the attraction of foreign investment.

#### 7.2.2. Main characteristic

The main characteristic of the new law is a reduction in the IPI (Excise) Tax to remain in force from January 1, 2001 to December 31, 2009, when the incentives will cease to exist. The law provides for:

- a reduction of ninety-five percent of the tax due, from January 1 to December 31, 2001;
- a reduction of ninety percent of the tax due, from January 1 to December 31, 2002;
- a reduction of eighty-five of the tax due, from January 1 to December 31, 2003;
- a reduction of eighty percent of the tax due, from January 1 to December 31, 2004;
- a reduction of seventy-five percent of the tax due, from January 1 to December 31, 2005;
- a reduction of seventy percent of the tax due, from January 1, 2006 to December 31, 2009, when the incentives will cease to exist.

### 7.2.3. Benefits

To be eligible for the benefits, companies must invest a minimum of 5% of their gross revenues annually in research and development activities in the area of information technology, which must be carried out in Brazil. Under the law, at least 2.3% of gross revenues must be invested as follows:

- under agreements with research centers or institutes or official or recognized Brazilian educational entities;
- under agreements with research centers or institutes or official or recognized Brazilian educational entities having their head office or main establishment located in the Sudam (Superintendency for the Development of the Amazon) or Sudene (Superintendency for the Development of the Northeast) designated areas or the Central Western region of the country, except for the Manaus Free Trade Zone;
- in the form of funds to be deposited quarterly in the FNDCT – National Scientific and Technological Development Fund.

### 7.2.4. Goods and services in the areas of information technology and automation

For the purposes of the law, the following are considered goods and services in the area of information technology and automation:

- electronic components and semiconductors, opto-electronics, as well as the respective electronic parts from which they are made;
- machines, equipment and devices based on digital technology which function in the collection, processing, structuring, storage, switching, transmission,

- retrieval or presentation of information, the respective electronic parts from which they are made and the physical support to operations;
- programs for computers, machines, equipment and devices for processing information and their respective technical documentation (software);
- technical services associated with the goods and services described above.

Source: National Institute of Industrial Property (INPI)

## 8. Antitrust Legislation

### 8.1. Purpose

Antitrust legislation aims at restraining the monopolistic action of certain companies, in accordance with Law 8884, edited June 11, 1994. The law makes provisions regarding the prevention and repression of infractions against the economic order, free competition, the social function of property, consumer rights and the repression of abuse of economic power.

With the promulgation of this law, the Administrative Council for Economic Defense (CADE) *Conselho Administrativo de Defesa Econômica* (CADE) which is linked to the Ministry of Justice (*Ministério da Justiça*), began to exercise its powers of administrative policing, which extend also to acts that take place abroad but produce effects in Brazil, or to foreign companies which have a representative in Brazil. Thus, acts that may in any way limit or damage free competition or which may result in the domination of the market for goods and services should be submitted for evaluation by CADE.

This organization is aided by the SDE - Economic Law Department of the Ministry of Justice *Secretaria do Direito Econômico do Ministério da Justiça* (SDE) which permanently monitors the activities and commercial practices of individuals or legal entities in order to prevent infractions against the economic order and may also solicit information and documents whenever deemed necessary.

### 8.2. Infractions

The following acts are considered infractions against the economic order:

- to limit, falsify, or damage free competition or free enterprise in any way;
- to dominate an important market for goods and services;
- to arbitrarily increase profits;
- to utilize a dominant position in an abusive manner.

Thus, the following acts, among others, shall be considered contrary to the legal system in force: price fixing among competitors (cartels); the dividing up of markets; limiting or preventing the access of new companies to the market; sales at prices below cost for the purpose of eliminating competitors or acquiring larger shares of the market (dumping); the stockpiling of goods; and the charging of excessive prices.

### 8.3. Penalties

The commission of infractions against the economic order subjects those responsible to the following penalties:

- in the case of a company, a fine varying from one to thirty per cent of the amount of gross revenues for the previous fiscal year, excluding taxes, but this amount shall never be less than the amount of the advantage enjoyed;
- in the case of a manager directly or indirectly responsible for the infraction committed by a company, a fine varying from ten to fifty per cent of the amount of the fine applicable to the company, for which fine the manager is exclusively and personally liable;
- in the case of other individuals or legal entities that do not perform a business activity such that it is not possible to use the criteria of the gross revenue figure, the fine will vary from six thousand to six million Fiscal Reference Units (UFIRs);
- in the case of recurrence, the fines will be charged in double.

## 9. Environmental Legislation in Brazil

### 9.1. The National Environmental Policy

The main Federal law governing the matter is Law 6938, published in August 1981. The objective of the national environmental policy is the preservation, improvement and recuperation of environmental quality, based on the following principles:

- that the environment is a public heritage intended for collective use which must necessarily be protected and guaranteed;
- sustainable use of ground, underground, water, and air resources;
- planning and supervision of the use of natural resources;
- protection of ecosystems, with the preservation of representative areas;
- control and zoning of activities which currently or potentially cause pollution;
- incentives for study and research into technologies aimed at the sustainable use and protection of environmental resources;
- monitoring of environmental quality;
- recuperation of deteriorated areas;
- protection of areas threatened by deterioration;
- environmental education at all teaching levels, including community education, in order to prepare the community to actively participate in environmental protection.

### 9.2. Licensing of activities that currently or potentially cause pollution

Licensing by the state environmental agency is required for the construction, installation, expansion and functioning of any establishment that uses environmental resources, or is considered to currently or potentially cause pollution. In some cases, the licensing process must be analyzed by the Federal environmental agency *Ibama*, the Brazilian Institute for the Environment and Renewable Natural Resources - *Instituto Brasileiro para o Meio Ambiente e Recursos Naturais Renováveis, Ibama*

For these same projects or activities considered to currently or potentially cause pollution, it is also required that an Environmental Impact Study (EIA) be carried out, including the respective Environmental Impact Report (RIMA). The following licenses must be obtained for such activities:

- Preliminary License (LP) - during the preliminary phase of the project, containing the basic requirements to be met during the localization, installation and operational phases;
- Installation License (LI) - authorizing the beginning of implementation of the undertaking;
- Operating License (LO) - authorizing the beginning of licensed activity and the functioning of pollution control equipment.

### 9.3. Crimes against the environment

Law 9605, published in February 1998, establishes a series of administrative infractions and crimes against the environment as well as their corresponding sanctions. In the case of infringement, environmental authorities shall take the following measures:

- animals shall be set free in their natural habitat or donated to zoos, foundations or similar entities, so long as they remain under the responsibility of qualified technical personnel;
- if perishable products or timber are involved, they shall be evaluated and donated to scientific institutions, hospitals, prisons or charitable organizations;
- nonperishable animal products and byproducts shall be destroyed or donated to scientific, cultural or educational institutions;
- the instruments used to commit the infraction shall be sold, guaranteeing their de-characterization by recycling.

The following are some of the crimes provided for and their respective penalties:

#### 9.3.1. Crimes against the fauna

- To kill, pursue, hunt, catch, or use any species of wildlife, whether native or following migratory routes, without the proper permission, license or authorization from the proper authority, or in divergence with the type of license obtained.

Penalty - detention of six months to one year, plus fine.

The following are subject to the same penalties:



- I - whoever obstructs the reproduction of fauna without the appropriate license or authorization, or in divergence with the type of license obtained;
- II - whoever modifies, damages or destroys nests, refuges or natural breeding areas;
- III - whoever sells, offers for sale, exports or acquires, keeps in captivity or in storage areas, uses or transports eggs, larvae or any species of wildlife, whether native or following migratory routes, as well as products or objects derived from them, originating from an unlicensed breeding area or one without the proper permission, license or authorization from the proper authorities.

The penalty is increased by half if the crime is committed:

- I - against rare species or those considered endangered, even if only at the site of the infraction;
- II - outside the hunting season;
- III - during the night;
- IV - in abuse of the license granted;
- V - within a conservation area;
- VI - by using methods or instruments capable of causing mass destruction.

The penalty may be increased up to three times if the crime occurs as a result of professional hunting activities. The provisions of this article do not apply to fishing.

- To export unfinished skins and hides of amphibians and reptiles without the authorization of the proper environmental authorities.

Penalty - detention of one to three years plus fine.

- To introduce an animal species into the country without the proper official technical approval report and license issued by the proper authorities.

Penalty - detention of three months to one year plus fine.

- To practice abuse, mistreatment, injury or mutilation of wild, domestic or domesticated animals, whether native or exotic.

Penalty - detention of three months to one year plus fine.

- To cause, by effluent emission or by materials drift, the death of aquatic fauna species existing in rivers, lakes, dams, lagoons, bays or in Brazilian territorial waters.

Penalty - detention of one to three years, or fine, or both.

- To fish during periods in which fishing is prohibited or in locations where prohibited by the appropriate agency.

Penalty - detention of one to three years, or fine, or both.

- Fishing with the use of:
  - I - explosives or other substances which in contact with the water produce a similar effect;
  - II - substâncias toxic substances or other means prohibited by the proper authorities.

Penalty - detention of one to five years.

### 9.3.2. Crimes against the flora

- To destroy or damage forests designated as permanent preservation areas, even if still in the formative stage, or use them in such a way as to infringe protection rules.

Penalty - detention of one to three years or fine, or both.

- To cut trees in forests designated as permanent preservation areas without permission from the proper authorities.

Penalty - detention of one to three years, or fine, or both.

- To cause a fire in woodlands or forests.

Penalty - detention of two to four years plus fine.

- To manufacture, sell, transport or release fire balloons that could cause fires in forestlands and other types of vegetation, or in urban areas or in any type of human settlement.

Penalty - detention of one to three years, or fine, or both.

- To extract stones, sand, lime or any type of mineral from publicly owned forests or those designated as permanent preservation areas, without prior authorization.

Penalty - detention of six months to one year plus fine.

- To cut down or transform into charcoal any species of hardwood, as defined by Executive Act, for industrial or energy purposes or for any other type of exploitation, economic or otherwise, in divergence with legal determinations.

Penalty - detention of one to two years plus fine.

### 9.3.3. Pollution and other environmental crimes

- To cause pollution of any type to such an extent that it results or may result in damage to human health, or that causes the death of animals or significant destruction of the flora.

Penalty - detention of one to four years, plus fine.

- To carry out prospecting, mining or extraction of mineral resources without the proper authorization, permission, concession or license or that is in divergence with the type of authorization granted.

Penalty - detention of six months to one year, plus fine.

- To produce, process, package, import, export, trade, supply, transport, store, keep, warehouse or use products or substances that are toxic, dangerous or harmful to human health or to the environment, contrary to the requirements established in law or regulations.

Penalty - detention of one to four years, plus fine.

- To disseminate any disease or pest or species which may cause damage to agriculture, cattle raising, the fauna, the flora, or to ecosystems.

Penalty - detention of one to four years plus fine.

### 9.3.4. Crimes against the public order and cultural heritage

- To destroy, make useless or cause the deterioration of:
  - I - assets especially protected by law, administrative act or judicial decision;
  - II - files, records, museums, libraries, art collections, scientific facilities, or the like protected by law, administrative act or judicial decision.

Penalty - detention of one to three years plus fine.

- To paint, graffiti or by any other means vandalize urban buildings or monuments.

Penalty - detention of three months to one year plus fine.

### 9.3.5. Crimes against environmental management

- To make false or misleading statements to a Government employee, omit the truth, or withhold information or technical and scientific data in environmental authorization or licensing proceedings.

Penalty - detention of one to three years plus fine.

## 9.4. Quality Certificate

Since 1996, approximately two hundred ISO 14001 certificates have been issued in Brazil, according to certifiers accredited by INMETRO, the National Institute of Metrology, Standardization and Quality - *Instituto Nacional de Metrologia, Normatização e Qualidade (Inmetro)*. In the past, mostly large companies were interested in obtaining this certification, but recently smaller companies which are suppliers to larger companies have also begun to seek ISO 14001 certification, precisely because the larger companies are beginning to require that their suppliers - mostly small companies - comply with the environmental rules defined by ISO 14001. The objective is to bring the entire productive chain into compliance, from the raw material through the finished product. To implement the process, certifiers must monitor whether required commitments are being met. In the case of noncompliance, the ISO certification may be suspended.

**Sources:** Brazilian Institute for the Environment and Renewable Natural Resources; and National Institute of Metrology, Standardization and Quality.

## 10. Consumer Rights

### 10.1. Introduction

The Brazilian Consumer Protection Code establishes the relationship between customers/consumers and industry, trade, service renderers and other agents such as importers, and is regulated by Law No. 8078 dated March 12, 1991. The entity that defends and provides orientation to consumers regarding the Code is the Brazilian Consumer Protection Institute - *Instituto Brasileiro de Defesa do Consumidor* (Idec), a non-governmental and non-profit organization.

Brazilian Law establishes the necessary procedures from the pre-manufacturing phase through placement of a product on the market, as well as the advertising involved.

### 10.2. Basic consumer rights

According to law, basic consumer rights include the protection of life, health, and safety against risks caused by practices employed in the supply of goods and services considered hazardous or harmful, the provision of appropriate and clear information regarding goods and services, with correct specification of quantities, characteristics, composition, quality and price, as well as the risks they entail, and also protection against misleading and abusive advertising, among other items.

### 10.3. Quality of goods and services

Goods and services placed on the market should cause no risk to consumers' health and safety, and it is mandatory for suppliers to provide any information the customer desires. Industrialized products must be sold with user instructions.

Suppliers may not place on the market goods or services which are hazardous or harmful to the customer's health or safety. In the event that a product which is already on the market is found to represent any type of risk, the supplier must communicate the fact to consumers immediately through public announcements in the press, on the radio and on television.

### 10.4. Liability for goods and services

Manufacturers, producers, builders, whether Brazilian or foreign, and importers are liable for the reparation of damages caused to consumers by defects resulting

from the design, manufacture, assembly, formulas, handling and making up, presentation, or packaging of their products, whether they are directly to blame or not, as well as for insufficient or inadequate information on the use and hazards of the product.

### 10.5. The Right of complaint

The right of complaint is valid for up to 30 days in the case of non-durable goods or services and for 90 days in the case of durable goods. The complaint period begins upon delivery of the goods or termination of the performance of services.

### 10.6. Advertising

Advertising must be done in such a way as to be easily identifiable by the customer. The supplier must provide adequate information regarding goods or services in its advertising and must be prepared to deliver any additional information required by the customer. Misleading or abusive advertising is forbidden.

\* **Misleading:** Misleading advertising is any type of advertising information or communication which is entirely or partially false, or that which in any way, including omission, is capable of inducing the consumer to error regarding the nature, characteristics, quality, quantity, properties, origin, price or any other information pertaining to goods and services. The omission of essential information regarding the goods or services is also considered misleading.

\* **Abusive:** Advertising is considered abusive when it reflects any type of discrimination, encourages or stimulates violence, exploits fear or superstition, or when it takes advantage of the lack of judgment and experience of children, disrespects environmental considerations or could induce the consumer to behavior that is harmful or hazardous to his/her health and safety.

### 10.7. Consumer code violations

Following are some examples of consumer code violations and their respective penalties:

- omitting conspicuous wording or symbols warning of the dangers or hazards of products from their packaging, labels, containers or advertising, as well as failing to warn of the hazards relating to a service to be rendered by means of highly visible written recommendations.

Penalty - Detention of six months to two years plus fine.

- Failing to advise the proper authorities and consumers of the dangers or hazards of products which become known after the products are on the market, as well as failing to recall dangerous or hazardous products immediately when ordered to do so by the proper authorities.

Penalty - Detention of six months to two years plus fine.

- Performing highly dangerous services contrary to the orders of the proper authorities:

Penalty – Detention of six months to two years plus fine.

- Making false or misleading statements or omitting relevant information regarding the nature, characteristics, quality, quantity, safety, performance, durability, price or warranty of goods or services. Sponsors of same are subject to the same penalty.

Penalty – Detention of three months to one year plus fine.

- Creating or displaying advertising known, or which should be known, to be misleading or abusive.

Penalty – Detention of three months to one year plus fine.

- Employing used parts or components for the repair of products without the authorization of the consumer.

Penalty – Detention of three months to one year plus fine.

- Denying or hampering consumer access to information regarding him/herself that is contained in customer files, data bases, records and registers.

Penalty – Detention of six months to one year or fine.

- Failing to deliver to the consumer a properly filled out warranty statement with a precise specification of its content.

Penalty – Detention of one to six months or fine.

Source: Brazilian Consumer Protection Institute

## 11. Public Works and Services Procurement

### 11.1. General criteria

Works and services including publicity, purchasing, transfer of assets, concessions, permissions, and Government rentals, when contracted with third parties, must be contracted by means of a public tender. Every part of the process must conform to the principles of equality, legality, impersonality, morality, publicity, administrative probity, objective judgment and selection of the proposal most advantageous to the government. All other factors being equal, first preference will be given to products or services produced or rendered by 100% Brazilian companies, and second preference to those produced or rendered in Brazil by mixed capital Brazilian companies.

The concession of public utility services is basically the delegation of the rendering of a public service to a legal entity or consortium of companies who have demonstrated their technical capacity to perform it, by means of a formal public contract, entered into following a competitive bidding process. Some public services are restricted to the Federal Government. Therefore, the following services may not be the object of concession or permission: maritime transport, extraction from petroleum or natural gas reserves, refining of Brazilian petroleum, extraction of nuclear ores and minerals.

According to the Federal Constitution, only the Federal Government may provide, either directly or by means of concessions granted to companies whose shareholding is State controlled, such services as power generation, transmission and distribution, transports, basic sanitation, urban waste removal and cleaning, operation of ports, highway construction, airport and aerospace infrastructure, telephone and telegraphic communications, data transmission and other public telecommunications services, and the rendering of informational services by privately held entities using the Government-operated public telecommunications network is guaranteed.

Public Tenders for works and services may only be opened when:

- there is a basic project approved by the proper authorities and available for examination by those interested in participating in the public bidding process;
- there is a detailed budget contained in spreadsheets that shows the composition of all unitary costs;
- there is a budget forecast for financial resources to ensure the payment of all obligations resulting from the works or services to be performed or provided during the fiscal year in progress, in accordance with the respective timetable.

The following may not participate, either directly or indirectly, in the tender, execution of works or supply of goods needed for same:

- the author of the basic or executive project, whether an individual or a legal entity;
- the company that is, individually or as part of a consortium, responsible for drawing up the basic or executive project, or of which the author of the project is a director, manager, shareholder or holder of more than 5% of the voting capital or its majority shareholder, technical person responsible or sub-contractee;
- employee or director of the organ or entity doing the hiring or responsible for the tender.

It is only allowed participation of the author of the project or the company as a consultant or technical advisor, in a monitoring, supervisory or management capacity to the Government body exclusively.

The specific Law which regulates the subject matter of bid tenders and administrative contracts is Federal Law 8666, dated June 21, 1993.

Public service concessions and permissions are governed by Federal Law 8987, dated February 13, 1995.

### 11.2. Exemptions from tenders

Tenders may be dispensed with in the following situations, as provided for in Federal Law 8666:

- works, services and purchases involving minimum amounts as indicated in law;
- wars, serious disturbances of the peace, public emergencies or calamities;
- when there were no interested bidders in the previous public tender;
- when the Federal Government must intervene in the economic sphere in order to regulate prices or normalize the supply situation;
- when the bids tendered offer prices that are higher than those practiced in the domestic market or are incompatible with those set by the proper authorities;
- when the operation involves only domestic public corporations, except if there are private or mixed-capital companies that can render or provide the same goods or services, in which case they shall be subject to a public tender;
- when there exists a possibility of compromising national security;

- for the purchase or rental of real estate for government use, where choice is conditioned upon installation needs and location, so long as the price is compatible with market value, as established through prior appraisal;
- in the contracting for the unfinished portion of works, services or supply as a consequence of contractual termination, provided that the classification order of the previous public tender is abided by and provided that the same conditions offered by the winning bidder are accepted, including the price, appropriately updated;
- in the eventual purchase of perishable foodstuffs, at a supply center or similar facility, carried out directly and based on the price for the particular day;
- in the contracting of a national nonprofit institution responsible for research, teaching or institutional, scientific or technological development;
- for the acquisition of goods or services through an international organization, provided that Brazil is a member, and in keeping with the terms of a specific agreement and when the conditions offered are advantageous to the Government;
- for the acquisition or restoration of works of arts and historical objects of certified authenticity.

### 11.3. Non-requirement of bid tender

A bid tender is not required when competition is unfeasible, as provided for in Federal Law 8666/93:

- for the acquisition of materials, equipment or goods which can only be supplied by an exclusive producer, company or commercial representative, brand preferences being prohibited; and proof of exclusivity must be evidenced by a declaration provided by the board of trade of the place where the bid tender would be held or the construction work or service provided by the Employees Union, Federation or Confederation of Employers, or by equivalent bodies;
- for the hiring of technical services of a singular nature, with professionals or companies that are notoriously specialized, non-requirement of a bid tender being prohibited in the case of advertising or publicity services. In this case, a notoriously specialized professional or company is considered to be one whose reputation in his/her/its field of specialization, resulting from prior performance, studies, experience, publications, organization, equipment, technical personnel or other requirements relating to its activities makes it possible to infer that his/her/its work is essentially and unarguably the most appropriate for the full satisfaction of the object of the contract;
- for the hiring of a professional from any artistic sector, whether directly or through an exclusive agent, whose celebrity is acclaimed by duly qualified critics or by public opinion.

#### 11.4. Types of procurement processes

The types of procurement processes include competitive bidding, requests for quotation, invitations to tender, contests, auctions and trading session. The following are the definitions of these procurement processes as defined by Federal Law 8666, enacted in 1993.

**Competitive bidding** is the process occurring among any interested companies which in the preliminary phase have proven their ability to meet the minimum required qualifications listed in the bidding notice for the contract.

**Request for Quotation** is the process occurring among the interested parties officially registered or which meet all the requirements for registration by the third day prior to the date for receiving quotations, provided they are duly qualified. The SICAF is the roster of vendors issued by the Federal Government. Other information on obtaining a copy of the SICAF can be obtained on the site [www.comprasnet.com.br](http://www.comprasnet.com.br).

