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BRAZILIAN UPDATE

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I. INTRODUCTION

RECENTLY, the Brazilian legal system began implementing reforms to enhance the country's business development. Changes have been made in bankruptcy law and other forms of law, but two recent reforms are worthy of note. First, Brazil's entire Code of Civil Procedure is in the process of being overhauled. Second, the Growth Acceleration Plan (GAP), proposed by re-elected President Lula in his second term (2007-2010), focuses on stimulating Brazil's economy, but also has the effect of modifying the country's legal system to accelerate growth.¹ These modifications encourage entrepreneurs to start businesses and allow established companies to perform more effectively by decreasing bureaucracy and granting incentives to small businesses, such as tax breaks or loans. This update profiles these two important changes to Brazil's legal system.

II. BRAZILIAN CODE OF CIVIL PROCEDURE, THE NEW PROCEDURE FOR EXECUTION OF JUDGMENT

The new procedure for execution of judgment (Law n. 11,382 of December 6, 2006)²—the second and final part of the execution system reform proposed by the Brazilian Department of Justice in 2004³—was

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1. Brazilian policymakers are seriously concerned about the development rate of Brazil when compared to other countries such as China, Russia and India. These countries that are called BRIC (Brazil, Russia, India and China) by economic analysts are candidates to become developed countries in the near future. But while their rate of growth in 2000-2005 was in average 5-8 % per year, Brazil's average rate in the same period was 2.7 %. See, e.g., Roopa Purushothaman & Dominic Wilson, *Dreaming with BRICs: The Path to 2050*, Global Economics Paper No. 99, GS GLOBAL ECONOMICS WEBSITE (Goldman Sachs Insight), Oct. 1, 2003, www2.goldmansachs.com/insight/research/reports/99.pdf.
2. Lei No. 11.382, de 6 de dezembro de 2006, http://www.planalto.gov.br/CCIVIL/_Ato2004-2006/2006/Lei/L11382.htm.
3. The Brazilian Code of Civil Procedure is available at https://www.planalto.gov.br/ccivil_03/LEIS/L5869.htm.

enacted in December of 2006 (Revised Law). The main objective of the execution system reform is to give more rationality and agility to executions and collection of lawsuits, which is one of the primary reasons for the slowness in the Brazilian courts.

The first part of the reform, the Law No. 11.232 of December 22, 2005,⁴ focuses on the unification of the discovery procedure and the execution procedure. Before the reform, enforcement of judicial awards used to be conducted pursuant to an independent procedure, which had the deleterious effect of delaying the enforcement of judicial decisions because it was followed by other service of process under the execution procedure.⁵ In the revised system, enforcement of the judicial awards is continuous. Once a demand for payment of debt is approved and such payment is not made, then a 10 percent penalty is automatically applied.

The most recent part of the reform complemented the text of 2005, focusing on location, seizure and sale of property of reluctant debtors. One of the main benefits to creditors is that the Revised Law eliminates the suspension of the embargoes of execution, which debtors frequently use to delay the process. Consequently, under the revised procedure, even with the embargoes on execution, the sale of the property continues to run. The Revised Law only makes exceptions for cases of serious or irreparable damage in the transfer of property.

Another important rule affects the rights of selecting the property for seizure. Before the reform, the law gave the debtor priority to choose the property to be seized. Now, it is the creditor who has such right. Under this new procedure, the debtor has three days to pay the debt or the creditor will select the property for seizure.

The law also gives to the debtor the option of payment by installments. For that, the debtor must recognize the debt and pay 30 percent of the debt immediately. The remainder may be paid in up to six installments.

The rule regarding alienation of property is also relevant. The new law eliminates the exclusivity of public auction, which was not considered efficient. The old legislation required the creditor to bring the confiscated property to public auction and then pocket the money from the sale. The Revised Law sets forth a much simpler mechanism. Now, the creditor has the option of transferring the property into her name and selling it or bringing the buyer before the judge.

