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Marcos Valadao

Nara Galeb Porto

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BRAZILIAN UPDATE: NEW ACCOUNTING STANDARDS, REINSURANCE LAW, BUSINESS ENVIRONMENT IMPROVEMENT AND MORE

Marcos Valadão and Nara Galeb Porto***

THIS Brazilian Update will address important issues related to recent changes in Brazilian Law, such as new accounting standards; the new reinsurance law; the statute establishing new procedures to facilitate the bureaucracy to formalize entrepreneurs and juridical persons; the new Federal Law authorizing the creation of the Brazilian Company of Communication (a public broadcast company) and regulating public services of communication delivered by the Government; and the creation of the *Chico Mendes Institute for the Conservation of Biodiversity*.

I. INTERNATIONAL ACCOUNTING STANDARDS IMPOSED BY LAW

The necessity of harmonizing accounting standards has become increasingly evident because business activities are becoming increasingly global and the differences in the accounting systems of individual countries are making the comparison of accounting values unduly difficult. The solution is to adopt international accounting standards.¹ In response, Brazil enacted Federal Law No. 11,638/2007,² which went into effect January 1, 2008, and modified Federal Law No. 6,404/1976 (Brazilian Corpo-

* Marcos Aurélio Pereira Valadão, Professor of Law (Universidade Católica de Brasília School of Law, Brazil); S.J.D. (SMU); LL.M. (UnB, Brazil); LL.M. International and Comparative Law (SMU); LL.B. (UCG, Brazil); B.S. (UnB, Brazil). The author may be contacted by e-mail at profvaladao@yahoo.com.br.

** Nara Galeb Porto, LL.M. International and Comparative Law (SMU); J.D. (PUC/SP, Brazil); licensed to practice law in Brazil and New York. Attorney at Andrews Kurth LLP. The author may be contacted by e-mail at naraporto@andrewskurth.com.

1. Mitsuru Misawa, Ph. D., *The Japanese Issues and Perspective on the Convergence of INTERNATIONAL ACCOUNTING STANDARDS*, 25 NW. J. INT'L L. & BUS. 711, 711 (2005). "Recently, a cry was heard for the need for an international standardization of the accounting system so that investors can understand and properly compare the performance of corporations of other countries when they seek financing overseas. As a result of these concerns, INTERNATIONAL ACCOUNTING STANDARDS are gradually taking shape." *Id.* at 711.

2. Lei No. 11.638, de 28 de dezembro de 2007, D.O.U. de 28.12.2007. (Brazil).

ration Law)³ regarding accounting and mandatory statements for companies.⁴ It also introduced changes to Brazil's accounting methodology which more closely conform to international standards.⁵ One of the most important changes is that an independent audit by an auditor registered with the Brazilian Federal Securities Exchange Commission (CVM) and publication of certain statements are mandatory requirements for "large companies," including publicly held companies (corporations) and closely held companies such as limited liability companies (this category was not subject to such requirements prior to the enactment of Federal Law No. 11,638).⁶ "Large companies" are defined as those having recorded assets for the previous financial year above 240 million Reais (roughly \$140 million) or a gross annual income of 300 Million Reais (roughly \$175 million).⁷ These measures will bring more transparency to the Brazilian securities market. Furthermore, other modifications introduced by Federal Law No. 11,638/2007 align Brazilian accounting standards more closely with international accounting standards by harmonizing them with the principles of the International Accounting Standards Board – IASB.⁸ Federal Law No. 6,604/1976, modified by Federal Law No. 11,638/2007, clearly states that regulations issued by the Brazilian Federal Securities Exchange Commission regarding the financial statements of corporations will follow international accounting standards adopted by the most important security and stock exchange markets.⁹

II. THE NEW REINSURANCE LAW IN BRAZIL

In January 2007, Complementary Law No. 126 was enacted to establish the legal framework for the Brazilian reinsurance market.¹⁰ This law is very important to the Brazilian reinsurance market because it extinguished the legal monopoly which the state-controlled Brazilian Reinsurance Institute (*Instituto de Resseguros do Brasil* - "IRB") previously had over the local reinsurance market for almost seventy years.¹¹ However, although Complementary Law No. 126 effectively ended the legal monopoly held by IRB, additional regulations needed to be issued by the Private Insurance Superintendency (*Superintendência de Seguros Privados* - "SUSEP") and the National Council for Private Insurance (*Conselho Nacional de Seguros Privados* - "CNSP") in order to allow for

3. Lei No. 6.404, de 15 de dezembro de 1976, D.O.U. de 17.12.1976. (Brazil).

4. See Lei No. 11.638, *supra* note 2.

5. See *id.*

6. See *id.*

7. See *id.*

8. See generally International Accounting Standards Board Homepage, www.iasb.org/Home.htm (last visited Aug. 7, 2008).

9. Lei. No. 6.604, *supra* note 3, at art. 177, § 5°.

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

11. *Id.* Under the new law, IRB will remain in the market as a state-owned local reinsurer and will not be privatized.

the incorporation of local reinsurance companies.¹² The principal regulation issued was the CNSP Resolution No. 168 in December 2007 (in effect as of April 2008), which regulated the activities of reinsurance and retrocession in Brazil.¹³

The resolution, as well as Complementary Law No. 126, recognized three categories of reinsurers authorized to operate in the reinsurance market: the local reinsurer, the admitted reinsurer, and the occasional reinsurer.¹⁴

The local reinsurer is a reinsurance entity headquartered in Brazil, organized in the form of a corporation (*sociedade por ações*), dedicated exclusively to the business of reinsurance and retrocession operations. The admitted reinsurer is a reinsurance entity with its head office outside of Brazil, with a representative office in Brazil, and registered with SUSEP to engage in reinsurance and retrocession operations; and the occasional reinsurer is a reinsurance entity with its head office outside of Brazil, with no representative office in Brazil, and registered with SUSEP to engage in reinsurance and retrocession operations.