**Invitation to Tender** is the process occurring among interested parties belonging to the pertinent sector, whether officially registered or not, a minimum of three being chosen and invited to bid by the contracting body, which will affix a copy of the bidding announcement in an appropriate place, extending the bidding to any others registered in the corresponding specialty who manifest their interest up to 24 hours before the proposals are presented.

**Contest** is the process occurring among any interested parties for the selection of a technical, scientific or artistic work, with the awarding of a prize or remuneration to the winners, in accordance with the criteria and general conditions contained in an official announcement to be published in the Brazilian official press at least 45 days before the contest.

**Auction** is the process occurring among any interested parties for the sale of any type of real estate and other goods that are of no use to the Government or products it has legally seized or attached, for the best offer equal to or exceeding the assessed value (minimum price).

The **Trading Floor** is a type of tender used for the acquisition of goods and the rendering of ordinary services (goods whose standards of performance and quality can be objectively described in a bidding notice, using the usual market specifications), no matter what the estimated value of the contract. The Trading Floor is used only by the Federal Union, with the exception of the State of São Paulo, which has adopted a specific regulation for it. Information on this type of tender can be found on the site [www.pregao.sp.gov.br](http://www.pregao.sp.gov.br).

#### Types of bid tender:

Lowest price, best technique, technique and price, or highest bid or offer.

#### 11.5. Administrative process

The opening of an administrative process, officially filed, registered and numbered, is the first procedure in a public tender. In this process are registered the specific authorization, the purpose and own resources earmarked for expenses. Later the following will also be attached: the notice or invitation, copies of the published notices, the original proposal and documents, minutes, reports, technical or legal opinions concerning the bidding and the contract or similar instrument. Solely in the case of the trading floor mode, there is an inversion of the order of opening of the envelopes, the envelopes with price proposals being opened first and then the envelope with the qualifications of the winner.

**Challenge to an Invitation to Bid:** The public administration may not fail to comply with the standards and conditions imposed by the law governing bid tenders, to which it is strictly bound. Every citizen has a legitimate right to challenge an invitation to bid for irregularities in the application of the law, and should submit complaints against receipt in up to five business days before the date set for opening of the bids.

**International Bid Tenders:** In international bid tenders, the invitation to bid must comply with the guidelines of monetary policy and foreign trade and meet the requirements of the appropriate agencies. When it is permitted for the foreign bidder to quote prices in a foreign currency, Brazilian bidders may also do so. The payment will be made in Brazilian currency, at the prevailing exchange rate on the business day immediately prior to the effective payment date.

**Withdrawal of a bid:** After the qualifying phase, withdrawal of a bid is not allowed, except for supervening reasons accepted by the Judging Commission. Otherwise, the following penalties will apply: warning, fine and suspension from the right to bid.

**Unperformable bids:** In no bidding process of any type will the presentation of absurdly low, symbolic or zero prices incompatible with market prices be allowed, except when they refer to materials and installations that are the property of the bidder, for which he renounces a portion or all of the remuneration. Unperformable prices shall be considered those which cannot

demonstrate their feasibility by means of documentation evidencing the costs of inputs with those of the market.

**Advantages not provided for:** No offer or advantage not provided for in the invitation to bid, including subsidized or open-ended financing, shall be considered, nor prices or advantages based on the offers of the other bidders.

**Performance of Investigations:** It is permitted for the Judging Commission at any phase of the bid tender to perform investigations intended to clarify or complement fact finding, it being prohibited to later include any document or information that should have been a part of the original bid.

### 11.6. Administrative contracts

Administrative contracts are regulated by the precepts of public law and the general theory of contracts under private law apply to them. At the discretion of the proper authorities, provided it is called for in the invitation to bid, a security may be required in the contracting for construction work, services and procurement, of the bank guarantee or performance bond type, or a security deposit in cash or government bonds. The value of the security may not exceed 5% of the value of the contract, and in the case of construction work and large-scale services involving considerable financial risk, the limit provided for may be increased to 10%.

#### Duration of contracts

The duration of the contracts shall be restricted to the valid period of the respective credits, limited to a maximum duration of 60 months, contracts for an indefinite time period being prohibited. The contractual term may be extended, provided the conditions set initially are maintained.

#### Alteration of contracts

Administrative contracts may be altered, provided they are duly justified in the case of alterations in design, or quantitative increases or decreases to its object. These are limited to 25% of the initial value of the contract, adjusted for inflation, in the case of purchases or services, and 50% in the case of construction work, remodeling of buildings and equipment.

In the case of cancellation of the services, construction work and goods, if the contractor has already acquired the materials and placed them at the work site, they must be paid for by the Government for the price they were acquired at,

with indexing for inflation, and the contractor may claim eventual damages arising from the cancellation, if duly proven.

### Rescission of contracts

The following are considered grounds for rescission:

- non-compliance or irregular compliance with contractual clauses;
- delays in the execution of the contract which compromise results within the stipulated time frame;
- unjustified delays;
- total or partial subcontracting, associations with third parties, total or partial assignment or transfer, as well as split-offs, mergers or incorporations not allowed for in the invitation to bid;
- failure to comply with reasonable determinations of the authority designated to monitor execution;
- repeated commission of faults;
- declaration of bankruptcy;
- dissolution of the company or death of a contractor;
- change in the corporate structure or purpose of the company;
- widely known reasons of public interest;
- cutbacks by the Government greater than 25%;
- suspension of execution by order of the Government for a period greater than 120 days, except in the case of public emergency;
- delay of over 90 days in payments due the contractor by the Government;
- failure of the Government to provide access to the location, area or object;
- occurrence of an act of God or *force majeure*.

### Reimbursement of the contractor

When the rescission occurs for one of the reasons underlined above, through no fault of the contractor, the latter shall be reimbursed for appropriately evidenced losses it may have suffered, being further entitled to the refunding of the security, of payments made in executing the contract up to the date of rescission, and payment for demobilization costs.

### Administrative Sanctions

Administrative sanctions are the following: warning, fine as provided for in the invitation to bid or in the contract, temporary suspension from participation in bid tenders and barring from contracting with the Government for a period of two years and declaration of unfitness to bid or contract with the Public Administration. In the case of the trading floor mode of operation, the period of two years for suspension from bidding is raised to five years.

## Crimes and Non-Performance of Bid Work

The following are considered crimes against the public interest:

- dispensing with use of the bid tender process except in the circumstances provided for in Law 8666/93;
- frustrating or defrauding, by adjustments, the competitive character of the bidding process, with the intention of obtaining advantages for oneself or for third parties;
- promoting private interests directly or indirectly vis-à-vis the Government, giving rise to celebration of a contract which is later declared invalid by the Judiciary Branch;
- permitting, facilitating or giving cause to any modification or advantage, including extension of contracts to favor the winning bidder during the execution of contracts;
- paying invoices outside the chronological order in which they are due;
- violating the confidentiality of the bid;
- defrauding, impeding or disturbing the performance of any act in the bidding process;
- eliminating a bidder by violence, threats, or offers of advantages;
- practicing a fraud against the Public Treasury by arbitrarily raising prices, selling counterfeit goods as authentic ones, or substituting one grade of merchandise for another, making the bid for execution of the contract unreasonably costly.

The unjustified refusal of the winning bidder to sign the contract within the time frame stipulated by the Government is considered non-performance of the clauses, subjecting it to penalties under Law 8666/93.

### 11.7. User rights and obligations

The user has the right and obligation to receive appropriate services, to receive from the granting party and the concessionaire all information necessary to protect individual or community interests, to exercise free choice in obtaining and using the service, to bring to the attention of the government and of the concessionaire any irregularities, to communicate to the proper authorities any illicit acts committed by the concessionaire in the rendering of the service, and to contribute towards the ongoing good condition of public property.

### 11.8. On-line bidding process

The on-line trading floor was set up in December of 2000 and has as its objectives both to streamline the work of purchasing goods and to reduce operating costs, not only for the Government but also for the supplier. It is also possible to operate several trading sessions simultaneously, and those companies located farther away from the government agency that requires the goods are now able to participate on an equal footing with others, which is a major benefit for suppliers. In addition, individuals not involved in the bidding process can monitor the process in real time through the Internet, which adds transparency to the trading sessions.

When registering to participate in electronic trading sessions, the supplier's information is cross-checked with the databases of the Internal Revenue Service, the PGFN (the Federal Treasury Department/Attorney General's office), the FGTS (Unemployment Severance Fund) and the INSS (Social Security Administration) to prevent those who have debts pending with the government from participating in the bidding.

Provisional Measure No. 2026 – enacted in May of 2000 and regulated by Decree No. 3555, enacted in August of 2000 – defines the goods and services for which the electronic trading sessions may be used. In brief, they are “those for which performance and quality standards can be concisely and objectively defined in the invitation to bid using the usual market specifications; that is, those that are offered by various suppliers and are easily compared to each other in order to facilitate the decision on purchasing or hiring.” There is no limit on the price of the purchasing or hiring done through the electronic trading sessions, a point in which it differs from other operating modes covered by the Law Governing Bidding Processes (Law No. 8666/93).

#### 11.8.1. At the Federal Government level:

##### How to register:

It is possible to participate in electronic trading sessions at Comprasnet – The Government Procurement Portal ([www.comprasnet.gov.br](http://www.comprasnet.gov.br)). The first step is to check whether the company is already registered with SICAF (the Unified Supplier Register). In order to register, the interested party must go to the section of the site marked “*free access*” and choose the option *SicafWeb/Corporate Supplier* or *Individual Supplier*, then go to *Include Supplier*.

When this has been done, the user must register on the Comprasnet site, using the option “*Register*”. He/she must provide the information requested and choose the services desired, in this case the *Electronic Trading Floor* (there is a



charge for this service). In order to register, the number of the SICAF registration receipt must be supplied, along with the social security number (CPF) of the manager and the date the company was opened. By clicking on the desired option, the supplier enters the site of the bank chosen, where he/she provides his Branch number, account number and the amount to be paid. Payment is on-line; that is, by supplying this data the amount to be paid for registering will automatically be debited from the account, and when accessing Comprasnet the company will be able to use all of the services included in the particular package that has been acquired.

### How to participate in on-line trading sessions:

In order to participate in an on-line trading session, a proposal should be sent containing the prices of the items the company is bidding to supply, within the time period established in the invitation to bid. If the values are below the posted reference value, the proposal will be accepted. When the bidding phase begins, the supplier goes to the option *Electronic Trading Floor* and clicks on “bids”. When a proposal is sent, the system confirms whether or not it has been successfully registered. Even so, it is advisable to double check under “proposals – verify.” At the time of registration, it is possible that some sort of attachment (i.e. a spreadsheet or document) may be requested, but such a requirement by the Trading Floor Mediator will be specified in the invitation to bid.

If the proposal is accepted, the values may not be changed at a later date. However, if it is not accepted, it may be presented again at a value lower than the reference value. When the bidding phase begins, all the messages can be seen by all participants, the Trading Floor Mediator and suppliers, but the identity of the companies participating in a particular trading session is not disclosed. The participants will only be identified after the bidding phase is concluded. To find out the winner of the bidding process, access the free access area under “consultations” and “results of bidding processes”.

For more information on the services offered through the site, users may e-mail [comprasnet@planejamento.gov.br](mailto:comprasnet@planejamento.gov.br) or call the Service Center at 0800-782323.

## 12. Financing

### 12.1. Introduction

The Federal Government’s *Brazil Empreendedor* Program has as its objectives to stimulate the development of micro, small, and medium-sized companies and to improve their professional level. The Federal financial institutions that will operate under the Program are: *Banco do Brasil* (Bank of Brazil), *Banco do Nordeste* (Bank of Northeast), *Banco da Amazônia* (Bank of Amazon) and *Caixa Econômica Federal*.

To obtain further information, those interested in applying for financing should consult the Sebrae Mobile Unit for information on the procedures to be followed in applying for credit through the financial institutions.

### 12.2. BNDES financing for micro, small, and medium-sized companies

#### 12.2.1. Classification of companies by size

The classification adopted by BNDES based on company size is the following:

**Micro-companies:** annual or annualized gross operating income\* of up to R\$900 thousand (nine hundred thousand reais).

**Small companies:** annual or annualized gross operating income\* greater than R\$900 thousand (nine hundred thousand reais) and equal to or less than R\$7.875 thousand (seven million, eight hundred seventy-five thousand reais).

**Medium-sized companies:** annual or annualized gross operating income\* greater than R\$7.875 thousand (seven million, eight hundred seventy-five thousand reais) and equal to or less than R\$45 million (forty-five million reais).

**Large companies:** annual or annualized gross operating income\* greater than R\$45 million (forty-five million reais).

(\*) Annual **gross operating income** is considered to be the income earned in the calendar year as a result of the sale of goods and services on one’s own behalf, the price of services rendered and the result of operations carried out on behalf of third parties, not including returns and unconditional discounts granted.

In the case of activities started after the beginning of the calendar year, the limits above shall be proportional to the number of months during which the corporate entity or individual firm is in activity, disregarding fractions of months. In the case of companies in the implementation phase, the annual sales forecast for the undertaking will be considered, taking into account the total installed capacity.

When the company is controlled by another company or is part of a business group, the classification of size will be based on the consolidated gross operating income. The above information was supplied by the BNDES.

### 12.2.2. Financeable investments / Items

Investments aimed at the implementation, expansion, modernization or relocation of the company may be financed, as well as projects for upgrading technology, quality and productivity, including but not limited to, the following expenses:

- construction or remodeling of property and miscellaneous installations related to the objectives of the business;
- acquisition of machinery and equipment manufactured in Brazil;
- acquisition or development of software;
- training of personnel;
- research, studies and projects;
- franchise fees and inaugural advertising for the venture;
- commercialization of goods and services for export;
- part of the working capital, when related to other financed investments.

Further information on working capital may be obtained on the BNDES site.

### 12.2.3. Lines of financing

#### 12.2.3.1. BNDES Automatic

Through financial institutions authorized by the BNDES, financing of up to R\$7 million is available, for purposes including the acquisition of machines and equipment, either Brazilian-made or imported. The total term of the financing is determined in accordance with the ability to pay of the venture, company or business group. According to BNDES, the share of total value financed is the following:

- machines and equipment: up to 80%;
- in the case of micro- and small companies and ventures located in areas covered by Regional Programs (PAI, PNC, PCO and RECONVERSUL): up to 90%;
- other items for investment: up to 60%;
- in the case of micro- and small companies: up to 90%;
- ventures located in areas covered by Regional Programs: up to 80%;
- importation costs of imported machines and equipment (see the BNDES Support Program for Equipment Imports).

Ventures which are not financeable are the following:

- business restructuring;
- real estate ventures (residential buildings, time-sharing projects, residential hotels and others); motels, saunas and hot springs resorts; banking/financial activities;
- sale of firearms;
- cutting, exploitation and sale of native wood, production of pig iron and mining ventures using rudimentary mining methods or panning.

Other non-financeable items are:

- existing land and improvements;
- used machines and equipment (except for micro-companies);
- animals for resale, formation of pasturelands in areas of environmental preservation;
- vehicles;
- working capital for exportation, agriculture and livestock breeding (except for micro-companies that are service providers).

In order to obtain financing, the interested party should visit the chosen financial institution, which will provide information on the documentation required and whether the credit can be extended, and if so, it will be able to negotiate the guarantees. Following approval by the institution, the process is submitted for ratification and release of funds by the BNDES.

#### 12.2.3.2. FINAME

With no limit on the amount, these are loans for the acquisition of new machines and equipment made in Brazil and leasing of Brazilian-made equipment through authorized financial institutions (to consult the list, contact BNDES).

The total term for financing is:

- up to 60 months for financing of up to R\$7 million;
- up to 48 months for passenger transport;
- up to 72 months for independent cargo transporters.

Financing of more than that established above: to be determined based on the ability-to-pay of the venture, company or business group.

In the case of acquisition of buses that make up the Integrated System for Urban Passenger Transport: to be determined based on the ability-to-pay of the venture, company or business group.

The proportion financed is the following:

- up to 90%: micro- and small companies in any region of the country; medium-sized and large companies located in the areas covered by the Regional Programs (PAI, PNC, PCO and RECONVERSUL); acquisition of buses that are part of the Integrated System for Urban Passenger Transport in any region of the country, and independent cargo transporters;
- up to 80%: medium-sized and large companies located in the Southern and Southeastern regions of the country (except in the cities in those regions included in the Regional Programs – the state of Espírito Santo, parts of the state of Minas Gerais covered by the Development Plan for the Northeast, and the area designated as the Southern Half of the state of *Rio Grande do Sul*).

In order to obtain financing, the interested party should visit the chosen financial institution, which will provide information on the documentation required and whether the credit can be extended, and if so, it will be able to negotiate the guarantees. Following approval by the institution, the process is submitted for ratification and release of funds by the BNDES. For more information, access: [www.bndes.gov.br/finance](http://www.bndes.gov.br/finance).

### 12.2.3.3. BNDES-Exim

This is financing of the following types for the export of goods and services through authorized financial institutions:

- Pre-Shipping: finances the production of goods to be exported in specific shipments;

- Special Pre-Shipping: finances the domestic production of goods exported, without being tied to specific shipments but having a preset time period for their realization;
- Post-Shipping: finances the commercialization of goods and services abroad, through refinancing to the exporter or through the use of a buyer's credit facility.

The guarantee instruments used in BNDES-exim operations are the same as those offered by the major export credit agencies in the world. In addition, the following are available to facilitate access to export credit:

- The Guarantee Fund to Promote Competitiveness [FGPC] (Collateral Fund) aimed at facilitating access to credit by micro-, medium-sized and small companies;
- Export Credit Insurance, which makes it possible to cover commercial and political risks on exported goods and services. In Brazil this tool is offered by the SBCE – Brazilian Export Credit Insurance Company.

### 12.3. Other financing

For information on other types of financing, contacting the BNDES. directly is recommended.

### 12.4. Guarantees

Real and personal guarantees will be required of the controlling partners of the company. At the discretion of the financial institutions that operate the Program, the FGPC (Collateral Fund) may be used, as well as dispensing with the real guarantee on operations of up to R\$500 thousand with coverage of the FGPC.

### 12.5. Applying for financing

To apply for financing, visit the SEBRAE Mobile Unit or a branch office of the following banks: *Banco do Brasil* (Bank of Brazil), *Banco do Nordeste* (Bank of Northeast), *Banco da Amazônia* (Bank of Amazon) and *Caixa Econômica Federal*.

Source: BNDES.

## 13. Cultural Incentive Laws

### 13.1. Federal incentives

#### 13.1.1. Benefits

##### 13.1.1.1. Agreements for transfer of funds

The Ministry of Culture enters into agreements with states, cities, public entities and private, not-for-profit entities for the realization of cultural projects. These agreements are aimed at projects for the recuperation and preservation of the country's historical and artistic heritage, the establishment of libraries, the production of shows and plays, and support in the advertising of films, art exhibits, etc. The proposals will be analyzed by the Departments reporting to the Ministry of Culture, based on the parameters established for each type of activity.

To obtain further information, the proposals for benefits under the agreement should be submitted to the Departments of the Ministry of Culture, based on the field of cultural interest. They are the following: Department of Books and Reading, Department of Museum Heritage and Plastic Arts, and Theater Arts and Audiovisual Department.

The program for submitting projects may be downloaded from the Internet site of the Ministry of Culture and may also be obtained from one of the Ministry of Culture locations.

##### 13.1.1.2. Rouanet Law

The projects approved by the National Commission on Cultural Incentives (CNIC) are eligible to receive sponsorships and donations from companies and individuals who may in turn deduct the donations, either partially or in full, from their income tax payable. The law that makes this possible is Law n° 8.313/91.

The law provides that the following are eligible to apply for the benefits: individuals, for-profit and not-for-profit companies and institutions of a cultural nature, and Government-related public entities such as foundations, quasi-governmental agencies and institutes, provided they have independent legal identities and are cultural in nature. Projects should aim at developing forms of expression, creative modes, processes for the preservation and protection of Brazilian cultural heritage and studies and methods for interpreting cultural

realities, as well as contributing to providing the means for access to artistic and cultural values and assets, including the following segments:

- theater, dance, circus, opera, mime and the like;
- movie production, video making, photography, recording and the like;
- literature, including reference works;
- music;
- plastic arts, graphic arts, engravings, posters, stamp collecting and the like;
- folklore and handicrafts;
- cultural heritage, including historical, architectural, libraries, museums, archives and other collections;
- humanities; and
- non-commercial educational and cultural radio and television.

Projects should provide benefits to the population and be justified on the areas and segments specified by the law. The democratization of access by the population to cultural assets is also an objective of the law and consequently mechanisms that facilitate this access – such as free tickets for shows and plays, tickets at more accessible prices, distribution of books to libraries, and free art exhibits, among others – are fundamental to fulfilling this objective.

Law n° 8.313/91 allows the donor or sponsor to deduct from the amount of tax payable on his/its tax return the amounts actually contributed to support cultural projects approved under the system stipulated by the law itself, based on the following percentages:

- in the case of individuals, eighty percent of the amount of donations and sixty percent of the amount spent on sponsorships;
- in the case of corporate entities subject to tax based on real profit, forty percent of the amount spent on donations and thirty percent of the amount spent on sponsorships.

In addition, companies may include the total value of donations and sponsorships as operating expenses, thus reducing the real profit of the company for the fiscal year with a consequent reduction in the amount of tax payable. The total deducted from tax payable may not exceed 4% of the total value for corporate entities and 6% in the case of individuals.

In addition to tax advantages, the sponsor may, depending on the project it supports, obtain a return in kind, consisting of products such as books, CDs, artwork, CD-roms, etc. The right to receive artistic products generated by the project is limited to 25% of total production and should be used only for free distribution.

To obtain further information, contact the Department responsible for the area of interest directly; projects should be submitted on the appropriate form to the Culture Ministry, to its Regional Offices or to the coordinator's office of the National Cultural Support Program (PRONAC) at locations associated with the Ministry (just consult the Ministry of Culture site on the Internet).

From the Ministry of Culture site it is possible to download the program for submitting projects, which can also be obtained from one of the Ministry of Culture locations. Following approval published in an Administrative Ruling, an expense spreadsheet for the project should be submitted. The manual and form for presenting project accounts can also be found on the Ministry of Culture site.