The property registration rule is another important protection to the creditor. The Revised Law allows the creditor, upon the start of the execution procedure, to go to the real estate/deed and title registries where the debtor has property and attach a notice communicating the procedure. This measure makes it much more difficult for debtors to sell off

4. Lei No. 11.232 de 22 Dezembro de 2005, http://www.uva.br/icj/processo_civil/Lei%2011232%20de%202005%20-%20Alteracao%20do%20CPC.htm.

5. See Marcos Valadao & Nara Porto Galeb, *Brazilian Update: Law and Economic Issues*, 13 L. & BUS. REV. AM. 235, 239 (2007).

assets to unsuspecting buyers, who would be forced to forfeit the property under a court judgment against the original debtor.

Another weapon for creditors is a 20 percent penalty if the debtor hides property or assets or presents dilatory appeals to delay execution of judgment.

Finally, the law regulates the use of the Internet to block resources in the financial system, which has been shown to increase the number of agreements between creditors and debtors since debtors do not want to have their resources blocked.

This new legislation is a big step forward for a faster, less time consuming, and a predictable judicial system in Brazil.

III. THE BRAZILIAN GROWTH ACCELERATION PLAN AND ITS EFFECTS IN THE BRAZILIAN LEGAL ORDER

Brazil's President, Luiz Inacio Lula da Silva, who was re-elected in October 2006, proposed a Growth Acceleration Plan (GAP) (2007-2010). GAP aims to increase economic growth by 4.5 percent in 2007 and 5 percent during 2008-2010.⁶ It involves investments in infrastructure totaling \$240 billion from the central government, and also investment from the private sector. GAP is the cornerstone of economic and legal measures aimed at promoting private investment, improving public investment in infrastructure, and removing obstacles to economic growth in other areas, such as with state bureaucracy, the judiciary system, administration, and regulation. GAP measures are divided in five categories: credit and financing access policies, tax breaks and tax reform, infrastructure investment, general business environment improvement, and a long term fiscal policy.⁷

Among the measures for financing are the BNDES spread reduction, reduction of the long term interest rates applied to lengthy projects,⁸ and the increase of funding for housing leasing operations.⁹ For example, Caixa Economica Federal¹⁰ received a \$2.5 billion credit to build sanitation and housing projects.¹¹

Tax breaks and tax incentives were granted to the domestic construc-

6. See GOVERNO FEDERAL, PROGRAMA DE ACELERAÇÃO DE CRESCIMENTO 5 (Official brochure, in Portuguese) (2007), <http://www.fazenda.gov.br/portugues/releases/2007/r220107-PAC-integra.pdf>.

7. See GOVERNO FEDERAL, PROGRAMA DE ACELERAÇÃO DE CRESCIMENTO (Official Ministry of Finance presentation) (2007), <http://www.fazenda.gov.br/portugues/releases/2007/r130207-PAC.pdf>.

8. BNDES, National Developing Bank, is the most important public developing bank in Brazil. See *id.*

9. Medida Provisória No. 350, de 21 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

10. Caixa Econômica Federal (CEF), a retail and federal chartered bank, is the second large public sector bank. CEF is specialized in popular savings and popular housing finance. See information available at <http://www1.caixa.gov.br/idiomas/ingles/index.asp>.

11. Medida Provisória No. 347, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

tion industry, including and infrastructure construction funds.¹² Tax relief from indirect taxes was also granted to high tech industries producing products such as computers,¹³ digital TV systems, semiconductors,¹⁴ and steel-made pieces for domestic construction.¹⁵ In July 2007, a general tax law for micro and small companies will take effect and give a special tax abatement from not only federal taxes, but state and local taxes as well.¹⁶ Additionally, deduction limits to individual income taxes were raised, thus promoting tax relief to individuals, a 4.5 percent increase per year from 2007 through 2010.¹⁷ Other measures adopted include accelerated depreciation and tax relief for the domestic construction sector by using a set of tax measures.¹⁸ The federal tax administration, which currently gathers internal revenue and customs fees will be merged with the social security taxes department, thereby creating one umbrella agency responsible for collecting all taxes.¹⁹ Furthermore, the ongoing implementation of public system for digital certification²⁰ and the electronic tax invoice scheduled to be online by 2008 will drastically reduce tax evasion and simplify tax filing.²¹ Brazil's government also resumed tax reform negotiations with its Congress.