### 13.1.1.3. Audiovisual Law

Under Law No. 8.685/93, up until fiscal year 2003 it will be possible to deduct from income tax the investments made in independent Brazilian audiovisual cinema productions through the acquisition of shares in their commercialization rights, for projects approved by the Ministry of Culture. Benefits under the law may also be extended to exhibition, distribution and technical infrastructure projects specific to the audiovisual area, except for the acquisition, remodeling or construction of real estate property.

The deduction permitted is limited to 3% of the total tax payable, both for individuals and corporate entities. Corporate entities taxed on the basis of real profit may, in addition, deduct the total amount of the investment as operating expenses, with positive results in terms of reducing their tax payable.

The law also allows for a reduction of 70% of the tax incurred on the remittance of profits and dividends resulting from the exploitation of foreign audiovisual works in Brazil, provided the funds are invested in the co-production of independent Brazilian audiovisual cinema productions in projects previously approved by the Ministry of Culture.

To benefit from the incentives under the Audiovisual Law, projects should necessarily meet the following requirements and not be of an advertising nature:

- corresponding contribution of own funds or those of third parties making up 20% of the overall amount;
- maximum funding limit of 3 million Brazilian reais;
- technical and artistic feasibility;
- commercial feasibility;

- approval of the budget and schedule of stages of execution and disbursements, with a set date for conclusion.

Further information may be obtained by contacting the Department for Audiovisual Development. From the Ministry of Culture site, it is possible to download the program for submitting projects, which can also be obtained from one of the Ministry of Culture locations. Following approval published in an Administrative Ruling, an expense spreadsheet for the project should be submitted. The manual and forms for presenting project accounts can also be found on the Ministry of Culture site.

### 13.1.1.4. Provision of travel tickets

The provision of tickets under the "Cultural Dissemination Program" is carried out by the Ministry of Culture based on the availability of funds, and benefits artists, technicians and students of Brazilian culture who have been invited to participate or to present specific works they have produced at cultural events in Brazil and abroad. The procedure for interested parties is to submit an application on the appropriate form, which can be obtained from Ministry of Culture Departments at least 50 days in advance.

The areas covered by the Program are: Theater Arts, Plastic Arts, Music, Historical and Cultural Heritage, Audiovisual and Humanities, and the benefits are granted only to Brazilians and individuals. In the case of a group, the tickets should be requested by its leader, attaching to the application the identification forms for each member of the group, duly filled out and signed.

The required documentation for participation in the program is the following:

- certified copy of the official invitation signed by the entity organizing the event;
- program of the event and document providing full information regarding it;
- 2 (two) letters of recommendation commenting on the professional qualifications and work of the candidate, one signed by a professional from the same field of endeavor and the other by a well-respected figure in the cultural area, including full identification of the writers (profession and institution where the individual works);
- certified copies of the ID card and Social Security card of the candidate and, in the case of a group, those of each one of its members;
- resume of the applicant, or of the group, emphasizing the principal activities within his/her field of endeavor (attach copies indicating awards received,

- catalogs, printed materials, programs of presentations made, etc.);
- application form filled out and signed by the applicant (obtained from Ministry Departments);
- an affidavit of commitment filled out and signed by the candidate or, in the case of a group, by each of the group members.

The restrictions on the benefit are the following:

- public servants on official missions or missions of interest to Federal, State or City agencies may not benefit;
- expense stipends, daily allowances, insurance or support for the transportation of scenery, works and/or equipment will not be provided;
- tickets will not be provided for touring companies of shows or plays;
- no more than one ticket per year will be provided to the same beneficiary;
- use of the ticket by a substitute will not be authorized.

According to Program regulations, the beneficiary shall be obliged after the event to return the ticket stub and boarding pass and also present a report on his/her participation in the event, together with documentation evidencing presentation of his/her work (folder, catalog, program, articles in the media) in up to 30 (thirty) days following his/her return.

#### 13.1.1.5. Repayable loans

The financial institution designated by the Ministry of Culture grants the loan, following approval of the application and on special terms, for the production of theater, circus, classical or instrumental music presentations, recording of CDs and publishing of literary works. The granting of these repayable loans applies to the fields of theater arts, circus, music, and books produced by private corporate entities of a cultural nature.

More information, as well as the time period for presenting projects in each case, can be obtained from the Music and Theater Arts Department. Projects may be submitted personally or by mail to the Music and Theater Arts Department in Brasília, to the National Arts Foundation (FUNARTE) in Rio de Janeiro, or to the Regional Offices of the Ministry of Culture.

#### 13.1.1.6. Virtuoso scholarships

The artistic and cultural studies (Virtuoso Scholarship) program has as its objective the granting of scholarships for professional studies in Brazil and abroad

to authors, artists and technicians directly engaged in artistic and cultural production. The Program aims at fostering the refinement of these professionals' skills to improve their performance in the workplace. Applicants will be chosen through a selection process that takes into account the candidate's résumé, the quality of his/her educational proposal and/or plan for further education, as well as the excellence of the institution chosen. The fields covered by the program are the following: theater arts, music, plastic arts, historical and cultural heritage, audiovisual and literature.

Possible candidates are artists, authors and technicians directly engaged in artistic and cultural production, Brazilian, at least 30 years of age, who can provide proof of their professional activities and acceptance in the intended course or internship program. The duration of the scholarship is from 3 to 12 months, depending on the candidate's study and/or improvement plan, and on the program schedule for the course and/or internship program. The scholarship may be extended once, for a maximum of 6 months, upon presentation by the teaching institution of proof of the scholarship holder's progress and of the need for this additional period. The extension is subject to availability of funds on the part of the Ministry of Culture

Applications should be submitted to the Ministry Departments, in accordance with the candidate's field of study, and a single copy of the full documentation should be sent to the Ministry of Culture by the cutoff date for registration. For information on the documents necessary for each specific field, as well as the application form for the scholarships, the candidate should contact the Ministry of Culture.

#### 13.1.1.7. Donation of musical instruments

The objective is the donation of musical instruments to bands and the offering of courses for the training of conductors and for conservation of instruments, thus stimulating the musical training of the Brazilian population. Applications should be submitted directly to the Music and Theater Arts Department of the Ministry of Culture and the interested party should present his/her project using the appropriate form, which may be obtained from the Department or on the Internet site of the Ministry of Culture.

### 13.2. How to contribute

#### 13.2.1. Individuals

In order for a project to receive contributions, it must be registered in the Arts Sponsorship Program Project Bank and/or the National Culture Fund – and if you would like information on all projects in order to decide where to place

your support, you should contact the Ministry of Culture. Those interested in registering, whether artists, producers or public and private institutions, shall present their cultural projects to the Ministry, which issues its official opinion in up to 60 days. This initial evaluation guarantees the project complies with the provisions of law, as well as permitting control of the funds received and of the actual execution of the projects.

If an individual directs his/her contribution to the National Culture Fund, he/she will be supporting the entire body of projects being carried out by public institutions. Should he/she wish to support a specific private or company-run project, the contribution is allocated to the Arts Sponsorship Program. In both cases, the individual may deduct 80% of the amount donated from his/her income tax, provided the amount deducted does not exceed 6% of tax payable for the fiscal year (or 5% if the person also has made donations to other causes).

#### How to contribute in the different situations:

- 1) Cultural donation without specifying the project. The donation may be made directly to the National Culture Fund by means of a bank deposit in the Bank of Brazil, as follows: account name *Banco do Brasil* – FNC; account No. 170.500-8; Branch 3602-1; identifying code 42000134902004-5, including the name and Social Security (CPF) number of the donor on the deposit slip. The slip is valid proof to be attached to the individual's income tax return in order to allow the deduction.
- 2) To donate to a specific project, as well as to look for a project that interests you, consult the Project Bank, in which the projects appear with a description, the cultural field and the total amount of the project, as well as the artist, producer or institution responsible and the area which will be served. Once the project has been selected, simply contact your cultural agent directly. To consult the Project Bank, just contact the Ministry of Culture.

#### 13.2.2. Corporate entities

To benefit from fiscal incentives, the investor should choose a project that has received the approval of the Ministry of Culture, through the National Commission on Cultural Incentives (CNIC). To do so, just contact the Ministry directly for information on the approved projects, which are updated monthly. In the case of support by a corporate entity, the deduction from income tax may be up to 4%.

Source: Ministry of Culture

## 14. Annex

### 14.1. Addresses referred in Chapter 13

#### 14.1.1. Departments

##### Audiovisual Department (SAV)

Projects:

- film in pellicle, infrastructure;
- exhibitions, events, festivals, seminars;
- films.

Telephone: (61) 316-2232

e-mail : sav@minc.gov.br

Address: Esplanada dos Ministérios, Bloco B, 3° andar  
Brasília-DF, CEP 70068-900

##### Department of Museum Heritage and Plastic Arts (*Secretaria do Patrimônio, Museu e Artes Plásticas -SPMAP*)

Projects:

- restoration of museums, churches, historical buildings, theaters, etc.;
- purchase of equipment and permanent material for restored buildings;
- organization of historical and cultural events;
- support to afro, indigenous projects, handcrafts and folklore.

Telephone: (61) 316-2085

e-mail : spmap@minc.gov.br

Address: Esplanada dos Ministérios, Bloco B, 2° andar  
Brasília-DF, CEP 70068-900

##### Department of Books and Reading (*Secretaria do Livro e Leitura - SLL*)

Projects:

- publication of books;
- modernization of books lot.

Telephones: (61) 316.2215 / 316.2216

e-mail : spccgpc@minc.gov.br - spcap@minc.gov.br

Address: Esplanada dos Ministérios, Bloco B, 3º andar  
Brasília-DF, CEP 70068-900

**Music and Theater Arts Department**  
(*Secretaria de Música e Artes Cênicas - SMAC*)

Projects:

- theater, dance, circus, opera e mimic;
- popular, erudite and instrumental music.

Telephone: (61) 316-2117  
e-mail : smac@minc.gov.br  
Address: Esplanada dos Ministérios, Bloco B, 2º andar  
Brasília-DF, CEP 70068-900

#### 14.1.2 Regional Offices of the Ministry of Culture

##### Rio de Janeiro

Telephone(s): + 55 21 262.2426 / 220.4189 / 220.6590 / 220.6094  
Fax: + 55 21 220.7715  
Address: Rua da Imprensa, nº 16 - Palácio Gustavo Capanema - 2º andar - Centro  
CEP: 20030-120 - Rio de Janeiro-RJ  
e-mail: dr@mincrj.gov.br

##### Pernambuco

Telephone(s): + 55 81 3424-7611/ 3424-7173  
Fax: + 55 81 3424-9679  
Address: Rua do Bom Jesus, 227/3º andar - Recife Antigo  
CEP: 50.030-170 - Recife-PE  
e-mail: joaoroma@joaoroma.com.br

##### São Paulo

Telephone(s): + 55 11 539.6304  
Fax: + 55 11 5539.6308  
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##### National Arts Foundations (FUNARTE):

Telephones(s): + 55 21 279.8003 / 279.8004 / 279.8005 / 262.5547 / 532.7144  
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Address: Rua da Imprensa, nº 16 - Palácio Gustavo Capanema - 5º andar - Centro  
Cep: 20030-120 - Rio de Janeiro-RJ

#### 14.2. Additional Texts

##### 14.2.1. *SIMPLES*

Integrated system for payment of taxes and contributions by micro- and small companies.

Consists of unified payment of the following taxes and contributions: IRPJ (Corporate Income Tax), PIS (Employees Profit Participation Program), COFINS (Social Contribution on Billings), CSLL (Social Contribution on Net Income), Employer portion of INSS (Social Security Contribution), and IPI (Excise Tax), if applicable, and may include ICMS (Value-Added Tax) and/or ISS (Tax on Services) owed by a micro-company and/or small company, provided that the State and/or City in which it is established has a formal agreement with the “*SIMPLES*” system. Registration with the “*SIMPLES*” system exempts the corporate entity from payment of the contributions instituted by the Federal Government, such as those for SESC (Social Service for Trades), SESI (Social Service for Industry), SENAI (Social Service for Micro- and Small Companies) and the like, as well as those relating to educational assistance and the Employer’s Union Contribution. Corporate entities classified as micro-companies or small companies, may choose to operate using the “*SIMPLES*” system, provided they are in good standing with the Internal Revenue Service and the Social Security Administration (INSS).

The option of taxation under the “*SIMPLES*” system may be made when the company is registered with the National Corporate Taxpayer Registry or as a change of registry by handing in the Registration Form for Corporate Entities



(FCPJ) by the last business day of the month of February of the year in course, and the taxpayer is subject to the “SIMPLES” system as of the first day of the year in which the option is taken.

#### 14.2.1.1. Micro-company

Micro-company (ME): a corporate entity whose gross income for the calendar year is equal to or less than R\$120.000,00 (one hundred twenty thousand reais), gross income being considered to be the revenues from the sale of own goods and services, the price of services rendered and the revenue from operations for third parties, excluding cancelled sales and unconditional discounts granted.

#### 14.2.1.2 Small company

Small company (EPP): a corporate entity whose gross income for the calendar is greater than R\$ 120.000,00 (one hundred twenty thousand reais) and less than or equal to R\$ 1.200.000,00 (one million two hundred thousand reais), gross income being considered to be the revenues from the sale of own goods and services, the price of services rendered and the revenue from operations for third parties, excluding cancelled sales and unconditional discounts granted.

### 14.3. Laws

#### LAW N° 7.232, OF 29 DE OCTOBER 1984.

*Determines the National Policy for Computer Science, and for other measures.*

The President of the Republic:

I hereby make known that the Congress decrees and I sanction the following Law:

**Art. 1º** This law establishes the principles, objectives and guidelines of the National Policy for Computer Science, its purposes and mechanisms of formulation, creates the National Council of Information, Technology and Automation, CONIN, and determines with regard to the Special Secretariat of Computer Science, SEI, creates the Computer Science Exportation Districts, authorises the creation of the Technological Centre for Computer Science – CTI, institutes the National Plan of Computer Science and Automation and the Special Fund for Computer Science and Automation.

#### **NATIONAL POLICY FOR COMPUTER SCIENCE**

**Art. 2º** The objective of the National Policy for Computer Science is to make the activities of computer science possible at a national level, so as to improve the social, cultural, political, technological and economical development of the Brazilian society, in accordance with the following principles:

I - governmental action in the orientation, co-ordination and stimulation of computer science activities;

II – participation of the State in productive sectors at a supplementary level, when decreed to be of national interest, and in cases where the national private enterprise lacks conditions to act or if it is not of their interest;

III – intervention by the state so as to assure a balanced protection for the national production of certain classes and types of goods and services as well as the growing technological capacity;

IV – prohibition of the creation of monopolistic situations, whether by *jure et de facto*;

V – continuous adjustment of the computerisation process for the peculiarities of the Brazilian society;

VI – political orientation in the activities of computer science, that takes into account the necessity to preserve and refine the cultural identity of the country, the strategic nature of computer science and the influence of this on the efforts developed by the country to reach better periods of social welfare;

VII – direction of all national efforts for the sector, aiming to meet the programmes that have priority regarding economical and social development and the strengthening of the National Power, in its various fields of expression;

VIII – establishment of mechanisms and legal and technical instruments for the protection of the secrecy of stored data, processed and transmitted, of interest to the privacy and safety of individuals and legal entities, private and public;

IX – establishment of mechanisms and instruments so as to ensure that every citizen has the right of access to and rectification of information related to himself in public or private databases;

X - establishment of mechanisms and instruments so as to ensure the balance between the productivity profits and the levels of employment in the automation of productive processes;

XI – governmental incentive and protection directed to the development of national technology and the economical-financial and commercial strengthening of national companies, as well as stimulation of the reduction of product and service costs, so as to ensure their increased international competitiveness.

**Art. 3º** To all intents and purposes of this Law, activities of computer science are those related to the rational and automatic treatment of information and, especially those of:

I – research, development, production, importation and exportation of electronic components and semiconductors, optical-electronics as well as respective raw materials of electronic types;

II – research, importation, exportation, manufacturing, commercialisation and operation of machines, equipment and devices based on digital techniques with technical functions for the collecting, treatment, structuring, storing, commutation, recuperation and presentation of information, its respective electronic raw materials, parts, pieces and physical support for operation;

III – importation, exportation, production, operation and commercialisation of programmes for computers and automatic machines for

the treatment of information and respective associated technical documentation (software);

IV – structuring and exploration of databases;

V – rendering of services for computer technology.

§ 1º (Vetoed).

§ 2º The structuring and exploration of databases (vetoed) will be regulated by specific law.

### **INSTRUMENTS OF THE NATIONAL POLICY FOR COMPUTER SCIENCE**

**Art. 4º** The instruments of the National Policy for Computer Science are as follows:

I – to stimulate the growth of computer science activities so as to be compatible with the development of the country;

II – to institutionalise rules and standards of homologation and certification of quality for computer science products and services;

III – the mobilisation and co-ordinated application of public financial resources destined for the stimulation of computer science activities;

IV – the betterment of the international co-operation means regarding the efforts to increase the professional competency/ability in the country;

V – the formation, training and improvement of human resources for the sector;

VI – the establishment of a special system for the concession of tax and financial incentives, in favour of national companies, destined for the growth of computer science activities;

VII – the administrative penalties for the non-observance of precepts of this Law and regulations;

VIII – the control of the importation of computer science goods and services for 8 (eight) years counting from the publication of this Law;

IX – the standardisation of a protocol for the communication between treatment and information systems; and

X – the establishment of specific programmes for the stimulation of computer science activities, by financial institutions of the state.

### **BRAZILIAN COMPUTER SCIENCE AND AUTOMATION COUNCIL**

**Art. 5º** Art. 32 of Decree-Law No. 200, of 25 February, 1967, came into force with the following wording:

“**Art. 32.** The Presidency of the Republic is essentially constituted by the Civil Cabinet and the Military Cabinet. The following areas are also included, acting as immediate advisory bodies to the President of the Republic:

I – the National Security Council;

II – the Economical Development Council;

III – the Social Development Council;

IV – the Planning Secretariat;

V – the National Service for Information;

VI – the General of the Armed Forces;

VII – the Administrative Department of Public Services;

VIII – the General Consultancy of the Republic;

IX – the High Commander of the Armed Forces;

X – the National Council of Information, Technology and Automation, CONIN.

**Sole paragraph.** The Chief of the Civil Cabinet, the Chief of the Military Cabinet, the Chief of the Planning Secretariat, the Chief of the National Service for Information and the Chief of the General of the Armed Forces are Ministers of the State title-holders of the respective agencies.

**Art. 6º** The National Council of Information, Technology and Automation - CONIN is constituted by representatives from the Ministers of

the Economy, Public Finances and Planning, of Infrastructure, of Foreign Affairs, by the Chief of the General of the Armed Forces and by the Science and Technology and Federal Administration Secretariat, representing the Executive Power, as well as 8 (eight) representatives from non governmental entities, comprising the representatives from the industry and the users of computer science goods and services, of the professionals and workers from the sector, from the scientific and technological community, from the press and juridical area. (*Art. revoked with paragraphs by Law No. 8.248, of 23/10/91*)

§ 1º The Presidency of the National Council of Information, Technology and Automation - CONIN, belongs to the Science and Technology Secretariat.

§ 2º In order to achieve the objectives of the National Policy for Computer Science, the National Council of Information, Technology and Automation - CONIN, may authorise the creation, and the extinction, of Centres of Technological Research and Computer Science, in any part of National Territory and foreign countries.

§ 3º The organisation and functioning of the National Council of Information, Technology and Automation, CONIN, will be established by the Executive Power.

§ 4º With the exception of that determined in the following § the duration of the term of office for non governmental members of the council will be of 3 (three) years.

§ 5º The term of office for members of the council, in any case, will end with the term of office of the President of the Republic who nominated them.

**Art. 7º** The National Council of Information, Technology and Automation - CONIN, is responsible for:

I – advising the President of the Republic during the formulation of the National Policy of Computer Science;

II - proposing, every 3 (three) years, the National Plan for Computer Science and Automation to the President of the Republic, to be approved and annually evaluated by the National Congress, as well as supervising its execution;

III – establishing, in agreement with that ordered in the National Plan for Computer Science and Automation, (vetoed) specific resolutions and procedures to be followed by the bodies of the Federal Administration;

IV – following the strict observance of these standards at all times;

V – stating an opinion, beforehand, on the creation and reformulation of bodies and entities, in the area of the Federal Government, regarding the computer science sector;

VI – stating a point of view regarding the concession of benefits, whether fiscal, financial or of any other nature, by the bodies and entities of the Federal Administration for projects of the computer science sector;

VII – establishing criteria for the compatibility of policies for the regional/sector development, that affects the computer science sector, with the objectives and principles as established by this Law, as well as measures destined to promote the de-concentration of the regional economy;

VIII – establishing rules and standards for the homologation of computer science goods and services and for the issuing of corresponding certificates, always taking into account the criteria followed by the pertinent technical bodies;

IX – being aware of projects for treaties, agreements, conventions and international commitments of any nature, that refer to the computer science sector;

X – establishing standards for controlling the flow of cross-border data and for the concession of channels and transmission vehicles of data for connection to data banks and networks in foreign countries (vetoed);

XI – establishing measures, taking into account the rendering, by the state, of adequate protection of individual and public rights, as regards the effects of computerisation on the society, following that ordered in Art. 40;

XII – stating the criteria for the minimum curriculum for professional development and the definition of careers to be adopted, regarding the activities of computer science, by the bodies and entities of the Federal Administration, Direct and Indirect, and the foundations under ministerial supervision;

XIII – deciding, at an appeal level, the questions arising from the decisions of the Special Secretariat for Computer Science;

XIV – stating an opinion about the basic conditions of acts or contracts (vetoed) relative to the activities of computer science;

XV – proposing to the President of the Republic the sending to the National Congress of the complementary legislative measures necessary for the execution of the National Policy for Computer Science; and

XVI – in accordance with the National Plan for Computer Science and Automation, create Research, Technology and Computer Science Centres, in any part of the National Territory or in foreign countries.

### **SPECIAL SECRETARIAT FOR COMPUTER SCIENCE**

**Art. 8º** It is of the responsibility of the Special Secretariat of Computer Science – SEL, a subordinate body of the National Council of Information, Technology and Automation - CONIN: *(Art. revoked with clauses by Law No. 8.248, of 23/10/91)*

I – to render services for technical and administrative support to the National Council of Information, Technology and Automation, CONIN - CONIN;

II – enact, divulge, execute and perform the resolutions of the National Council of Information, Technology and Automation - CONIN, in agreement with item III of Art. 7;

III – elaborate the proposal of the National Plan of Computer Science and Automation, submit it to the National Council of Information, Technology and Automation and execute it in its area of jurisdiction, in agreement with items II and III of Art. 7;

IV – adopt the necessary measures for the execution of the National Policy for Computer Science as appropriate;

V – analyse and decide upon projects for the development and production of computer science goods (vetoed); and

VI – to previously manifest itself regarding the importation of goods and services for computer science for 8 (eight) years counting from the publication date of this Law, following that disposed in item III of Art. 7.

### **APPLICABLE MEASURES FOR ACTIVITIES OF COMPUTER SCIENCE**

**Art. 9º** In order to assure adequate levels of protection for national companies, whilst they are not consolidated and capable of competing in the international market, observing differentiating criteria according to the

peculiarities of each specific market segment, periodically re-evaluated, the Executive Power shall adopt restrictions of transitory nature for the production, operation, commercialisation and importation of computer science goods and technical services. (*Art. revoked with paragraphs by Law No. 8.248, of 23/10/91*)

§ 1º With the exception of that stated in Art. 10, restrictions or impediments cannot be adopted for the free practice of manufacturing, commercialisation and rendering of technical services in the sector of computer science by national companies that utilise national technology, as long as they do not benefit from fiscal and financial benefits.

§ 2º Equally, the *caput* restrictions of this Art. are not applied to goods (vetoed) of information science, with national technology whose manufacturing does not depend on the importation of parts, pieces and components of foreign origin.

**Art. 10.** The Executive Power may establish limits for the commercialisation, in the national market, of goods and services of computer science, even for those produced in the Country, where they imply the creation of monopolies in sectors of the segment (vetoed).

**Art. 11.** The bodies and entities of the Public Federal Administration, Direct and Indirect, the institutional foundations or those maintained by Public Power and other organisations, under the direct or indirect control of the Union will give preference to items produced by national companies when purchasing goods and services of computer science. (*Art. revoked with paragraphs by Law No. 8.248, of 23/10/91*)

**Sole paragraph.** Such preference is allowed when there is the satisfactory delivery conditions, support for services, quality, standardisation, compatibility and performance specifications, difference in price to similar imported products at a percentage to be proposed by the National Council of Information, Technology and Automation - CONIN to the President of the Republic (vetoed).

**Art. 12.** For the intents and purposes of this Law, national companies are those of legal constituted entity with headquarters in the country, whose control is, in a permanent manner, exclusive and unconditionally, under the ownership, direct or indirect, of individuals resident and domiciled in the country, or by entities of internal public law, being control understood as: (*Art. revoked by paragraphs and clauses of Law No. 8.248, of 23/10/91*)

I – ruling control: the practising, *jure et de facto*, of the power to elect administrators of the society and to direct the functioning of the departments of the company;

II – technological control: the practising, *jure et de facto*, of power to develop, generate, acquire, transfer and vary the technology of products and of the production process;

III – control of capital: the detention, directly or indirectly, of the totality of the capital, with a direct effect on, or potential vote, at a minimum of 70% (seventy per cent) of the capital stock.

§ 1º In the case of publicly held corporations, the shares with rights to vote or to fixed or minimum dividends must correspond to, at a minimum, 2/3 (two thirds) of the capital stock and may only be the property of, or be subscribed or acquired by:

- a) individuals, resident or domiciled in the Country, or entities of internal public law;
- b) legal entities of public law, constituted and with headquarters and forum within the country, that meet the requirements as defined in this Art. to be included as a national company;
- c) legal entities of internal public law.

§ 2º The shares with right to vote or fixed or minimum dividends must be of nominative form.

**Art. 13.** The following incentives, grouped together or individually, may be conceded to national companies so that they may perform projects for research, development and production of goods and services for computer science, that meet the fixed proposals of Art. 19: (*Art. revoked with clauses by Law No. 8.248, of 23/10/91*)

I – exemption or reduction until 0 (zero) of aliquots relevant to the Import Duty in cases of importation that have no similar national ones:

- a) of equipment, machines, apparatus and instruments, with respective accessories, spare parts and tools;
- b) of components, intermediary products, raw materials, parts and pieces and other supplies;

II – exemption of Export Taxes, in cases of exportation of homologated goods;

III – exemption or reduction until 0 (zero) of aliquots relevant to Excise Tax:

- a) assure suppliers of the goods mentioned in item I, imported or of national production, with the maintenance of tax credits regarding raw materials, intermediary products, parts and pieces and other supplies utilised in the industrialisation process;
- b) regarding final homologated products;

IV - exemption or reduction until 0 (zero) of Tax aliquots regarding Credit Operations, Exchange and Insurance and on Operations Relating to Titles and Securities, that apply to the exchange operations linked to the payment of imported goods and of contracts for the transfer of technology;

V – deduction up to the double, as an operational cost for the effects of ascertaining the Income Tax and Revenues of Other Natures, of expenses resulting from ones own programmes or those of third parties, previously approved by the National Council of Information, Technology and Automation – CONIN, that has as its objective the research and development of goods and services of the computer science sector or the development, training and improvement of human resources for computer science activities;

VI – appreciated depreciation of goods destined to fixed assets;

VII – priority to direct financing by federal financial institutions, or of indirect financing, by means of transferring administrative funds by those institutions, for the costing of investments for fixed assets, including goods of foreign origin where no similar national goods exist.

**Art. 14.** National companies, that perform or may perform, physical-chemical processes relevant to the manufacturing of electrical components for semiconductor, optical-electronic and similar processes, as well as their supplies, involving techniques such as epitaxial growth, diffusion, ionic implantation or other similar or advanced processes, may be conceded, as decided by the President of the Republic, additional incentives to those foreseen in the previous article, so as to benefit from a reduction in the taxable income, for the effects of Income Tax, of a percentage equivalent to the gross income of these goods as presented in the total income of the company. *(Art. revoked with § by Law No. 8.248, of 23/10/91)*

**Sole paragraph.** Equally so, as a further incentive to companies that use supplies listed in the *caput* of this article, especially micro-electronic companies, it may be attributed the capacity to make double deductions to the acquisition value of their taxable income.

**Art. 15.** National companies, that have approved projects for the development of software, of relevant interest to the productive system of the

country, may be conceded the benefit of reducing their taxable income, for the effects of Income Tax, at a percentage equal to the gross income of the commercialisation of the software as represented in the total income of the company. *(Revoked by Law No. 8.248, of 23/10/91)*

**Sole paragraph.** (Vetoed).

**Art. 16.** The incentives foreseen by this Law will only be conceded to classes of goods and services, within the criteria, limits and bands of application that are expressively foreseen in the National Plan for Computer Science. *(Revoked by Law No. 8.248, of 23/10/91)*

**Art. 17.** Without affecting other conditions to be established by the National Council of Information, Technology and Automation, CONIN, benefiting companies must invest in programmes for technological creation, development or adaptation, at a quantity corresponding to a percentage (vetoed) previously fixed at the time when the incentives were given, incidental on the quarterly income from the commercialisation of goods and services of the sector, deducting transport and insurance expenses, when written separately on the fiscal documentation and when corresponding to current market prices.

**Sole paragraph.** (Vetoed).

**Art. 18.** The non fulfilment of the conditions established at the concession of fiscal incentives will oblige the infringing company to fully collect taxes that were exempt or where a reduction was granted, and that in other ways are fully due, monetarily corrected and with a fine of 100% (one hundred per cent) on the main updated amount. *(Revoked by Law No. 8.248, of 23/10/91)*

**Art. 19.** The criteria, conditions and time limit for the granting, in each case, of measures as stated in articles 13 to 15 will be established by the National Council of Information, Technology and Automation - CONIN, in agreement with the unremitting policies of the National Plan for Computer Science and Automation, aimed at: *(Revoked Art. with clauses by Law No. 8.248, of 23/10/91)*

I – the growing participation of national private companies;

II – so as to adequately attend the necessities of users that use the goods and services of the sector;

III – the development of applications that have the best economical and social costs/benefit relations;

IV – the substitution of imports and the generation of exports;

V – the progressive reduction in the final prices of goods and services;  
and

VI – the capacity for significant technological development.

**Art. 20.** Activities of stimulation will be directly performed by the credit institutions and public and private financing, observing the criteria established by the National Council of Information, Technology and Automation - CONIN and the statutory resolutions of the institutions mentioned.

**Art. 21.** For the fiscal years of 1986 to 1995, inclusive, legal entities may deduct up to 1% (one per cent) of their owed Income Tax, as long as they directly apply, until the single quota maturity date or last tax quota, an equal amount in new shares of national companies of private law that have as their sole or main activity the production of goods and services of the computer science sector, being prohibited to invest in applications of companies of one or more economical conglomerates and/or companies that have not had their capitalisation plans approved by the National Council of Information, Technology and Automation - CONIN. *(Art. revoked by § of Law No. 8.248, of 23/10/91)*

**Sole paragraph.** Any company under direct or indirect control of the Union or of the States, currently existing or that may be created, cannot use the benefits that are described in the present Law, neither take advantage of other privileges.

**Art. 22.** (Vetoed) in the case of computer science goods and services, judged as being of relevant interest to the internal scientific and productive activities, and for which no company exists capable of meeting the effective necessities of the internal market, with own or foreign acquired technology, the production may be admitted in favour of companies that have not met the requirements of Art. 12, as long as the interested organisations: *(Art. revoked with clauses and paragraphs by Law No. 8.248, of 23/10/91)*

I – have approved, by the National Council of Information, Technology and Automation - CONIN, programmes for the effective qualification of their technical body for product technologies and for production processes;

II – they are applied, within the country, in activities of research and development, directly or in convention with Centres of Technological Research and Development aimed at the area of Computer Science and Automation or with Brazilian universities, following priorities defined by the National Council of

Information, Technology and Automation - CONIN, at a quantity corresponding to a percentage, as fixed within the National Plan of Computer science and Automation, that applies to the gross income of each accounting period;

III – present a plan for exportation; and

IV – establish development programmes for local suppliers.

§ 1º The National Council of Information, Technology and Automation - CONIN will only authorise the foreign acquisition of technology when there is a known interest of the market, and when no national company exists with the technical ability to meet the demand.

§ 2º The requirements of this Art. do not apply to products and services of companies that, until the legal date of this Law, had already been producing and commercialising in the country, in agreement with projects approved by the Special Secretariat of Computer Science - SEI (vetoed).

**Art. 23.** The producers of goods and services of computer science will guarantee the adequate technical quality of these goods and services to their users, any onus for proof of this quality will be of their exclusive responsibility.

§ 1º In agreement with the criteria to be fixed by the National Council of Information, Technology and Automation - CONIN, the manufacturers of machines, equipment, subsystems, instruments and gadgets, produced in the country or of foreign origin, for the commercialisation on the internal market, are obliged to make known the technical information necessary for the inter-connecting or connection of these goods with those produced by other makers and the rendering of services, by third parties, for technical maintenance, as well as to supply parts and pieces for 5 (five) years after discontinuing the making of the product.

§ 2º The time limit and conditions foreseen in the former § will be established by regulation of the National Council of Information, Technology and Automation - CONIN.

### EXPORTATION DISTRICTS FOR COMPUTER SCIENCE

**Art. 24.** With the exception of the prevalent situations and, taking into account the availability of corresponding technology within the country, the use of foreign technology by companies that do not meet the requirements of Art. 12 remain conditioned to:

I – the production (vetoed) if exclusively destined for the foreign market;  
and

II – the production unit being located in one of the Computer Science Exportation Districts.

**Art. 25.** Municipalities will be considered Computer Science Exportation Districts (vetoed) if they are situated in the areas of SUDAM (Superintendency for the Development of the Amazon) and SUDENE (Superintendency for the Development of the Northeast) for this purpose as indicated by the Executive Power and as nominated by the National Congress.

**Art. 26.** The production and exportation of goods for Computer Science, as well as for importation of their parts, pieces, accessories and supplies, in the Computer Science Exportation Districts, will be free from any Taxes regarding the Exportation, regarding the Importation, (vetoed) regarding Industrialised Products and regarding the closing of exchange operations.

**Art. 27.** The exportation of pieces, components, accessories and supplies of national origin for use and industrialisation within the Computer Science Exportation Districts, or for re-exportation to foreign countries, will be, for all fiscal effects relevant to current legislation, equivalent to Brazilian exports for foreign countries.

**Art. 28.** (Vetoed).

**Art. 29.** The convention terms remain ratified for the compatibility of computer science and microelectronic procedures, in the Manaus Free-Trade Zone, and for the rendering of services for technical and operational support, of 30 November of 1983, celebrated between the Superintendency of the Manaus Free-Trade Zone - SUFRAMA and the Special Secretariat of Computer Science - SEI, with the intervention of the Technological Centre for Computer Science and the Centre for the Analysis of Industrial Production, that is an integrate part of this Law.

#### **SPECIAL FUND FOR COMPUTER SCIENCE AND AUTOMATION**

**Art. 30.** (Vetoed).

**Sole paragraph.** (Vetoed).

**Art. 31.** The National Council of Information, Technology and Automation - CONIN, will annually approve the budget for the Special Fund of Computer Science and Automation, taking into account the plans and

projects as approved by the National Council of Information, Technology and Automation – CONIN, allocating resources to aims as specified in Art. 30.

#### **TECHNOLOGICAL FOUNDATION CENTRE FOR COMPUTER SCIENCE**

**Art. 32.** The Executive Power is authorised to establish the Technological Centre for Computer Science - CTI, so as to stimulate the development of scientific and technological research in the activities of computer science.

§ 1º The Centre, bound to the National Council of Information, Technology and Automation - CONIN, will benefit from having administrative and financial autonomy and will acquire corporate entity from the time of archiving its constitutive act, its articles of association and the approving decree.

§ 2º the President of the Republic will designate a representative of the Union for the constitutive acts of the Centre.

§ 3º The structure and functioning of the Centre will be governed by its articles of association as approved by the President of the Republic.

**Art. 33.** The objectives of the centre are to:

I – promote, by means of agreements, conventions and contracts with public and private institutions, to perform research, plans and projects;

II – issue technical reports;

III – follow nationalisation programmes, together with the appropriate bodies, in accordance with the guidelines of the National Council of Information, Technology and Automation - CONIN;

IV – perform support services to national companies of the computer science sector;

V – implement a policy for the integration of Brazilian universities, by means of agreements, conventions and contracts, for the national effort to develop our information science.

**Art. 34.** By means of the act of Executive Power, the assets and rights pertaining to, or destined to, the Technological Centre for Computer Science will be incorporated into the Technological Centre for Computer Science.



**Art. 35.** The patrimony of the Technological Centre for Computer Science will be made up as follows:

I – resources arising from the Special Fund for Computer Science and Automation, that have been allocated by the National Council of Information, Technology and Automation - CONIN;

II – budgetary allocations and subventions of the Union;

III – financial support and subventions that have been allocated by the States and Counties, their autarchies, societies of mixed economy or public companies;

IV – assets and rights of the Technological Centre for Computer Science;

V – remuneration of rendered services arising from agreements, conventions or contracts;

VI – eventual revenue.

**Sole paragraph.** During the institution of the Centre, the Executive Power will stimulate the participation of private resources into the patrimony of the entity and in its current expenses, without the required necessity of the final part of letter b, of Art. 2, of Decree-Law No. 900 of 29 September, 1969.

**Art. 36.** The National Council of Information, Technology and Automation, CONIN, will guarantee, where required, the incentives as mentioned in this Law, to the Technological Centre for Information.

**Art. 37.** The Technological Centre for Computer Science will manage its employees in accordance with labour legislation.

§ 1º The workers of the Technological Centre for Computer Science to be lapsed, will have the right to be utilised as one of the employees of the Centre.

§ 2º The Centre may contract, within or outside of the country, the services of companies or specialised professionals for the rendering of technical services, as a temporary measure, after consulting the National Council of Information, Technology and Automation - CONIN.

**Art. 38.** In the case of the Centre being lapsed, its assets will be incorporated into the patrimony of the Union.

**Art. 39.** Expenses arising from the constitution, installation and functioning of the Technological Centre for Computer Science will be passed to the budgetary allocations currently consigned to the National Security Council, previously in favour of the Presidency of the Republic - National Council of Information, Technology and Automation - CONIN or of others destined to this cause.

## FINAL RESOLUTIONS

**Art. 40.** (Vetoed).

**Sole paragraph.** (Vetoed).

**Art. 41.** (Vetoed).

§ 1º (Vetoed).

§ 2º (Vetoed).

§ 3º (Vetoed).

**Art. 42.** Without impairment to maintenance and improvement of instruments and mechanisms of industrial policy and services in the area of Computer Science, in force at the time of publication for this Law, the National Council of Information, Technology and Automation – CONIN, will submit to the President of the Republic a proposal to adapt the rules and procedures that are in force to the precepts of this Law within 180 (one hundred and eighty) days.

**Art. 43.** Materials relevant to computer programmes and associated technical documentation (software) (vetoed) and relative privacy rights, with rights to the personality, relevant to its range, will be subject to specific laws, to be approved by the National Congress.

**Art. 44.** The First National Plan for Computer Science and Automation will be passed to National Congress within 360 (three hundred and sixty) days from the publication date of this Law.

**Art. 45.** This Law will come into force 60 (sixty) days after its publication.

**Art. 46.** Any opposing resolutions are revoked.

Brasília, 29 October 1984; 163<sup>rd</sup> of Independence and 96<sup>th</sup> of the Republic.

**LAW N° 9.609, 19 FEBRUARY 1998**

*It states about the protection of the intellectual property of a computer programme, its commercialisation in the country and sets other provisions.*

The President of the Republic:

I hereby make known that the Congress decrees and I sanction the following Law:

**Chapter I****PRELIMINARY PROVISIONS**

**Art. 1°** A computer programme is the expression of an organised set of instructions in a natural or codified language, contained in a physical support of any kind, which has to be used in automatic machines that deal with information, devices, peripheral equipment or instruments, based in digital or analogous technique, to make them work both in and for determined ways.

**Chapter II****PROTECTING THE AUTHOR'S RIGHTS AND THE REGISTRATION**

**Art. 2°** The policy of protection to the intellectual property of a computer programme is the one awarded to the literary works by the legislation of authoring rights and connected ones in force in the country, taking into account what is stated in this Law.

§ 1° The provisions related to moral rights do not apply to the computer programme, except for, at any time, the author's right to demand the paternity of the computer programme and the author's right of opposing to non-authorized alterations when they imply in deforming, mutilating or any other modification of the computer programme, which may damage the author's honour or reputation.

§ 2° The protection of the rights related to a computer programme are assured for the period of fifty years, counting from the first of January of the following year of its publication or, in its absence, of its creation.

§ 3° The protection to the rights dealt with by this Law does not depend on registration.

§ 4° The rights attributed by this Law are assured to foreigners domiciled abroad, provided the country of origin of the programme assures to Brazilians and foreigners domiciled in Brazil the equivalent rights.

§ 5° That exclusive right of authorising or forbidding the commercial rent is included among the rights which are assured by this Law and by the legislation of authoring rights and connected ones in force in the Country, but this right is not exhaustible by the sale, licence or any other form of transferring the copy of the programme.

§ 6° What is disposed on the previous § does not apply to the cases where the programme itself is not the essential object of the rent.

**Art. 3°** If it is the title-holder's wish, it may be possible to register computer programmes in the agency or organisation that will be nominated by act by the Executive Power, by initiative of the Ministry in charge of the policy for science and technology.

§ 1° The request for registration that is settled in this Art. should have, at least, the following information:

I – the data referring to the author of the programme and to the title-holder, in case he/she is different from the author, being them individuals or companies;

II – the identification and the functional description of the computer programme; and

III – the parts of the programme and other data that may be considered enough to characterise its independent creation, safeguarding the rights of third parties and the responsibility of the Government.

§ 2° The information referred to in sub-§ III of the previous § is confidential, and cannot be revealed, safe by judicial order or upon request of the title-holder.

**Art. 4°** Safe contrary provision, the rights relating to the computer programme will belong exclusively to the employer, the person hiring services or public agency, when the programme has been developed and made while a contract was still in force or during any other by-law link, and it is solely destined to research and development, or when the activity of the employee, hired for service or servant is foreseen, or even, when it is due to the own nature of the concerning commissions to these links.

§ 1° Safe contrary agreements, the compensation for the work or rendered service should be limited to the remuneration or to the agreed salary.

§ 2º When a computer programme has been made without having relation to the employment contract, rendered services or by-law links, and without using resources, technological information, industrial and business secrets, materials, installations or equipment which belong to the employer, to the company or organisation with which the employee has an agreement for rendering services or public agency, the rights concerning this computer programme will belong exclusively to the employee.

§ 3º The treatment foreseen in this Art. will be applied in the cases where people with scholarships, trainees and similar ones have developed the computer programme.

**Art. 5º** The rights about the authorised derivations made by the title-holder of the computer programmes, including their economic exploration, will belong to the authorised person who will make them, unless the contrary is stated in a contract.

**Art. 6º** These do not offend the rights of the title-holder of the computer programme:

I – reproduction, in a sole sample, of a legitimately bought copy, provided this is meant to be the backup or electronic storage copy, in which case the original sample serve as backup.

II – the partial quotation, for didactic purposes, provided both the programme and the title-holder of the respective rights are identified;

III – the existence of similarity of a programme to another pre-existing one, when this happens due to functional characteristics of its application, to the fulfilment of normative and technical precepts, or to the limitation of an alternative way for expressing it;

IV – the integration of a programme, keeping its essential characteristics, to an applicative or operational system that is technically indispensable to the user's needs, provided it is for the exclusive use of whoever has promoted it.

### Chapter III

#### WARRANTIES TO USERS OF COMPUTER PROGRAMMES

**Art. 7º** The contract that allows the use of the computer programme, the corresponding fiscal document, the physical supports or the respective packages should state the technical due date of the commercialised version, in such a way that can be easily read by the user.