According to GAP, infrastructure is crucial to accelerating sustainable development, increasing productivity, and overcoming regional and social inequalities. But, the government recognizes that to overcome the infrastructure deficiencies, the country needs to have a strategic plan for the long run. Therefore, it plans to increase completion and regulatory framework, start joint ventures between public and private sectors, and promote integration between the states, federal government, and municipalities. The infrastructure plan has three points of attack: logistics (ports, airports, highways, railroads, and inland waterway transportation); energy (which includes renewable sources such as ethanol and biodiesel); and urban and social improvement (housing, urban transportation, water and sewer systems, and waste disposal systems). GAP also aims to im-

12. Medida Provisória No. 348, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

13. It is called the Digital Inclusion Program. Decreto No. 6.023, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil). This decree raised the limit for tax exemption to computers, to improve the already existent program.

14. Medida Provisória No. 352, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

15. Decreto No. 6.024, de 22 de janeiro de 2007, D.O.U., de 22.01.2007 (Brazil).

16. Lei Complementar No. 123, de 14 de dezembro de 2006, D.O.U. de 15.12.2006 (Brazil).

17. Medida Provisória No. 340, de 29 de dezembro de 2006, D.O.U. de 29.12.2006 (Brazil).

18. Medida Provisória No. 340, de 29 de dezembro de 2006, D.O.U. de 29.12.2006 (Brazil); Medida Provisória No. 351, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil); Lei No. 11.434, de 28 de Dezembro de 2007, D.O.U. de 29.12.2007 (Brazil).

19. Bill of Law No. 6.272/2005 depends on Congressional approval.

20. Decreto No. 6.022, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

21. Decreto No. 6.024, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

prove South America integration.²²

As for the general business environment, several measures have been adopted. Among them: the regulatory framework for the sanitation sector;²³ the regulation of the reinsurance market (once a governmental monopoly);²⁴ the re-institution of agencies to promote regional development.²⁵ Also, the legal framework for regulatory agencies and the regulatory framework for the natural gas market are worth noting.²⁶ The reform of the Brazilian system that encourages competition (anti-trust law) is currently not specifically included in the measures, but it will be part of the reforms.²⁷

GAP also contains measures to maintain fiscal consistency. A national forum for the social security system was created to address system-wide problems and to propose solutions.²⁸ The President sent two proposals to Congress regarding fiscal consistency. The first proposal caps the wages of public workers, including those within the executive, legislative, and judiciary branches. The second proposal aims to link the growth of the minimum wage within both the private and public sectors to the growth of the national economy (NGP).²⁹ This change is important because the minimum wage affects the equilibrium of the social security system. According to GAP, the fundamentals to achieving these goals are fiscal responsibility, monetary stability, and low external vulnerability.³⁰

22. See GOVERNO FEDERAL, PAC-PROGRAMA DE ACELERAÇÃO DO CRESCIMENTO-INFRA-ESTRUTURA (Official presentation in Portuguese), <http://www.presidentia.gov.br/>.

23. Lei No. 11.448, de 5 de janeiro de 2007, D.O.U. de 11.01.2007 (Brazil).

24. Lei Complementar No. 126, de 15 de janeiro de 2007, D.O.U. de 16.01.2007 (Brazil).

25. Lei Complementar No. 124, de 3 de janeiro de 2007, D.O.U. de 04.01.2007 (Brazil); Lei Complementar No. 125, de 3 de janeiro de 2007, D.O.U. de 04.01.2007 (Brazil).

26. Bill of Law No 3.37/2004 and No. 6.673/2006.

27. Bill of Law 5.877/2005.

28. Decreto No. 6.019, de 22 de janeiro de 2007, D.O.U. de 22.01.2007 (Brazil).

29. The President sent two proposed bills to Congress regarding this issue (Executive Messages Nos. 38/2007, and 40/2007, currently Bill of Law No. 1/2007).

30. See PROGRAMA DE ACELERAÇÃO DE CRESCIMENTO, *supra* note 6.