**Art. 8º** Whoever commercialises computer programmes all over the country and within the technical due date of the respective version, be it the title-holder of the programme or the title-holder of the commercialisation rights, has the obligation to assure the respective users the rendering of complementary technical services related to the adequate working of the programme, taking its specifications into account.

**Sole Paragraph** – the obligation will continue in case of taking the computer programme out of circulation during its due date period, safe for fair indemnity of possible damage caused to third parties.

### Chapter IV

#### LICENCE AGREEMENTS FOR THE USE, COMMERCIALISATION AND TRANSFERENCE OF TECHNOLOGY

**Art. 9º** The use of a computer programme in the Country will be object of a licence agreement.

**Sole paragraph.** In case the contract referred to in the caput of this Art. does not exist, the fiscal document related to the purchase or licensing of the copy will be used to prove the regularity of its use.

**Art. 10.** The acts and licence agreements for commercialisation rights referring to computer programmes of a foreign origin should state, as far as taxes and demandable charges are concerned, the responsibility for the respective payments and should set the salary of the title-holder of the computer programme, who is domiciled abroad.

§ 1º The following clauses will be considered null if they:

I – limit the production, distribution or the commercialisation, thus violating the normative provisions in force;

II – exempt any of the contractors of the responsibilities for any possible actions of third parties, due to vices, faults or violation of the right of "auto".

§ 2º The sender of the corresponding value in foreign currency, as payment of the applicable remuneration, will keep all the necessary documents to prove the fairness of the remittances and of their conformity to the caput of this Art. for the period of five years.

**Art. 11.** In the cases of transfer of technology of computer programmes, the National Institute of Industrial Property will register the respective agreements so that they take effect in relation to third parties.

**Sole paragraph.** For registering in accordance to this article, it is necessary to deliver, from the supplier to the technology receptor, the complete documentation, specially the commented code-source, descriptive memorial, internal functional specifications, diagrams, flow charts and other technical data necessary for absorbing the technology.

## Chapter V

### INFRACTIONS AND PENALTIES

**Art. 12.** Violating the computer programme author's rights:

**Penalty** – Imprisonment from six months up to two years or fine.

§ 1º If the violation consists of reproducing, by any means, a computer programme, as a whole or in part, for commercial purposes, without the express authorisation of the author or whoever is his/her representative:

**Penalty** – Seclusion from one to four years and fine.

§ 2º Whoever sells, puts on display for sale, brings to the country, buys, hides or has in stock, for commercial purposes, the original or the copy of a computer programme, produced with violation of authoring rights, incurs into the same penalty of the previous paragraph.

§ 3º For the crimes foreseen in this article, one only proceeds through complaint, safe:

I – when they are practised causing damage to a public law entity, autarchy, public company, mixed economy corporation or a foundation established by the public:

II – when due to a criminal act, it results in tax dodging, loss of tax collection or the practise of any of the crimes against the tax order or against the consumption relations.

§ 4º In the case of sub-§ II in the previous paragraph, the liabilities of tax, or social contribution and any fixture, it will be prosecuted regardless of the representation.

**Art. 13.** The penal action and the preliminary diligence of search and seizure, in the cases of violation of computer programme author's rights, will be preceded by inspection and the judge may order the seizure of the copies

produced or commercialised with violation of the author's rights, their versions and derivations, in the hands of the infringer or whoever is displaying them, keeping them in stock, reproducing or commercialising them.

**Art. 14.** Regardless of the penal action, the person who suffered the loss will be able to bring an action against the infringer to prohibit him/her to practise the criminal act, with the imposition of monetary penalty for the case of transgression of the principle.

§ 1º The action of abstention of the practise of the act may be cumulated with the one of damage and loss for the damages due to the infraction.

§ 2º Regardless of preparatory preventive measures, the judge may give a temporary restraining order prohibiting the infringer to practise the criminal act, in the terms of this article.

§ 3º In the procedures, the preventive civil measures of search and seizure will observe what was stated in the previous article.

§ 4º In case information characterised as confidential, is presented in court for the defence of the interests of any of the parts, the judge will have to determine that the process proceeds in justice secret, and the use of such information is forbidden to the other part for any other purposes.

§ 5º Whoever requests or promotes the measures foreseen in this and in the previous article, acting by misdeed or by envy, perversity or gross error will be responsible for the damage and loss, in the terms of articles 16, 17 and 18 of the Code of Civil Procedure.

## Chapter VI

### FINAL PROVISIONS

**Art. 15.** This Law will be in force counting from the date of its publication.

**Art. 16.** Law n.7.646, from 18 December 1987 is deprived of effect.

Brasília, 16 February 1998; 177<sup>th</sup>. Year of Independence and 110<sup>th</sup>. Year of Republic.

Fernando Henrique Cardoso

José Israel Vargas

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**LAW Nº 9.610, 19 FEBRUARY 1998**

*Alters, updates and consolidates the legislation about authoring rights and sets other provisions.*

The President of the Republic:

I hereby make known that the Congress decrees and I sanction the following Law:

**I****PRELIMINARY PROVISIONS**

**Art. 1º** This Law regulates authoring rights, and this denomination comprehends the rights of the author and those which are connected to them.

**Art. 2º** Foreigners domiciled abroad will have the protection granted in the agreements, conventions and treaties in force in Brazil.

**Sole paragraph.** The dispositions of this law suit the national citizens or people living in a country that grants to Brazilians or people living in Brazil the reciprocity in the protection to authoring rights or their equivalent.

**Art. 3º** Authoring rights are considered as movable properties, for legal effects.

**Art. 4º** Juridical businesses are interpreted restrictively about authoring rights.

**Art. 5º** For the effects of this Law, it is considered:

I - publication – the offering of literary, artistic or scientific work to the knowledge of the public, with the author’s consent, or any other title-holder of author’s right, by any means or process;

II – transmission or emission – the dissemination of sounds or of sounds and images, by means of radio-electric waves; satellite signals; wire, cable or other conductor; optical means or any other electromagnetic process;

III - retransmission – simultaneous emission of the transmission from a company by another;

IV - distribution – allocation to the public of the original or copy of literary, artistic or scientific works, interpretations or arranged executions and phonograms, by means of sale, rental or any other means of transfer of property or ownership;

V – communication to the public – act in which the work is made available to the public by any means or procedure that do not consist of the distribution of samples;

VI – reproduction – the copy of one or more samples of a literary, artistic or scientific work or of a phonogram, in any tangible way, including any permanent or temporary storage by electronic means or any other means of fixation that may be developed;

VII - forgery – non-authorised reproduction;

VIII - work:

- a) in co-authorship – when it is created in common, by two or more authors;
- b) anonymous – when the author’s name is not stated, either by his/her will or because he/she is unknown;
- c) pseudonym – when the author hides him/herself by a presumed name;
- d) unpublished – which has not been published;
- e) posthumous – which is published after the author’s death;
- f) originating – primordial creation;
- g) derivative – the one that being a new intellectual creation is the result of the transformation of an originating work;
- h) collective – the one created by the initiative, organisation and responsibility of a legal or personal entity, that has it published under their name or mark and it is constituted by the participation of different authors, whose contributions are blended in an autonomous creation;
- i) audio-visual – the one that results from the fixation of images with or without sound, which aims at creating the idea of movement by means of their reproduction independently of the processes of receiving a broadcast, of the support used initially or afterwards to fix it, or even of the means used for its transmission;

IX - phonogram – all the fixation of sounds of a performance or interpretation or of other sounds, or of the representation of sounds which is not a fixation included in an audio-visual work;

X - editor – the individual or legal entity to whom is attributed the exclusive right of the reproduction of the work and the obligation to divulge it, within the limits foreseen in the publishing contract;

XI - producer – the individual or legal entity who takes the initiative and has the economical responsibility of the first fixation of the phonogram or the audio-visual work, whatever the nature of the support;

XII – radio broadcasting – wireless transmission, inclusive by satellites, of sounds or images and sounds or their representations, for the reception to the public and the transmission of codified signals, when the decoding means are offered to the public by the broadcasting organisation with or without their consent;

XIII – artists, both interpreters or performers – all the actors, singers, musicians, ballet dancers or other people who perform a role, sing, recite, read, interpret or perform in any way literary or artistic works or folklore expressions.

**Art. 6º** The Union, the States, the Federal District or the Districts will not have the dominion of the works they sponsor.

## II

### INTELLECTUAL WORKS

#### Chapter I

#### PROTECTED WORKS

**Art. 7º** The creations of the spirit expressed by any means or fixed in any kind of support, tangible or intangible, known or which may be invented in the future, are protected intellectual works, such as:

I – the texts from literary, artistic or scientific works;

II – the conferences, allocutions, sermons and other works of the same nature;

III – the drama and musical-drama works;

IV – choreographies and pantomimes, whose performances are fixed in a written or in any other form;

V – musical compositions, with or without lyrics;

VI – audio-visual works, with or without sound, inclusive the cinematographic ones;

VII – photographic works and the ones produced by any process similar to photography;

VIII – the works that include drawing, painting, printing, sculpture, lithography and kinetic art;

IX – illustrations, maps and other works of the same nature;

X – projects, sketches and plastic works concerning geography, engineering, topography, architecture, landscaping, staging and science;

XI – adaptations, translations and other transformations in original works, presented as a new intellectual creation;

XII - software;

XIII – collectanea or compilations, anthologies, encyclopaedias, dictionaries, data base and other works which, by their selection, organisation or content disposition, may constitute an intellectual creation.

§ 1º Software is the subject of specific legislation, provided it follows the provisions of this Law which are applicable.

§ 2º The protection given in subparagraph XIII does not encompass the data or materials themselves and is understood without prejudice to any authoring rights which may subsist regarding the data or materials within the works.

§ 3º In the sciences domain protection will fall on the literary or artistic form, not encompassing their scientific or technical content, without prejudice to the rights that protect the other fields of immaterial property.

**Art. 8º** The following are not subject to protection, as authoring rights, which is the scope of this Law:

I – the ideas, normative procedures, systems, methods, projects or mathematical concepts as such;

II – plans or rules to perform intellectual acts, games or business;

III – blank forms to be filled in by any kind of information, scientific or not, and their instructions;

IV – the texts of treaties or conventions, laws, decrees, regulations, judgement and other official acts;

V – the information used by everyone, such as calendars, diaries, reference files or subtitles;

VI – the names and isolated titles;

VII – industrial or commercial utilisation of ideas contained in the works.

**Art. 9º** The same protection that is given to the original work, is assured to the copy which is made by the author himself.

**Art. 10.** The protection to the intellectual work includes its title, if original and unmistakable with the title of a work in the same gender, previously divulged by another author.

**Sole paragraph.** The name of periodical publications, inclusive newspapers, is protected for the period of one year after the release of its last issue, unless they are annual, in which case this period is extended to two years.

## Chapter II

### AUTHORING OF INTELLECTUAL WORKS

**Art. 11.** Author is the individual who creates literary, artistic or scientific work.

**Sole paragraph.** The protection given to the author may be given to legal entities in the cases foreseen in this Law.

**Art. 12.** In order to identify him/herself as author, the creator of the literary, artistic or scientific work, may use his civil name, complete or shortened even by his/her initials, his/her pseudonym or any other conventional sign.

**Art. 13.** It is considered as the author of the intellectual work, provided there is no evidence to say the opposite, the one who has, by one of the identification means referred to in the previous Art. and according to the use, this quality indicated or announced in its use.

**Art. 14.** It is the title-holder of author rights the person who adapts, translates, makes musical arrangements and orchestration of works of public domain, not having the right to oppose to another adaptation, musical arrangement, orchestration or translation, unless it is the author's copy.

**Art. 15.** Co-authoring of the work is attributed to the ones in whose name, pseudonym or conventional sign is used.

§ 1º The person, who simply helped the author in the production of the literary, artistic or scientific work, revising it, updating it, as well as checking

or guiding its publishing or presentation by any means, is not considered as co-author.

§ 2º All the faculties inherent to the creation of an individual work are assured to the co-author, whose contribution may be used separately, but the use that may lead to prejudice to the exploration of the common work is forbidden.

**Art. 16.** The author of the subject or literary, musical or literary-musical argument and the director of the audio-visual work are co-authors.

**Sole paragraph.** The ones who create the drawings used in the audio-visual work are considered as co-authors of cartoons.

**Art. 17.** The protection to the individual participation in collective works is ensured.

§ 1º Any of the participants, on behalf of their moral rights, may forbid that their name is announced or indicated in the collective work, without loss of the right to receive the agreed remuneration.

§ 2º The title-holding of property laws on the assemblage of the collective work belongs to the organiser.

§ 3º The contract with the organiser will specify the participant's contribution, the deadline for delivery or achievement, the remuneration and other conditions for its accomplishment.

## Chapter III

### REGISTERING INTELLECTUAL WORKS

**Art. 18.** The protection to the rights dealt with by this Law does not depend on the register.

**Art. 19.** It is the author's option to register their work in the public agency defined in § and in sub§ 1 of Art. 17 from the Law nº 5.988, from 14 December, 1973.

**Art. 20.** For the registering services foreseen in this Law a retribution will be charged, whose value and collecting process will be determined by an act of the title-holder of the federal public administration agency to which the registration of the intellectual works is linked.

**Art. 21.** The registering services dealt with by this Law will be organised in accordance to what is stated in sub§ 2 of Art. 17 from the Law Number 5.988, from 14 December, 1973.

### III

#### THE AUTHOR'S RIGHTS

##### Chapter I

#### PRELIMINARY PROVISIONS

**Art. 22.** The author holds the moral and patrimonial rights of the work they have created.

**Art. 23.** Co-authors of an intellectual work will carry out their rights, by mutual agreement, except for contrary covenant.

##### Chapter II

#### THE AUTHOR'S MORAL RIGHTS

**Art. 24.** These are the author's moral rights:

I – to claim, at any time, the authorship of the work;

II – to have their name, pseudonym or conventional sign indicated or announced as being the author's, when their work is being used;

III – to keep the work unpublished;

IV – to ensure the integrity of the work, by opposing to any modifications or to the practice of acts that in any way may damage or affect them as an author, in their reputation or honour;

V – to modify the work, before or after being used;

VI – to withdraw the work from circulation, or to suspend any previously authorised form of use, when the circulation or use imply offence to their reputation and image;

VII – to have access to a sole and rare specimen of the work, when it legitimately belongs to someone else, in order to preserve its memory, by means

of photographic or similar process, or audio visual, in such a way that it is the least inconvenient possible to its holder, who, in any case, will be paid for any damage or loss this may have caused them;

§ 1º Upon the author's decease, the rights referred to in subparagraphs I to IV, will be passed to their successors.

§ 2º It is due to the State to defend the integrity and authorship of a work in public dominion.

§ 3º In the case of subparagraphs V and VI, the previous compensations paid to the others should be safeguarded, when applicable.

**Art. 25.** It falls on to the director, exclusively, the practice of moral rights on the audio-visual work.

**Art. 26.** The author may reject the authorship of an architectural project which has been altered without their consent, during the execution or after the conclusion of the building.

**Sole paragraph.** The owner of the building site is responsible for the damage caused to the author whenever, after the rejection, the rejected project is considered to be the author's work.

**Art. 27.** The author's moral rights are inalienable and cannot be renounced.

##### Chapter III

#### THE AUTHOR'S PATRIMONIAL RIGHTS AND THEIR DURATION

**Art. 28.** It falls to the author the exclusive right to use, to have the benefit and to dispose of the literary, artistic or scientific work.

**Art. 29.** The use of the work depends on the author's previous and express authorisation, in any forms, such as:

I – partial or integral reproduction;

II – the edition;

III – the adaptation, the musical arrangement and any other transformations;



IV – the translation to any language;

V – the inclusion in phonogram or audio-visual production;

VI – the distribution, when not inherent to the contract signed by the author with third parties for the use and exploration of the work;

VII – the distribution for offering of works or productions by means of cable, optical fibre, satellite, waves or any other system that allows the user to make the selection of the work or production to receive it at a time and place previously determined by the person who formulates the demand, and in the cases where the access to the works or production is done by any system that means payment done by the user;

VIII – the direct or indirect use of the literary, artistic or scientific work, by means of:

- a) representation, recitation or declamation;
- b) musical execution;
- c) use of loudspeakers or similar systems;
- d) radio or television broadcasting;
- e) reception of transmission of radio broadcasting in places of collective attendance;
- f) background music;
- g) audio-visual, cinematographic display or by any similar process;
- h) use of artificial satellites;
- i) use of optical systems, telephone wires or not, cables of any kind and similar means of communication that may be adopted;
- j) exhibition of works of art;

IX – the inclusion in database, the storage in computer, microfilming and the other forms of filing;

X – any other existing forms of use or that may be invented.

**Art. 30.** In the exercise of the right of reproduction, the title-holder of the authoring rights can make the work of art available to the public, in the form, place or time h/she wishes, on a onerous or gratuitous basis.

§ 1º The reproduction right of exclusivity will not be applicable when it is temporary and when it just has the purpose of making the work of art, phonogram or rendition perceptible in the electronic media or when it is of a transient or circumstantial nature, as long as it happens, during the rightly authorised course of use by its title-holder.

§ 2º In whatever mode of reproduction, the number of specimen will be informed and controlled, and whoever reproduces the work of art has the duty of keeping registries that enable the author to inspect the economic use of its exploitation.

**Art. 31.** The several modalities of use of literary, artistic or scientific works of art or phonograms are independent among themselves, and the authorisation granted by the author, or by the producer, respectively, does not extend to any of the others.

**Art. 32.** When a work of art, made in a co-authoring regimen, is not divisible, none of the co-authors can publish or authorise its publication without the consent of the others, running the risk of being indemnified for damages and loss, unless in the case of a collection of his/her complete works.

§ 1º In case of disagreement, the co-authors will decide by majority.

§ 2º To the dissident co-author is guaranteed the right not to contribute to the publishing expenses, renouncing his/her part of the profits, and the right to veto the inclusion of his/her name in the work.

§ 3º Each co-author can register the work themselves or defend their own rights against third parties, without the compliance of the others.

**Art. 33.** Nobody can reproduce a work of art, which does not belong to the public dominion, with the excuse of making annotations to it, commenting on it or improving it, without the permission of the author.

**Sole paragraph.** The commentaries or annotations can be published separately.

**Art. 34.** The missives, which publication is conditioned to the author's permission, may be attached as documents of proof in administrative or judicial proceedings.

**Art. 35.** Having the author given the work of art its definite final version as a result of revision, their heirs will not be allowed to reproduce the preceding versions.

**Art. 36.** The rights to the economic use of the writings published in the daily or periodic press, with the exception of the signed ones or the ones which present a lien, belong to the editor, unless otherwise established.

**Sole paragraph.** The authorisation for the economic use of signed articles for publication in dailies or periodicals, does not extend its effects beyond the given period of time of periodicity, accreted of twenty days counting from its publication, at which end the author regains their right.

**Art. 37.** The acquisition of the originals of a work of art, or of a sample, does not confer to the acquirer any of the patrimonial rights, unless otherwise established among the parties and in the cases foreseen in this law.

**Art. 38.** The author cannot renounce or alienate rights to perceive a minimum of five per cent of the increase of the price, eventually verifiable in each resale of the work of art or manuscript, being them originals, which h/she has alienated.

**Sole paragraph.** In case the author does not perceive their rights following the act of resale, the salesperson is considered the trustee of the amount owed to them, unless the operation was carried out by an auctioneer, in which case this will be the trustee.

**Art. 39.** The patrimonial rights of the author, except for the returns resulting from its exploitation, are not shared, except for pre-nuptial pact agreements to the contrary.

**Art. 40.** When dealing with anonymous or pseudonymous works of art, whoever publishes it, will have the duty to exercise the patrimonial rights of the author.

**Sole paragraph.** The author, who makes themselves known, will undertake the exercise of the patrimonial rights, except for the rights acquired by third parties.

**Art. 41.** The patrimonial rights of the author endure for seventy years, as from January 1<sup>st</sup> of the year following their death, obeying the line of succession under the civil law.

**Sole paragraph.** The period of time of protection, which the *caput* of this Art. refers to, is applicable to the posthumous works of art.

**Art. 42.** When a literary, artistic or scientific work of art made in co-authorship regimen, is indivisible, the period of time foreseen in the previous article, will be counted as from the death of the last of the surviving co-authors.

**Sole paragraph.** To the rights of the surviving heirs will be added the rights of the co-author who leaves no heirs.

**Art. 43.** The period of protection of the patrimonial rights of anonymous and pseudonymous works of art will be of seventy years, as from January 1<sup>st</sup> of the year immediately following its publication.

**Sole paragraph.** The established in art. 41 and its Sole Paragraph will be applicable, whenever their author makes themselves known before the stated term foreseen in the *caput* of this article.

**Art. 44.** The period of protection of the patrimonial rights of audio-visual and photographic works of art will be of seventy years, as from January 1<sup>st</sup> of the year following its disclosure.

**Art. 45.** Besides the works of art in relation to which the period of time of protection of the patrimonial rights lapsed, belong to the public dominion:

- I. the ones of deceased authors who have left no heirs;
- II. the ones of unknown authors, except for the legal protection to the ethnic and traditional knowledge.

## Chapter IV

### LIMITATIONS OF THE AUTHORING RIGHTS

**Art. 46.** It does not constitute offence to the authoring rights:

I. the reproduction:

- a) in the daily or periodical press, of news or informative article, published in dailies or periodicals, mentioning the name of the author, if signed, and of the publication from where they were transcribed;
- b) in dailies and periodicals, of speeches given in public meetings of any nature;
- c) of pictures, or of any other form of representation of images, whether consigned or not, when made by the owner of the consigned object, not having the opposition of the person pictured in them or of their heirs;
- d) of literary, artistic or scientific works of art, for the exclusive use of the visually disabled, whenever the reproduction, without commercial views, is made using the Braille system or any other procedure which give support to aforesaid mentioned;

II. the reproduction, in one sample only of small passages, for the private use of the copyist, as long as it is done by the latter and with no commercial view;

III. the mention in books, newspapers, magazines or in any other means of communication, of passages of any work of art, with the purpose of study, criticism or polemics, in the justified measure to achieve its aim, indicating the author's name and the origin of the work of art;

IV. The partial or integral publication of a summary of the lessons given at any educational institution by whom they are aimed at, without the express previous authorisation of whoever gave them, is forbidden;

V. the use of literary, artistic or scientific works of art, phonograms and the radio and television broadcast in commercial establishments, with the exclusive view of demonstrating to its clientele, as long as they commercialise the support or equipment which will enable its use;

VI. the theatrical representation or musical performance, when carried out in the family retreat or in the educational institutions with purely didactic aims, not having in either case, the purpose of profit;

VII. the use of literary, artistic or scientific works of art in order to produce judicial or administrative proof;

VIII. the reproduction, in whichever works of art, of small passages of pre-existing works of any nature, or of an integral work, when of fine arts, whenever the reproduction in itself is not the main purpose of the new work of art, and that it does not harm the normal exploitation of the work of art produced, nor does it bring unjustifiable loss to the legitimate interests of the authors.

**Art. 47.** The paraphrases and parodies, when not faithful reproductions of the original work of art, and when it does not imply discredit, are free

**Art. 48.** The words of art situated permanently in public places can be reproduced freely, through paintings, drawings, photography and audio-visual procedures.

## Chapter V

### TRANSFERENCE OF THE AUTHOR'S RIGHTS

**Art. 49.** The author's rights may be totally or partially transferred to third parties, by themselves or by their heirs, on a universal or singular basis, personally or through representatives with special powers, by means of licensing,

concession, assignment or through other means accepted by the Law, obeying the following limitations:

I. the total transmission comprises all of the author's rights, except for the ones of a moral nature and the ones expressly excluded by law;

II. the total and definite transmission of the rights will only be allowed in face of contractual written stipulation;

III. in the case of not having a contractual written stipulation, the maximum deadline will be of five years;

IV. the assignment will only be valid in the country where the contract was signed, unless otherwise stipulated;

V. the assignment will only come about for the mode of use already existing at the date of the contract;

VI. not having specifications as far as the mode of use, the contract will be interpreted restrictively and being understood as limited only the one which will be that indispensable to the fulfilment of the contract's purpose.

**Art. 50.** The total or partial assignment of the author's rights, which is presumed onerous, will always be made in written.

§ 1º The assignment can be annotated on the margin of the registry to which the art. 19 of this Law refers, or, the work of art is not registered, the instrument can be registered in the Public Records.

§ 2º The essential elements, such as its object and the conditions of the exercise of Law as far as time, place and price, will be part of the assignment instrument.

**Art. 51.** The assignment of the author's rights over future works will cover a maximum period of five years.

**Sole paragraph.** The stated term will be reduced to five years whenever undetermined or greater, and the stipulated price will be proportionally decreased.

**Art. 52.** The omission of the author's name, or of the co-author's, at the time of the divulging of the work does not presuppose anonymity or the assignment of its rights.

## TITLE IV

USE OF INTELLECTUAL WORKS OF ART AND OF THE  
PHONOGRAMS

## Chapter I

## EDITION

**Art. 53.** In face of an edition contract, the editor is in charge of the reproduction and the divulging of the literary, artistic or scientific work, and is also authorised, on an exclusivity basis, to publish and to divulge it for the duration and under the conditions agreed with the author.

**Sole paragraph.** In every sample of the work, the editor shall mention:

- I. the title of the work and its author;
- II. in case of translation, the original title and the translator's name;
- III. the year of its publication;
- IV. their name or trademark which identifies them.

**Art. 54.** The author may be obliged to make a literary, artistic or scientific work under the same contract, and the editor will make every effort towards its publication and divulging.

**Art. 55.** In the case of the author's death or impediment to finish the work, the editor may:

- I. consider the contract terminated, even if a considerable part of the work has been handed in;
- II. edit the work as autonomous, by means of proportional payment of the price;
- III. commission another to finish it, as long as the heirs give their consent and that this fact is mentioned in the edition.

**Sole paragraph.** Its partial publication is prohibited, if it was the author's will only to publish as a whole or if their heirs decided otherwise.

**Art. 56.** It is understood that the contract treats only of one edition, unless otherwise established.

**Sole paragraph.** When nothing is mentioned in the contract, it is considered that each edition is constituted of three thousand copies.

**Art. 57.** The price of payment will be settled by arbitration, based on common law, whenever there is no express stipulation in the contract by the author.

**Art. 58.** If the originals were not handed in, in accordance with what was agreed upon and the editor does not refuse them in the thirty days that follow its receiving, the changes made by the author will be considered as accepted.

**Art. 59.** Whichever the conditions of the contract, the editor is obliged to disclose to the author the examination of the accounts for the part which corresponds to them, as well as keep them informed about the progress of the edition.

**Art. 60.** It is of the competence of the editor to establish a market price. He cannot however, raise it to the point of hindering the circulation of the work.

**Art. 61.** The editor will be obliged to render monthly accounts to the author, whenever their payment is conditioned to the sales of the work, except for a stated term agreed upon differently.

**Art. 62.** The work shall be published within two years of the celebration of the contract, unless a different stated term was otherwise stipulated.

**Sole paragraph.** The non-editing of the work within the legal or contractual stated term can lead to a breach of contract, being the editor responsible for the damages caused.

**Art. 63.** While the editions, to which the editor is entitled, have not been sold out, the author will not be able to dispose of their work and the burden of proof falls to the editor.

§ 1º During the validity of the contract of edition, the editor is entitled the right to demand the withdrawal from circulation of an edition of the same work made by somebody else.

§ 2º An edition is considered sold out when there are fewer issues than ten per cent of the total edition in stock, in the hands of the editor.

**Art. 64.** The editor will only be able to put on sale the remainder issues, one year after the launching of the edition, as long as the author is notified that, within the period of thirty days, they will have priority in the acquisition of the referred issues and for the sales price.

**Art. 65.** When the edition is sold out, and despite the editor's being entitled to another, does not publish it, the author may notify themselves to do it within a limited period of time, under the penalty of losing that right, and being liable for damages caused.

**Art. 66.** The author has the right to make amendments and alterations, which he finds fit, to the successive editions of their works.

**Sole paragraph.** The editor may oppose the alterations which might harm their interests, offend their reputation or increase their responsibility.

**Art. 67.** If the updating of a work in the forthcoming editions is indispensable, due to its nature, and the author refuses to carry it out, the editor may commission somebody else to do it, mentioning the fact in the edition.

## Chapter II

### COMMUNICATION TO THE PUBLIC

**Art. 68.** Without the previous and express authorisation of the author or title-holder, theatrical works, musical or literary-musical pieces and phonograms will not be able to be used in public executions and presentations.

§ 1º The use of theatrical works such as dramas, tragedies, comedies, operas, operettas, ballets, pantomimes and the like, with or without music, having the participation of artists, paid or not, in public places or through radio or television broadcasts and cinematic shows are considered public representations.

§ 2º The use of musical or literary-musical pieces, with the participation of artists, whether or not paid, or the use of phonograms and audio-visual words, in public places, whatever the processes, inclusive radio or television broadcasts or transmissions whatever the mode, and cinematic shows are considered public executions.

§ 3º The following are considered public places as far as performances, executions or broadcasts are concerned: theatres, cinemas, ballrooms or concert halls, night clubs, pubs, bars or associations of any nature, shops, commercial and industrial establishments, stadiums, circuses, fairs, restaurants, hotels, motels, clinics, hospitals, public administrative buildings, foundations, land,

air or sea passenger transportation, or wherever literary, artistic or scientific works are performed, executed or broadcast.

§ 4º The manager/impresario shall present at the central office, as foreseen in the art. 99, proof of the payment related to the authoring rights, prior to public performance.

§ 5º When payment depends on the public 's attendance, the manager may through an agreement with the central office, pay the price after the public performance.

§ 6º The manager will hand in a complete list of the works and phonograms used, indicating the names of the respective authors, artists and producers, immediately after the public performance or broadcast.

§ 7º The cinematic and radiobroadcasting companies will promptly make available for the interested ones, an authenticated copy of the individual and collective contracts, settlements and agreements, authorising and regulating the payment per public performance of musical pieces and phonograms which are part of their programmes or audio-visual works.

**Art. 69.** The author, in respect to the local usage, will notify the manager of the period of time of the executions and presentations, except for previous conventional stipulation.

**Art. 70.** The author has the right to oppose to presentations and executions, which have not been sufficiently rehearsed, as well as supervise it, having for such, free access to the presentations or executions, in the place where they will be held.

**Art. 71.** The author of the work is not allowed to change its essence, without an agreement with the manager, who is responsible for it.

**Art. 72.** The manager is not allowed to hand in the work to a strange person to the presentation and performance, without the author's permission.

**Art. 73.** The main performers, as well as the orchestra and choir directors, chosen by common consent by the author and producer, cannot be substituted by order of the latter without the consent of the former.

**Art. 74.** Upon the authorisation of its translation or adaptation, the author of a theatrical work will be allowed to determine a stated term for its use in public presentations.

**Sole paragraph.** After the lapse of time to which this Art. refers to, the translator or the person in charge of its adaptation, will not be able to oppose to the use of another authorised translation or adaptation, except if it is a copy of theirs.

**Art. 75.** Having the presentation of a theatrical work, made on a co-authorship basis, being authorised, none of its co-authors may revoke the given authorisation, without leading to the suspension of the season settled by contract.

**Art. 76.** The share in the results of the shows reserved for the author and artists is incapable of being pawned.

### Chapter III

#### USE OF THE FINE ARTS WORK

**Art. 77.** Unless otherwise agreed, the author of a fine arts work, upon alienating the object on which it materialises, transfers the right to exhibit it, but does not transfer to the acquirer the right to reproduce it.

**Art. 78.** The authorisation to reproduce a fine arts work, by whichever process, should be made in writing and is presumed onerous.

### Chapter IV

#### USE OF A PHOTOGRAPHIC WORK

**Art. 79.** The author of a photographic work has the right to reproduce and sell it, being observant of the restrictions to the exhibition, reproduction and sale of portraits, and not to the detriment of the author's rights over the photographic work, if of fine arts protected.

§ 1º The photography, when used by third parties, shall indicate clearly the name of its author.

§ 2º The reproduction of a photographic work, which is not in perfect consonance with its original, is forbidden, except in the case of a previous authorisation by the author.

### Chapter V

#### USE OF PHONOGRAMS

**Art. 80.** Upon the publication of a phonogram, the producer shall mention in every sample:

- I. the title of the work and its author;
- II. the performer's name or pseudonym;
- III. the year of its publication;
- IV. their name or trademark which identifies them.

### Chapter VI

#### USE OF AN AUDIO-VISUAL WORK

**Art. 81.** The author's and performer's authorisation of a literary, artistic or scientific work with the aim of audio-visual production implies, unless otherwise agreed, on the consent for its economic use.

§ 1º The exclusivity of the authorisation depends on an express provision and ceases ten years after the signing of the contract.

§ 2º In every copy of the audio-visual work, the producer shall mention:

- I. the title of the audio-visual work;
- II. the director's and other co-author's names or pseudonyms;
- III. the title of the adapted work and its author, if it is the case;
- IV. the performing artists;
- V. the year of its publication;
- VI. their name or trademark which identifies them.

**Art. 82.** The contract of audio-visual production shall establish that:

I. the payment owed to the co-authors of the work and to the performing artists and musicians by the producer, as well as the time, place and payment form;

II. the deadline for the conclusion of the work;

III. the producer's responsibility towards the co-authors, performing artists or musicians, in the case of co-authorship.

**Art. 83.** The participant of the audio-visual work production who interrupts their participation temporarily or definitively, will not be able to

oppose that it be used in the work nor that a third party substitutes them. However, the rights which refer to the part already performed are safeguarded.

**Art. 84.** In case the co-authors' payment of an audio-visual work depends on the income of its economic use, the producer shall render account twice a year, unless otherwise agreed upon.

**Art. 85.** Unless otherwise agreed, the co-authors of an audio-visual work may make use of the part which constitutes their personal contribution in a different genre.

**Sole paragraph.** If the producer does not conclude the audio-visual work within the established term or if he does not start its exploitation within two years as from its conclusion, the use, to which this Art. refers to, is free.

**Art. 86.** The authoring rights of musical performance related to musical, literary-musical works and phonograms part of audio-visual works are due to their title-holders by the people responsible for the places and establishments, referred to in art. 68 § 3º of this Law, which show them, or by the television stations which broadcast them.

## Chapter VII

### USE OF DATABASE UNITS

**Art. 87.** The title-holder of the patrimonial rights of a database will have the exclusive right to authorise or prohibit, as regards to the form of expression of the structure of the referred base:

I. its total or partial reproduction, by whichever means or process;

II. its translation, adaptation, reordering or any other change;

III. the distribution of the original or copies of the database units or of its communication to the public;

IV. the reproduction, distribution or communication to the public of the results of the operations mentioned in section II of this article.

## Chapter VIII

### USE OF COLLECTIVE WORK

**Art. 88.** Upon the publishing of a collective work, the organiser shall mention in every issue:

I. the title of the work;

II. a list of all the participants in alphabetical order, unless otherwise agreed;

III. the year of its publication;

IV. their name or trademark which identifies them.

**Sole paragraph.** To avail oneself of the aforesaid in art. 17 § 1º, the participant shall notify the organiser in written, by the delivery of their participation.

## TITLE V

### RELATED RIGHTS

#### Chapter I

### PRELIMINARY PROVISIONS

**Art. 89.** The norms relative to the rights of the author are applicable, wherever suitable, to the rights of the performing artists or musicians, the phonographic producers and radiobroadcasting companies.

**Sole paragraph.** The protection of this Law to the rights foreseen in this article, leave intact and does not affect the guarantees ensured to the authors of literary, artistic and scientific works.

#### Chapter II

### RIGHTS OF THE PERFORMING ARTISTS AND MUSICIANS

**Art. 90.** The performing artist or musician has the exclusive right, on an onerous or gratuitous basis, to authorise or prohibit:

I. the arrangement of their interpretation or executions;

II. the reproduction, the public performance and the venue of their interpretation or the scheduled executions;

III. the broadcast of their interpretation or executions, scheduled or not;

IV. the availability of their interpretation or executions to the public, in such a way that anyone can have access to it, at the time and place of their choice;

V. any other manner of use of their interpretation and executions;

§ 1º When several artists participate in the interpretation or in the performance their rights shall be enforced by the director of the assemblage.

§ 2º The protection to the performing artists and musicians refers to the reproduction of the voice and image, whenever associated to their performances.

**Art. 91.** The radiobroadcasting companies are allowed to schedule the interpretations or executions of the artists who have given them their permission to use in a certain number of broadcasts, allowing for their conservation in the public archives.

**Sole paragraph.** The subsequent re-use of the arrangement, at home or abroad, will only be legal in face of written authorisation of the title-holders of the intellectual property included in the programme, and an additional payment is due to the title-holders for each new use.

**Art. 92.** The performing artists are entitled to the moral rights of integrity and paternity of their interpretations, inclusive after the cession of the patrimonial rights, without detriment to the reduction, compactness, edition and dubbing of the work in which they have participated, under the responsibility of the producer, who will not be able to alter the interpretation of the artist.

**Sole paragraph.** The decease of whichever participant of an audio-visual work, concluded or not, does not impede its exhibition and economic utilisation, nor does it require additional authorisation and the due payment for the deceased, according to the terms of the contract and of the law, made in favour of the estate or the heirs.

### Chapter III

#### RIGHTS OF THE PHONOGRAPHIC PRODUCERS

**Art. 93.** The producer of phonograms has the exclusive right, on an onerous or gratuitous basis, to authorise or prohibit:

I. the direct or indirect repetition, total or partial;

II. the distribution through the sale or hiring of samples of reproduction;

III. the communication to the public by means of public executions, inclusive through radiobroadcasting;

IV. (VETOED)

V. any other modes of use, in existence or which might be invented.

**Art. 94.** The phonographic producer is entitled to perceive, from the users to which art. 68 of this Law and its paragraphs refer to, the pecuniary gains resulting from the public performance of phonograms and share it with the artists, in the form agreed among them and their associations.

### Chapter IV

#### RIGHTS OF RADIOBROADCASTING COMPANIES

**Art. 95.** The radiobroadcasting companies are entitled to the exclusive right of authorising or prohibiting the retransmission, arrangement, repetition of their broadcasts, as well as the communication to the public, through television, in public places, not to the detriment of the rights of the title-holders of intellectual property included in the programming.

### Chapter V

#### DURATION OF THE RELATED RIGHTS

**Art. 96.** The stated period of protection of the related rights for the phonograms is of seventy years as from January 1<sup>st</sup> of the year following the arrangement, for transmission, for the broadcasts of radiobroadcasting companies; and for presentations and public executions, for the other cases.

### TITLE VI

#### ASSOCIATIONS OF TITLE-HOLDERS OF AUTHORIZING RIGHTS AND OF THE RELATED ONES

**Art. 97.** The authors and title-holders of related rights are allowed to form associations, with no purpose of profit, to exercise and defend their rights.

§ 1º It is forbidden to belong to more than one association for the collective administration of rights of the same nature.



§ 2º The title-holder is allowed to transfer, at any given time, to another association, having to communicate the fact in written to their original association.

§ 3º The associations with headquarters abroad, will be represented in this country by national associations constituted in the form foreseen in this Law.

**Art. 98.** With the act of affiliation, the associations represent their associates for the practice of all acts necessary for the judicial or extrajudicial defence of their authoring rights, as well as for their exaction.

**Sole paragraph.** The title-holders of authoring rights are allowed to exercise personally the acts referred to in this article, by means of previous communication to the association to which they are affiliated.

**Art. 99.** The associations will maintain only one central office for levying and distributing, in common, of the rights related to the public performance of musical and literary-musical works and of phonograms, inclusive through radiobroadcasting and transmission through any other mode, and of the showing of audio-visual works.

§ 1º The central office, organised in the form foreseen in this article, does not operate at profit and will be run and managed by the associations which it belongs to.

§ 2º The central office and the associations to which this Title refers to, will be the legal representatives of the title-holders, in court and outside court, as their title-holders' procedural substitutes.

§ 3º The collection of whichever amounts by the central office will only occur through bank deposits.

§ 4º The central office is allowed to have inspectors, who are forbidden to receive from the manager any cash under any pretence.

§ 5º The non-observance of the norm of the preceding § will make the person to blame, incapacitated for the post of inspector, without detriment of the fitting civil and criminal sanctions.

**Art. 100.** The union or professional association, which gathers not fewer than one third of the affiliates of an authoring association, will be able to inspect once a year, after notifying eight days in advance, with the help of an auditor, the accuracy of the accounts rendered to the people they represent.

## TITLE VII

### SANCTIONS TO THE VIOLATIONS OF THE AUTHORIZING RIGHTS

#### Chapter I

#### PRELIMINARY PROVISIONS

Art. 101. The civil sanctions dealt with in this Chapter, are applicable without detriment of the fitting penalties.

#### Chapter II

#### CIVIL SANCTIONS

**Art. 102.** The title-holder, whose work is fraudulently reproduced, divulged or used in any way, may require the apprehension of the samples reproduced or the cessation of its divulging, without detriment of the fitting compensation.

**Art. 103.** Whoever publishes a literary, artistic or scientific work, without the authorisation of the title-holder, will lose to the latter the samples apprehended and will pay him the price of the ones he sold.

**Sole paragraph.** Not knowing the number of samples which constitute the fraudulent edition, the offender will pay an amount corresponding the three thousand samples, besides the apprehended ones.

**Art. 104.** Whoever sells, displays for sale, conceals, acquires, distributes, keeps in stock or use work or phonogram fraudulently reproduced, with the purpose of selling, obtaining direct or indirect gains, advantages, profit, benefit for themselves or for others, will be mutually responsible with the forger, in the terms of the preceding articles; as well as the importer and the distributor, which are liable of forgery, in case of reproduction abroad.

**Art. 105.** The transmission and retransmission, whatever the means or process, and the communication to the public of artistic, literary or scientific works, of performances and of phonograms, carried out despite the violation of their title-holders' rights, shall be immediately suspended or interrupted by the competent judiciary authority, without detriment of a daily fine for the breach and of the other fitting compensations, independently of the applicable criminal sanctions; in case the violator is proved relapsing into violating the

title-holders' rights of author and related, the value of the penalty might be doubled.

**Art. 106.** The condemnatory sentence might determine the destruction of all the illicit samples, as well as of the originals, moulds, negatives and other elements used to carry out the civil illicit act, and also the loss of machinery, equipment and input aimed at that purpose, using them solely to achieve the illicit intent.

**Art. 107.** Independently of the loss of the equipment used, they are liable of prejudice, never inferior to the value which results from the application of the provisions of art. 103 and its sole paragraph, whoever might:

I. falsify, delete, modify or make useless, in any way, the technical devices inserted in the samples of the work and safeguarded productions to avoid or restrict its copy;

II. falsify, delete or make useless, in any way, the coded signs aimed at restricting the communication to the public of works, productions or safeguarded broadcasts or at avoiding its copy;

III. delete or modify, without authorisation, any information about the administration of rights;

IV. distribute, import for distribution, issue, communicate or make available for the public, without authorisation, works, performances and executions, samples of the scheduled performances in phonograms and broadcasts, knowing that the information about the administration of rights, coded signs and technical devices were deleted or modified without authorisation.

**Art. 108.** Whoever, upon the use of an intellectual work of whichever mode, fails to appoint or announce as such, the name, pseudonym or agreed sign of the author and of the performer, besides being liable of moral damages, they will be obliged to disclose their identity in the following way:

I. in the case of radiobroadcasting companies, at the same time at which the infringement occurred, for three consecutive days;

II. in the case of graphic or phonographic publication, through the including of an erratum in the samples yet to be distributed, without detriment of communication, highlighting three consecutive times in newspaper of great circulation, in the author's, performer's, editor's and producer's legal residence;

III. in the case of any other mode of use, through the press, in the mode to which the preceding section refers.

**Art. 109.** The public execution performed in disagreement with the articles 68, 97, 98 & 99 of this Law, will subject the responsible to a penalty twenty time the value which should have been paid originally.

**Art. 110.** The violation of the authoring rights in public concerts and auditions, taking place in the venues or establishments to which art. 68 refers, their owners, directors, managers, impresarios, or tenants, are mutually liable together with the organisers of the events.

### Chapter III

#### PRESCRIPT OF THE LAWSUIT

**Art. 111.** (VETOED)

### TITLE VIII

#### FINAL AND TRANSITORY PROVISIONS

**Art. 112.** If a work becomes of public dominion, in consequence of the expiration of the protection stated period of time, which was of its right according to § 2º Art. 42 of the Law # 5.988, of 14 December 1973, it will not have the protection stated period of time of the patrimonial rights enlarged, by enforcement of art. 41 of this Law.

**Art. 113.** The phonograms, books and audio-visual works will be subjected to the stamps and identification signs under the responsibility of the producer, distributor or importer, without burden for the consumer, with the aim to testify to the enforcement of the legal norms in effect, according to the precepts of the regulations.

**Art. 114.** This Law comes into force one hundred and twenty days after its publication.

**Art. 115.** The following are revoked: art. 649 to 673 and 1.346 to 1.362 of the Civil Code and the Laws # 4.944 of 6 April 1966; 5.988 of 14 December 1973, except for its art. 17 and its §§ 1º2º; 6.800 of 25 June 1980; 7.123 of 12 September 1983; 9.045 of 18 May 1995, except for contrary covenant, being in force the Laws # 6.533 of 24 May 1978 and 6.615 of 16 December 1978.

Brasilia, 19 February 1998 177<sup>th</sup> of the Independence and 110<sup>th</sup> of the Proclamation of the Republic.

Fernando Henrique Cardoso  
Francisco Weffort

**Antitrust Law (Law Number 8.884/94)**  
**(UPDATED ON NOVEMBER 05, 1998)**  
**LAW Number. 8.884 - JUNE 11, 1994**  
**PUBLISHED ON THE OFFICIAL GAZETTE OF THE FEDERAL**  
**EXECUTIVE (D.O.U). - 13.06.94**

*Changes the Administrative Council for Economic Defense  
 – CADE - into an autarchy, regulates antitrust measures,  
 and makes other provisions*

The President of the Republic:

I hereby make known that the Congress decrees and I sanction the following Law:

**TITLE I**

**GENERAL PROVISIONS**

**Chapter I**

**OBJECT**

**Art. 1º** This Law sets out antitrust measures in keeping with such constitutional principles as free enterprise and open competition, the social role of property, consumer protection, and restraint of economic power abuses.

**Sole Paragraph.** Society at large is entrusted with the legal rights protected herein.

**Chapter II**

**TERRITORY**

**Art. 2º** Without prejudice to any agreements and treaties to which Brazil is a party, this Law applies to acts wholly or partially performed within the Brazilian territory, or the effects of which are or may be suffered therein.

**Sole Paragraph.** Foreign companies that operate or have a branch, agency, subsidiary, office, establishment, agent or representative in Brazil shall be deemed situated in the Brazilian territory.

**TITLE II**

**THE ADMINISTRATIVE ECONOMIC PROTECTION COUNCIL - CADE**

**Chapter I**

**AUTARCHY**

**Art. 3º** The Administrative Economic Protection Council - CADE, an agency with authority throughout the Brazilian territory and created by Law No. 4137 of September 10, 1962, shall henceforth become a federal autarchy reporting to the Ministry of Justice, with headquarters and jurisdiction in the Federal District, and duly commissioned for performance of the duties set forth herein.

**Chapter II**

**THE CADE BOARD**

**Art. 4º** The CADE Board shall be composed of a President and six Board Members chosen among citizens over than thirty years of age reputed for their legal or economic knowledge and unblemished reputation, duly appointed by the President of the Republic after their approval by the Senate.

§ 1º The term of office of the President and Board Members shall be two years, one reelection being hereby permitted.

§ 2º The President and Board Member duties shall be discharged on an exclusive basis; accordingly, no overlapping of positions will be permitted, unless otherwise provided for in the Constitution.

§ 3º In the event of resignation, death or termination of a CADE President, the senior or eldest Board Member (in this order) will take office as President until further appointment thereof, without prejudice to his/her corresponding duties as Board Member.

§ 4º In the event of resignation, death or termination of a CADE Board Member, a new Board Member shall be appointed for the remaining term of office of the replaced member.

§ 5º In the events set forth in the preceding § or upon expiration of the terms of office of the council members, the Council shall be reduced to less than the number established in Art. 49, the time frames set out in articles 28, 31, 32, 33, 35, 37, 39, 42, 45, 46, sole paragraph, 52, § 2, 54, paragraphs 4, 6, 7

and 10, and 59, § 1 of this law shall be considered automatically interrupted, and the case development shall be suspended, and the new terms shall begin immediately after restructuring of the quorum.

**Art. 5°** The CADE President or Board Members may only be ousted by a decision of the Senate, a request of the President of the Republic, as a result of unappealable criminal sentencing of any such member for malicious crime, or in light of disciplinary action as set forth in Law No. 8112 of December 11, 1990 and Law No. 8429 of June 2, 1992, as well as owing to violation of any of the limitations dealt with in Art. 6 hereof.

**Sole Paragraph.** Any CADE Member's absence at three consecutive ordinary meetings, or twenty intermittent ordinary meetings, shall cause automatic termination of his/her term of office, except for leaves of absence duly approved by the CADE Board.

**Art. 6°** The President and Board Members shall not:

I. - receive fees, percentages or other compensation in any way or on any pretext;

II. - act as a self-employed workers;

III. - participate—as controlling parties, officers, managers, agents or attorneys in fact—in any civil, commercial or like companies;

IV. - render opinions on matters of their specialty, even if on a theoretical basis, or act as advisors to companies of any kind;

V. - avail themselves of the media to render opinion on cases pending decision, or otherwise disparage orders, votes or sentences handed down by the courts, except for critique in case records, technical works or in the exercise of court duties; and

VI. - carry out politics- or party-oriented activities.

### Chapter III

#### AUTHORITY OF THE CADE BOARD

**Art. 7°** The CADE Board shall:

I. - ensure compliance with this Law and its regulations, as well as with the Board in-house rules;

II. - resolve on purported violations of the economic order, and apply the penalties provided for by law;

III. - resolve on proceedings instituted by the Economic Law Office - SDE of the Ministry of Justice;

IV. - resolve on ex officio appeals from the SDE Secretary;

V. - order that action be taken in restraint of violations of the economic order within the term scheduled therefor;

VI. - approve both the cease-and-desist commitment and the performance commitment, as well as order SDE to monitor compliance therewith;

VII. - judge appeals against preventive action adopted by SDE or by the Board reporting official;

VIII. - make its decisions known to the interested parties;

IX. - request information from individuals, agencies, authorities and other public or private entities, with due regard for the confidentiality ensured such information pursuant to law, if any, as well as determine the investigations required for performance of its duties;

X. - request from the Federal Executive Branch agencies and from state, municipal, the Federal District and territorial authorities the acts required for compliance with this Law;

XI. - retain the performance of examinations, inspections and studies, approving the respective professional fees and other expenditures on a case-by-case basis, all of which shall be borne by the company if it is eventually punished under this Law;

XII. - analyze acts or conducts under any circumstance, subject to approval thereof pursuant to Art. 54 below, and establish a performance commitment as the case may be;

XIII. - request court execution of its decisions pursuant to this Law;

XIV. - request services and staff from any federal public agencies or entities;

XV. - determine the adoption of administrative and court action by the CADE Attorney General Office;

XVI. - sign contracts and agreements with Brazilian agencies or entities, and advance to the Minister of Justice for approval any such documents that are to be signed with foreign or international organisms;

XVII. - answer consultations on matters within its sphere of authority;

XVIII. - make the forms of violation of the economic order known to the public;

XIX. - draft and approve its in-house rules on operations, criteria for resolutions, and organization of in-house services, including for the purpose of establishing the recess of the Board and the Attorney General Office on account of vacation; during such period, the statute of limitations as well as the term set forth in Art. 54, § 6 hereof shall be suspended;

XX. - draft the structure applying to the CADE staff, with due regard for Art. 37, II of the Constitution;

XXI. - draft budgetary proposals pursuant to this Law; and

XXII. - appoint the possible substitute of the Attorney General in the event of absences, dismissal or impairment.

#### Chapter IV

##### AUTHORITY OF THE CADE PRESIDENT

**Art. 8º** The CADE President shall:

I. - act as the CADE legal representative in and out of court;

II. - preside over the CADE Board meetings, with the right to vote thereat, plus a casting vote;

III. - distribute processes by lot at the Board meetings;

IV. - call meetings and organize the corresponding agenda;

V. - comply and cause compliance with the CADE decisions;

VI. - determine that the CADE Attorney General Office take all court action required for the execution of the CADE decisions and sentences;

VII. - sign the cease-and-desist commitments, as well as performance commitments;

VIII. - submit to the CADE Board for the budgetary proposal approval, as well as the intended assignment of the staff that is to render services to CADE; and

IX. - guide, co-ordinate and supervise the CADE administrative activities.

#### Chapter V

##### AUTHORITY OF THE CADE BOARD MEMBERS

**Art. 9º** The CADE Board Members shall:

I. - vote on cases and matters submitted to the CADE Board;

II. - issue orders and decisions on the cases for which they act as reporting members;

III. - submit to the CADE Board any requirements as to data and documents from individuals, agencies, authorities and other public or private entities, the data and documents that are to be kept confidential pursuant to law, as the case may be, as well as order all investigations required for performance of their duties;

IV. - adopt preventive action, and establish a daily fine for noncompliance therewith; and

V. - discharge all further duties ascribed thereto under the applicable rules.

#### Chapter VI

##### THE CADE ATTORNEY GENERAL OFFICE

**Art. 10.** An Attorney General Office shall be commissioned with CADE to:

I. - render legal assistance to CADE, and provide for defense thereof in court;

II. - arrange for judicial execution of CADE decisions and sentences;

III. - subject to the CADE Board preliminary approval, request court measures aiming at curbing violations of the economic order;

IV. - arrive at court settlements for cases involving violations of the economic order, subject to the CADE Board preliminary approval after hearing a representative of the Attorney General of the Republic;

V. - render opinion on cases under the CADE authority;

VI. - ensure compliance with this Law; and

VII. - perform all further action incumbent thereon under the in-house rules.

**Art. 11.** The Attorney General—appointed by the Minister of Justice, and duly commissioned by the President of the Republic after consultation and approval of the Senate—shall be a Brazilian citizen with unblemished reputation and renowned legal expertise.

§ 1º The Attorney General shall attend the CADE meetings, without any right to vote thereat.

§ 2º The Attorney General shall be subject to the same rules on term of office, reelection, disqualification, termination and replacement as those applying to the CADE Board Members.

§ 3º In the event of absences, temporary separation or impairment of the Attorney General, the plenary body will indicate and the CADE President will appoint a possible substitute to act for a period not exceeding ninety (90) days, with no need for Federal Senate approval; such substitute shall be entitled to compensation for the position held during such substitution.

### TITLE III

#### THE ATTORNEY GENERAL OF THE REPUBLIC AND CADE

**Art. 12.** The Attorney General of the Republic, after hearing the Higher Council, shall appoint a member of the Attorney General Office of the Republic to handle the cases submitted to CADE for review.

**Sole Paragraph.** CADE may request that the Attorney General Office of the Republic cause enforcement of the CADE decisions or of the cease-and-desist commitments, as well as that it adopt all court action provided for in Art. 6, XIV (b) of Supplementary Law No. 75 of May 20, 1993.

### TITLE IV

#### THE ECONOMIC LAW OFFICE

**Art. 13.** The Economic Law Office of the Ministry of Justice - SDE, as structured pursuant to law, will be headed by a Secretary appointed by the Minister of Justice from among Brazilian citizens of renowned legal or economic expertise and unblemished reputation, duly commissioned by the President of the Republic.

**Art. 14.** SDE shall:

I. - ensure compliance with this Law by monitoring and following up on market practices;

II. - provide for ongoing follow-up on business activities and practices from individuals or legal entities with overriding control over a relevant market for a certain product or service, in order to prevent violations of the economic order; for such purposes, all pertinent data and documents may be required, with due regard for the confidential status thereof pursuant to law, if any;

III. - carry out preliminary investigations on purported violations of the economic order, for further instatement of administrative proceedings;

IV. - acknowledge the lack of grounds or evidence, and shelve the preliminary investigation records;

V. - request data from individuals, agencies, authorities and other public or private entities, with due regard for the confidential status thereof under the law, if any, as well as determine the action required for exercise of its duties;

VI. - commence administrative proceedings intended to investigate and restrain violations of the economic order;

VII. - appeal ex officio to CADE for shelving of preliminary investigations or administrative proceedings;

VIII. - send on to CADE, for review, any cases commenced by SDE, if a violation of the economic order has been duly evidenced;

IX. - sign a cease-and-desist commitment on the agreed conditions and submit it to CADE, as well as monitor compliance therewith;

X. - advise CADE of certain conditions for signing of a performance commitment, and monitor compliance therewith;

XI. - adopt preventive measures intended to cease the act characterized as a violation of the economic order, and establish the deadline for compliance therewith as well as a daily fine applying to default thereon;

XII. - receive and substantiate cases to be judged by CADE, including consultations, and monitor compliance with the CADE decisions;

XIII. - advise the public authorities as to the adoption of any action required for compliance herewith;

XIV. - carry out studies and researches aiming at improving antitrust policies;

XV. - advise the public of the various forms of violation of the economic order, as well as the means to curb such violations; and

XVI. - perform other duties as provided for by law.

## TITLE V

### VIOLATIONS OF THE ECONOMIC ORDER

#### Chapter I

#### GENERAL PROVISIONS

**Art. 15.** This Law applies to individuals, public or private companies, as well as to any individual or corporate associations, established *de facto* and *de jure*—even on a provisional basis—irrespective of a separate legal nature, and notwithstanding the exercise of activities regarded as a legal monopoly.

**Art. 16.** The company and each of its managers or officers shall be jointly liable to the various forms of violation of the economic order.

**Art. 17.** The companies or entities within a same economic group *de facto* and *de jure* shall be jointly liable to violations of the economic order.

**Art. 18.** The legal nature of any party charged with violation of the economic order may be disregarded whenever any such violation entails abuse of power and rights, violation of the law, illicit facts or acts, or any breach of bylaws or articles of association. This legal nature shall also be disregarded in the event of bankruptcy, insolvency, discontinuance or suspended operations of the underlying company due to poor management thereof.

**Art. 19.** The antitrust measures set forth herein do not exclude any punishment inflicted on other legal acts pursuant to law.

## Chapter II

### VIOLATIONS

**Art. 20.** Notwithstanding malicious intent, any act in any way intended or otherwise able to produce the effects listed below, even if any such effects are not achieved, shall be considered a violation of the economic order:

I. - to limit, restrain or in any way injure open competition or free enterprise;

II. - to control a relevant market of a certain product or service;

III. - to increase profits on a discretionary basis; and

IV. - to abuse one's market control.

§ 1º Achievement of market control as a result of competitive efficiency does not entail an occurrence of the illicit act provided for in item II above.

§ 2º Market control occurs when a company or group of companies controls a substantial share of a relevant market as supplier, agent, purchaser or financier of a product, service or related technology.

§ 3º The dominant position mentioned in the preceding § is presumed when a company or group of companies controls twenty percent (20%) of the relevant market; this percentage is subject to change by CADE for specific sectors of the economy.

**Art. 21.** The acts spelled out below, among others, will be considered a violation of the economic order, to the extent applicable under Art. 20 and items thereof:

I. - to set or offer in any way—in collusion with competitors—prices and conditions for the sale of a certain product or service;

II. - to obtain or otherwise procure the adoption of uniform or concerted business practices among competitors;

III. - to allot markets for finished or semi-finished products or services, or for supply sources of raw materials or intermediary products;

IV. - to limit or restrain market access by new companies;

V. - to pose difficulties for the establishment, operation or development of a competitor company or supplier, purchaser or financier of a certain product or service;

VI. - to bar access of competitors to input, raw material, equipment or technology sources, as well as to their distribution channels;

VII. - to require or grant exclusivity in mass media advertisements;

VIII. - to agree in advance on prices or advantages in public or administrative bids;

IX. - to affect third-party prices by deceitful means;

X. - to regulate markets of a certain product or service by way of agreements devised to limit or control technological research and development, the production of products or services, or to dampen investments for the production of products and services or distribution thereof;

XI. - to impose on distributors, retailers and representatives of a certain product or service retail prices, discounts, payment conditions, minimum or maximum volumes, profit margins, or any other marketing conditions related to their business with third parties;

XII. - to discriminate against purchasers or suppliers of a certain product or service by establishing price differentials or discriminatory operating conditions for the sale or performance of services;

XIII. - to deny the sale of a certain product or service within the payment conditions usually applying to regular business practices and policies;

XIV. - to hamper the development of or terminate business relations for an indeterminate period, in view of the terminated party's refusal to comply with unreasonable or non-competitive clauses or business conditions;

XV. - to destroy, render unfit for use or take possession of raw materials, intermediary or finished products, as well as destroy, render unfit for use or constrain the operation of any equipment intended to manufacture, distribute or transport them;

XVI. - to take possession of or bar the use of industrial or intellectual property rights or technology;

XVII. - to abandon of cause abandonment or destruction of crops or harvests, without provenly good cause;

XVIII. - to unreasonably sell products below cost;

XIX. - to import any assets below cost from an exporting country other than those signatories of the GATT Antidumping and Subsidies Codes;

XX. - to discontinue or greatly reduce production, without good cause;

XXI. - to partially or fully discontinue the company's activities, without good cause;

XXII. - to retain production or consumer goods, except for ensuring recovery of production costs;

XXIII. - to condition the sale of a product to acquisition of another or contracting of a service, or to condition performance of a service to contracting of another or purchase of a product; and

XXIV. - to impose abusive prices, or unreasonably increase the price of a product or service.

**Sole Paragraph.** For the purpose of characterizing an imposition of abusive prices or unreasonable increase of prices, the following items shall be considered, with due regard for other relevant economic or market circumstances:

I. - the price of a product or service, or any increase therein, vis-à-vis any changes in the cost of their respective input or with quality improvements;

II. - the price of a product previously manufactured, as compared to its market replacement without substantial changes;

III. - the price for a similar product or service, or any improvement thereof, on like competitive markets; and

IV. - the existence of agreements or arrangements in any way, which cause an increase in the prices of a product or service, or in their respective costs.

**Art. 22. (VETOED)**

**Sole Paragraph. (VETOED)**



### Chapter III

#### PENALTIES

**Art. 23.** The following antitrust penalties shall apply:

I. - for companies: a fine from one to thirty percent of the gross pretax revenue thereof as of the latest financial year, and such fine shall by no means be lower than the advantage obtained from the underlying violation, if assessable;

II. - for managers directly or indirectly liable to their company's violation: a fine from ten to fifty percent of the fine imposed on the company, which shall be personally and exclusively imposed on the manager; and

III. - in the case of other individuals and other public or private legal entities, as well as any *de facto* or *de jure* associations of entities or persons, even temporary ones, with or without legal identity, that do not engage in business activities, when it is not feasible to use the gross sales value, the fine will be 6,000 (six thousand) to 6,000,000 (six million) UFIR or any other index replacing it.

**Sole Paragraph.** Fines imposed on recurring violations shall be doubled.

**Art. 24.** Without prejudice to the provisions of the preceding article, the fines listed below may be individually or cumulatively imposed on violations, whenever the severity of the facts or the public interest so requires:

I. - at the violator's expense, half-page publication of the summary sentence in a court-appointed newspaper for two consecutive days, from one to three consecutive weeks;

II. - ineligibility for official financing or participation in bidding processes involving purchases, sales, works, services or utility concessions with the federal, state, municipal and the Federal District authorities and related entities, for a period equal to or exceeding five years;

III. - annotation of the violator on the Brazilian Consumer Protection List;

IV. - recommendation that the proper public agencies:

(a) grant compulsory licenses for patents held by the violator; and

(b) deny the violator installment payment of federal overdue debts, or order total or partial cancellation of tax incentives or public subsidies;

V. - the company's spin-off, transfer of corporate control, sale of assets, partial discontinuance of activities, or any other antitrust measure required for such purposes.

**Art. 25.** If any acts or situations detrimental to the economic order are not discontinued after a CADE Board decision to this effect, or in the event preventive measures or any cease-and-desist commitment set forth herein are not complied with, a daily fine equal to or higher than 5,000 (five thousand) Fiscal Reference Units - UFIR or replacing index shall apply, which fine may be increased as many as twenty times in accordance with the severity of the violation and the violator's economic status.

**Art. 26.** In the event any data or documents requested by CADE, SDE, SEAE or other public entity acting under this Law are unreasonably denied, concealed, tampered with or delayed, this shall constitute a violation subject to a daily fine of 5,000 (five thousand) UFIR, and the fine may be increased up to twenty-fold in keeping with the violator's economic status.

**Art. 27.** The penalties provided for in this Law shall apply with due regard for:

I. - the severity of the violation;

II. - the violator's good faith;

III. - the advantages obtained or envisaged by the violator;

IV. - actual or threatened occurrence of the violation;

V. - the extent of damages or threatened damages to open competition, the Brazilian economy, consumers, or third parties;

VI. - the adverse economic effects on the market;

VII. - the violator's economic status; and

VIII. - recurrences.

## Chapter IV

## PRESCRIPTION

**Art. 28.** Revoked by Provisory Measure Number 1.708-4 of 27.10.98 (D.O.U. from 29.10.98).

## Chapter V

## CAUSE OF ACTION

**Art. 29.** Injured parties may—for themselves or for the privies under article 82 of Law No. 8078 of September 11, 1990—defend their individual or diffuse interests in court by way of antitrust measures and the awarding of losses and damages suffered in connection therewith, irrespective of the corresponding administrative proceeding which shall not be stayed in view of the court action.

## TITLE VI

## ADMINISTRATIVE PROCEEDINGS

## Chapter I

## PRELIMINARY INVESTIGATIONS

**Art. 30.** SDE may carry out preliminary investigations ex officio or at the written and reasonable request of interested parties; no disclosure as to any such investigations shall be made whenever the evidence as to purported violation of the economic order does not suffice to immediate commencement of administrative proceedings.

§ 1º During preliminary investigations, the SDE Secretary may adopt any of the steps set forth in Art. 35 hereof, including requests for clarification addressed to the defendant.

§ 2º Commencement of administrative proceedings out of formal complaints addressed by the Senate or the House of Representatives is not conditioned to preliminary investigations.

**Art. 31.** After conclusion of preliminary investigations within sixty days, the SDE Secretary shall order commencement of a corresponding administrative proceeding or the shelving thereof, subject to ex officio appeal to CADE in this latter case.

## Chapter II

## COMMENCEMENT AND DISCOVERY OF ADMINISTRATIVE PROCEEDINGS

**Art. 32.** Administrative proceedings shall be instituted no later than eight days after cognizance of the underlying fact, formal complaint or closing of the preliminary investigations, as per order issued by the SDE Secretary providing for the facts to be verified thereunder.

**Art. 33.** The defendant shall be summoned to file a defense within fifteen days.

§ 1º The initial summons shall bear the entire tenor of the order providing for institution of the administrative proceeding and the corresponding formal complaint, as the case may be.

§ 2º The defendant shall be first personally summoned by mail against receipt or, in case of failure thereof, by notice published in the Official Gazette of the Federal Executive and in a newspaper widely circulated in the state in which the defendant is resident or headquartered, with due regard for the periods required for attachment of the receipt notice or publication, as the case may be.

§ 3º Any summons under subsequent proceedings shall be made by publication in the Official Gazette of the Federal Executive, in which the name of the defendant and respective attorney shall be mentioned.

§ 4º The defendant's holders, officers or managers, or duly appointed attorney, may follow up on administrative proceedings, with full access to the case records at SDE and CADE.

**Art. 34.** Failure to file a defense in due course after duly notified to that effect will entail the defendant's judgment by default and acknowledgment of the charges against it/him, subject to all further terms irrespective of prior notice in that respect. The in absentia defendant may take part in any phase of the proceeding without recourse of preceding acts.

**Art. 35.** Upon lapse of time for filing a defense, SDE will order investigations and the production of evidence required thereby; SDE may order that the defendant, any individuals or companies, public entities or agencies provide data, clarifications or documents within fifteen days, with due regard for the confidentiality applying thereto under the law, as the case may be.

**Sole Paragraph.** The investigations and evidence required by the SDE Secretary, including hearing of witnesses, shall be concluded within forty-five days, extendable for a like period with good cause.

**Art. 36.** Federal authorities, as well as officers of autarchies, federal government-owned companies and mixed-capital companies, shall render all assistance and collaboration required by CADE or SDE, including as regards preparation of technical reports on the matters under the authority thereof, under penalty of liability.

**Art. 37.** The defendant shall produce any evidence within forty-five days after submission of defense, as well as put forth new documents at any time before the discovery phase lapses.

**Sole Paragraph.** The defendant may ask the SDE Secretary to set out a date, time and place for hearing of a maximum of three witnesses.

**Art. 38.** The Economic Policy Secretariat of the Ministry of Finance (SEAE) shall be informed by official letter of the institution of any administrative proceedings, and the Secretariat may elect to render an opinion on the matters within its sphere of authority, before the discovery phase lapses.

**Art. 39.** Upon conclusion of the discovery phase, the defendant will be summoned to put forth his/its final arguments within five days, after which the SDE Secretary will issue a substantiated report resolving on forwarding of the case records to CADE for review or shelving thereof, subject to an ex officio appeal to CADE in this latter case.

**Art. 40.** The SDE Secretary, the CADE members, and their civil servants and officials shall exert their best efforts to develop and conclude preliminary investigations and administrative proceedings in the interest of proper expedition as required for clarification of the facts, under penalty of liability.

**Art. 41.** The SDE Secretary decisions cannot be appealed to higher ranks.

### Chapter III

#### CADE JUDGMENT ON ADMINISTRATIVE PROCEEDINGS

**Art. 42.** Once the proceedings have been found admissible, the CADE President will randomly distribute such proceedings to the Reporting Official, who will be afforded a twenty-day term to render an opinion thereon.

**Art. 43.** The reporting official may order supplementary investigations or request further information pursuant to Art. 35 hereof, as well as allow for the production of new evidence to the case whenever he/she considers the existing data insufficient for a final determination on the case.

**Art. 44.** Upon invitation of the CADE President in response to an indication of the reporting official, any person may provide CADE with clarifications on relevant matters.

**Art. 45.** Upon board judgments—the date of which will be made known to the parties at least five days in advance—the Attorney General and the defendant, or his/its attorney, will be respectively offered the floor for fifteen minutes each.

**Art. 46.** The CADE decision—which in any event shall be duly substantiated against violations of the economic order—shall contain:

I. - a detailed report on the violating acts, and an indication as to the antitrust action to be taken by the proper authorities;

II. - the terms for commencement and conclusion of the action referred to in the preceding item;

III. - the applicable fine; and

IV. - a daily fine to apply while the violation is in effect.

**Sole Paragraph.** The CADE decision shall be published within five days in the Official Gazette of the Federal Executive.

**Art. 47.** CADE shall monitor compliance with its decisions.

**Art. 48.** Total or partial noncompliance with the CADE decision shall be reported to the CADE President, who will ask the Attorney General to provide for execution thereof via court channels.

**Art. 49.** The CADE decisions shall be taken by majority vote, with the attendance of a minimum of five members.

**Art. 50.** The CADE decisions do not qualify for Executive Branch review; accordingly, any such decisions shall be promptly executed, the Attorney General Office being then advised in this respect for the purpose of taking all legal action within its sphere of authority.

**Art. 51.** The CADE regulations and in-house rules shall further regulate administrative proceedings.

#### Chapter IV

##### PREVENTIVE MEASURES AND CEASE-AND-DESIST ORDERS

**Art. 52.** The SDE Secretary or reporting official may—upon his/her own initiative or at the request of the CADE Attorney General—adopt preventive measures in any instance of administrative proceedings, whenever there are signs or sound reasons to believe that the defendant directly or indirectly caused or may cause irreparable or substantial damages to the market, or that he/it may render the final outcome of the proceedings ineffective.

§ 1º The preventive measures issued by the SDE Secretary or reporting official shall order prompt cessation of damaging acts and the resumption of the preceding situation, if reasonably feasible, as well as impose a daily fine pursuant to Art. 25 hereof.

§ 2º The SDE Secretary or CADE reporting official decision on adoption of preventive measures may be voluntarily appealed to the CADE Board within five days, without suspensive effects.

#### Chapter V

##### CEASE-AND-DESIST COMMITMENTS

**Art. 53.** CADE or SDE—ad referendum CADE—may agree on a commitment to cease acts under investigation in any instance of administrative proceedings, which commitment shall by no means entail a confession as to the matter under analysis nor acknowledgment of guilt for the acts thereunder.

§ 1º The commitment shall provide for:

- a) the defendant's commitment to cease the action under investigation in due course;
- b) a daily fine to be imposed in the event of default under Art. 25 hereof; and
- c) the defendant's commitment to issue periodical reports on the defendant's market performance, and an undertaking to make proper authorities aware of any changes in its corporate structure, control, activities and location.

§ 2º The case will be on hold while the cease-and-desist commitment is duly complied with, and after a pre-established time this case will be shelved if all conditions set out in the corresponding commitment have been fully met.

§ 3º The conditions spelled out in the commitment may be changed by CADE if they are provenly overburdensome for the defendant, provided that any such changes do not cause damages to third parties or to the society at large, and that the new conditions do not entail a violation of the economic order.

§ 4º The cease-and-desist commitment constitutes an extrajudicial execution instrument; accordingly, execution of this commitment shall be promptly petitioned in the event of default thereon or if monitoring thereof is in any way hampered, pursuant to articles 60 et seq. hereof.

#### TITLE VII

##### MONITORING MECHANISMS

#### Chapter I

##### MONITORING OF ACTS AND AGREEMENTS

**Art. 54.** Any acts that may limit or otherwise restrain open competition, or that result in the control of relevant markets for certain products or services, shall be submitted to CADE for review.

§ 1º CADE may authorize any acts referred to in the main section of this article, provided that they meet the following requirements:

I. - they shall be cumulatively or alternatively intended to:

- a) increase productivity;
- b) improve the quality of a product or service; or
- c) cause an increased efficiency, as well as foster the technological or economic development;

II. - the resulting benefits shall be ratably allocated among their participants, on the one part, and consumers or end-users, on the other;

III. - they shall not drive competition out of a substantial portion of the relevant market for a product or service; and

IV. - only the acts strictly required to attain an envisaged objective shall be performed for that purpose.

§ 2º Any action under this Art. may be considered lawful if at least three of the requirements listed in the above items are met, whenever any such action is taken in the public interest or otherwise required to the benefit of the Brazilian economy, provided no damages are caused end-consumers or -users.

§ 3ºv The acts dealt with in the main section of this Art. also include any action intended for any form of economic concentration, whether through merger with or into other companies, organization of companies to control third companies or any other form of corporate grouping, when the resulting company or group of companies accounts for twenty percent (20%) of a relevant market, or in which any of the participants has posted in its latest balance sheets an annual gross revenue equivalent to R\$ 400,000,000 (four hundred million reais).

§ 4º The acts dealt with in the main section of this Art. shall be submitted to SDE—duly accompanied by three counterparts of the corresponding documentation—in advance or no later than fifteen business days after the occurrence thereof, and SDE shall promptly forward one such counterpart to CADE and another to SEAE.

§ 5º Noncompliance with the deadlines set forth in the preceding § will be punishable with a fine in an amount between 60,000 (sixty thousand) UFIR and 6,000,000 (six million) UFIR, imposed by CADE without prejudice to the opening of an administrative proceeding pursuant to Art. 32 hereof.

§ 6º Upon receipt of the SEAE technical report issued within thirty days, SDE shall pronounce thereon within this same period and then send the case and evidentiary documents on to the CADE Board, which shall resolve thereon within sixty days.

§ 7º The effectiveness of any acts dealt with in this Art. will be conditioned to approval thereof, which approval shall be retroactive to the date of occurrence of such acts; if not looked into by CADE within the sixty-day period established in the preceding paragraph, the acts referred to above will be deemed automatically approved.

§ 8º The terms set forth in paragraphs 6 and 7 hereof will be stayed while the clarifications and documents considered essential for review of the case by CADE, SDE or SEAE are not submitted as requested.

§ 9º In the event the acts specified in this Art. are subject to suspensive conditions or have already caused fiscal or other effects to third parties, the CADE Board—if it elects to deny approval thereof—shall determine that all

applicable action be taken to totally or partially revert—by way of dissolution, spin-off or sale of assets, partial cessation of activities, among others—any action or procedure damaging to the economic order, notwithstanding any civil liability for losses and damages caused third parties.

§ 10. Without prejudice to the obligations of the parties involved, any change in the stock control of publicly-held companies or registration of amalgamations shall be reported to SDE by the Securities Commission - CVM and by the Brazilian Commercial Registry Department of the Ministry of Industry, Trade and Tourism - DNRC/MICT, respectively, within five business days for the SDE review, if applicable.

**Art. 55.** The approval dealt with in the preceding Art. may be reviewed by CADE ex officio or at the SDE request, if this approval was based on false or misleading information rendered by the interested party, in the event of default on obligations assumed hereunder, or if the intended benefits have not been attained.

**Art. 56.** The commercial registries or corresponding state entities cannot file any acts related to organization, transformation, amalgamation, merger or grouping of companies, as well as changes in incorporation acts, unless all such acts contain:

- I. - a clear-cut and detailed statement as to the subject matter thereof;
- II. - the interest of each partner, and the term for capitalization thereof;
- III. - full name and identification of each partner;
- IV. - the place where the headquarters is located and its respective address, including as regards any declared branches;
- V. - full name and identification of the company's officers;
- VI. - the term of duration of the company; and
- VII. - the number, type and value of the outstanding stock.

**Art. 57.** Articles of dissolution shall state the reasons thereof, apart from a statement re the amount ascertained among the partners and an indication of the persons that are to assume the company's assets and liabilities.

## Chapter II

### PERFORMANCE COMMITMENT

**Art. 58.** The CADE Board will define performance commitments to be assumed by any interested parties that submitted acts for review pursuant to Art. 54 hereof, so as to ensure compliance with the conditions established in § 1 thereof.

§ 1º Performance commitments will take into consideration the extent of international competition in a certain industry and their effect on employment levels, among other relevant circumstances.

§ 2º Performance commitments shall provide for volume or quality objectives to be attained within predetermined terms, compliance with which will be monitored by SDE.

§ 3º Failure without good cause to comply with performance commitments shall cause the CADE approval to be revoked pursuant to Art. 55 hereof, followed by the opening of an administrative proceeding for the adoption of the applicable measures.

## Chapter III

### CONSULTATION

**Art. 59.** Revoked by article 83 Law Number 9.069, of 29.06.95 (D.O.U. from 30.06.95).

## TITLE VIII

### COURT EXECUTION OF CADE DECISIONS

#### Chapter I

#### PROCESSING

**Art. 60.** The CADE Board decisions imposing fines, as well as obligations to do or not to do, constitute an extrajudicial execution instrument.

**Art. 61.** Executions exclusively intended to collection of fines shall be carried out pursuant to Law No. 6830 of September 22, 1980.

**Art. 62.** In the event of executions intended to collection of fines and compliance with obligations to do or not to do, the courts shall order specific performance of any such obligations, or otherwise provide for acts that ensure an outcome equivalent to compliance therewith in practical terms.

§ 1º An obligation to do or not to do can only lead into a suit for losses and damages its specific performance or obtainment of an equivalent outcome in practical terms is not possible.

§ 2º Losses and damages shall be paid without prejudice to any applicable fines.

**Art. 63.** Execution shall be carried out by all means, including by way of intervention in the company, if necessary.

**Art. 64.** The CADE decisions shall be executed at the federal courts of the Federal District, or at the courts with jurisdiction over the executed party's headquarters or domicile, at the CADE discretion.

**Art. 65.** Motions or like action against an execution instrument shall not stay the execution itself, unless an amount corresponding to the fines imposed is deposited in court, and a bond is posted as determined by the courts to ensure compliance with a final decision on the case, including as regards daily fines.

**Art. 66.** Depending on the severity of the violation of the economic order, and should there be sound reasons to believe in irreparable or substantial damages, the courts may order prompt adoption of all or a portion of the action required under the execution instrument, notwithstanding the deposit of fines in court or the posting of bonds.

**Art. 67.** Daily fines on an ongoing violation shall be apply as from the deadline established by CADE for voluntary compliance with the CADE decision, up to the day of actual performance thereof.

**Art. 68.** - The execution of CADE decisions shall be afforded priority over other kinds of action, except for habeas corpus and writ of mandamus.

## Chapter II

### JUDICIAL INTERVENTION

**Art. 69.** The courts shall order intervention in a company whenever required to ensure specific performance hereunder, and appoint a receiver.

**Sole Paragraph.** The court decision on intervention shall be duly substantiated, as well as accurately establish the action to be taken by the appointed receiver.

**Art. 70.** If the executed party rebuts a court-appointed receiver within forty-eight hours on the arguments of ineptitude or lack of good standing, and if this claim is duly evidenced in three days, the courts shall render a decision thereon within this same period.

**Art. 71.** If the rebuttal is granted, the courts shall appoint another receiver within five days.

**Art. 72.** The intervention may be terminated early if the obligation that gave rise thereto has been provenly complied with in full.

**Art. 73.** The court intervention shall be limited to those acts required for compliance with the court decision that gave rise thereto, and shall be effective for a maximum period of one hundred and eighty days; the receiver shall be held liable for his/her acts and omissions, especially in the event of abuse of power and departure from the original purposes of his/her appointment.

§ 1º The receiver will be subject to articles 153 through 159 of Law No. 6404 of December 15, 1976, to the extent applicable.

§ 2º The receiver will be entitled to a compensation stipulated by the courts, which may replace him/her at any time and whenever the receiver becomes insolvent, is charged with active or passive corruption or malfeasance in office, or violation of his/her duties.

**Art. 74.** The courts may withdraw the company's managers from their duties if they are provenly preventing performance of acts incumbent on the receiver. Any such managers shall be replaced as provided for in the company's bylaws or articles of association.

§ 1º If any managers still prevent the receiver from taking proper action after adoption of the procedures set forth in the main section of this article, then the courts shall proceed as per § 2 below.

§ 2º If a majority of the company's managers deny assistance to the court-appointed receiver, the courts shall order that the receiver take over the company's management.

**Art. 75.** The receiver shall:

I. - perform or order performance of all acts required under the execution process;

II. - advise the courts of any irregularities committed by the company's management and of which the receiver may become aware; and

III. - submit to the courts a monthly report on his/her activities.

**Art. 76.** The expenses arising from the intervention hereunder shall be borne by the executed party.

**Art. 77.** Upon lapse of the intervention, the receiver shall provide the federal courts with a detailed report on his/her action, and either propose the dismissal or shelving of the case or ask for an extension of the intervention period should the execution decision have not been fully performed in due course.

**Art. 78.** Whoever opposes or prevents any intervention or, after termination thereof, performs any acts that directly or indirectly annul its effects in whole or in part, or even fails to comply with legal orders from the court-appointed receiver, will be held criminally liable for resistance, disobedience or coercion under the execution process, pursuant to articles 329, 330 and 344 of the Penal Code.

## TITLE IX

### FINAL AND TEMPORARY PROVISIONS

**Art. 79.** (VETOED)

**Sole Paragraph.** (VETOED)

**Art. 80.** The CADE Attorney shall henceforth become an Attorney General official duly commissioned to the autarchy created hereunder, jointly with the CADE President and Board Member positions.

**Art. 81.** The Executive Branch shall send to the Congress within sixty days a bill of law on the permanent staff of the new autarchy, as well as on the duties and compensation applying to the CADE President, the Board Members, and the Attorney General.

§ 1º While CADE is not provided with staff of its own, civil servants may be temporarily assigned to this autarchy by commission or otherwise, without prejudice to the remuneration and other benefits originally afforded thereto, including for the purpose of representing this autarchy in court.

§ 2º The CADE President shall prepare and submit to the Board for approval a list of servants required for the agency, who may be placed at SDE disposal.

**Art. 82.** (VETOED)

**Art. 83.** The Code of Civil Procedure, as well as Laws Nos. 7347 of July 24, 1985 and 8078 of September 11, 1990, also apply to the administrative and court proceedings set forth herein.

**Art. 84.** The fines provided for herein shall be converted into Brazilian currency on the date of actual payment thereof, duly collected to the Fund dealt with in Law No. 7347 of July 24, 1985.

**Art. 85.** Art. 4, VII of Law No. 8137 of December 27, 1990 shall henceforth read as follows:

“**Art. 4.** (...)

VII. - increase without good cause the price of a certain product or service, in view of one’s market control.”

**Art. 86.** Art. 312 of the Code of Criminal Procedure shall henceforth read as follows:

“**Art. 312.** Preventive imprisonment may be decreed so as to safeguard public or economic order in the interest of the criminal process, or to ensure enforcement of criminal laws, whenever a crime was provenly committed, or if there is sufficient evidence as to its perpetrator.”

**Art. 87.** Article 39 of Law No. 8078 of September 11, 1990 shall henceforth read as follows, with the additional items below:

“**Art. 39.** The supplier of a certain product or service cannot, among other abusive practices:

(...)

IX. - refuse to sell products or render services directly to whomever is willing to purchase them against prompt payment, except for intermediation cases duly regulated by special laws; and

X. - increase without good cause the price of a certain product or service.”

**Art. 88.** Art. 1 of law No. 7347 of July 24, 1985 shall henceforth read as follows, with the additional item below:

“**Art. 1º** Without prejudice to class actions, this Law applies to actions for moral and property damages arising from:

(...) V. - violation of the economic order.”

**Sole Paragraph.** Art. 5, II of Law No. 7347 of July 24, 1985 shall henceforth read as follows:

“**Art. 5º** (...)

II. - include in its institutional purposes the protection to the environment, consumers, economic order, open competition, or the artistic, aesthetic, historical, tourism, and landscape heritage; (...)”

**Art. 89.** - CADE shall be invited to take part as assistant in court actions involving application of this Law.

**Art. 90.** The periods for consultations submitted under Art. 74 of Law No. 4137 of September 10, 1962, as amended by Art. 13 of Law No. 8158 of January 8, 1991, are hereby interrupted, with due regard for Title VII, Chapter I hereof.

**Art. 91.** This Law does not apply to dumping and subsidies cases dealt with in the Accords for Implementation of Art. VI of the General Agreement on Customs Tariffs and Trade, duly enacted by Decrees Nos. 93941 and 93962 of January 16 and 22, 1987, respectively.

**Art. 92.** All provisions to the contrary are hereby revoked, as are Laws Nos. 4137 of September 10, 1962; 8158 of January 8, 1991; and 8002 of March 14, 1990, except for Art. 36 of Law No. 8880 of May 27, 1994, which remains effective.

**Art. 93.** This Law shall be effective starting at its publishing date.



**14.4. Conversion Table - Shoes and Clothing**

## Women's

Dresses, Skirts and Coats								
Brazil	38	40	42	44	46	48	50	
USA	4	6	8	10	12	14	16	18
Europe	38	40	42	44	46	48	50	52

Sweaters and Blouses								
Brazil	38	40	42	44	46	48	50	
USA	6	8	10	12	14	16	18	
Europe	40	42	44	46	48	50	52	

Shoes									
Brazil	35		36		37		38		39
USA	3	4	5	6	7	8	9	10	11
Europe	34	35	36	37	38	39	40	41	44

## Men's

Suits								
Brazil		46		48		50	52	54
USA	34	36	38	40	42	44	46	48
Europe	34	36	38	40	42	44	46	48

Shirts								
Brazil	35	37	39	40	41	42	43	44
USA	14	15	15.5	16	16.5	17	17.5	18
Europe	36	38	39	41	42	43	44	45

Shoes								
Brazil	39		40	41		42	43	44
USA	7.5	8	8.5	9	9.5	10	10.5	11
Europe	39		40	41		42	43	44

## Children's

Clothes								
Brazil	2	4	6	8	10	12	14	16
USA	2 e 3	4 e 5	6	7 e 8	10	12	14	16
Europe	2 e 3	4 e 5	6 e 7	8 e 9	10 e 11	12	14	14+

Shoes							
Brazil	24 e 25	26 e 27	28	29	30	31	32
USA	7.5	8.5	9.5	10.5	11.5	12.5	13.5
Europe	24	25.5	27	28	29	30	32