The resolution further determines the conditions of access to the Brazilian market by foreign reinsurers.¹⁵ Admitted reinsurers must meet some minimum requirements to access the Brazilian market. The main conditions are: (i) to be duly incorporated under the respective laws of their place of incorporation, with authorization to underwrite local and international reinsurance in the fields that they intend to serve in Brazil, and over five years of reinsurance underwriting experience; (ii) to have a net worth of at least \$100 million; (iii) to have a minimum solvency rating; (iv) to appoint an attorney-in-fact, residing in Brazil, with full administrative and judicial powers, including powers to receive service and notifications; (iv) to have an escrow account in foreign currency with SUSEP to guarantee their operations in Brazil (in the amount of \$5 million for reinsurers that practice in all fields and \$1 million for reinsurers that practice only in the field of persons); and (v) to have a representative office in Brazil.¹⁶

12. Before the new law was enacted, IRB was also responsible for the supervision and regulation of reinsurance, co-insurance and retrocession activities in Brazil. Now this power was transferred to SUSEP and CNSP. CNSP represents a gathering of government entities and agencies, headed by the Ministry of Finance with representatives of the Brazilian Central Bank, Brazilian Securities & Exchange Commission, and the Ministries of Justice and Social Security; therefore, it is not a regulatory agency itself. SUSEP is responsible for enforcing the new reinsurance legislation. The Brazilian National Monetary Council (*Conselho Monetário Nacional* - "CMN") determines the rules that insurers and reinsurers must follow when investing their collateral and any other funds in the Brazilian market and also rules on the execution of agreements in foreign currency.

13. Resolução CNSP (SUSEP) No. 168, de 17 de dezembro de 2007, D.O.U. de 19.12.2007 (Brazil).

14. *See id.*

15. *See id.*

16. *See id.*

Occasional reinsurers must also meet some minimum requirements to access the Brazilian market. The main conditions are: (i) to be duly incorporated under the respective laws of their place of incorporation, with authorization to underwrite local and international reinsurance in the fields that they intend to serve in Brazil, and over five years of reinsurance underwriting experience; (ii) to have a net worth of at least \$150 million; (iii) to have a minimum solvency rating; and (iv) to appoint an attorney-in-fact, residing in Brazil, with full administrative and judicial powers, including powers to receive service and notifications.¹⁷ In addition, occasional reinsurers cannot be incorporated in tax haven jurisdictions, meaning those jurisdictions where there is no income tax or where income tax is imposed at a rate below 20 percent, or where the laws impose confidentiality with respect to the corporate structure and ownership of legal entities.¹⁸

With respect to local reinsurers, the resolution states that they must comply with all local laws and regulations that are applicable to Brazilian insurance companies.¹⁹ Further, the resolution favors local over admitted or occasional reinsurers by determining that Brazilian insurance companies must give local reinsurers a preferential offer for the ceding of reinsurance, of at least 60 percent of the premiums ceded until January 16, 2010, and 40 percent after January 16, 2010.²⁰ In addition, reinsurance transactions regarding life insurance and private pension plans are exclusive to local reinsurers.²¹

III. BUSINESS ENVIRONMENT IMPROVEMENT

The business environment in Brazil is considered to be a hard one.²² Thus, the government has been taking action to promote reforms in order to make the business environment more favorable. One of the recent efforts toward achieving this goal is Federal Law No. 11,598/2007.²³ This statute establishes general rules of simplification and integration of the procedures to register and formalize entrepreneurs and juridical persons and applies to the federal government, states, Federal District, and municipalities.²⁴ Law No. 11,598/2007 also created a National Network for Simplification and Formalization of Companies and Business (named REDESIM), designed to coordinate the federal government, states, Federal District, and municipalities toward a common database, which will be

17. *See id.*

18. *See* Resolução CNSP (SUSEP) No. 168, de 17 de dezembro de 2007, D.O.U. de 19.12.2007 (Brazil).

19. *See id.*

20. *See id.*

21. *See id.*

22. *See* INT'L FINANCE CORP., THE WORLD BANK, DOING BUSINESS IN BRAZIL 1-5 (2006), available at http://www.doingbusiness.org/documents/doing_business_in_brazil_07.pdf, last visited March 12, 2008.

23. Lei No. 11.598, de 03 de dezembro de 2007, D.O.U. de 04.12.2007 (Brazil).

24. *See id.*

commonly administrated and accessed.²⁵ The network, REDESIM, operates through the internet and is intended to speed business registrations and the issuances of public permits and licenses in all levels of government, and in all federal entities, thus making it easier to do business in Brazil.

Along with REDESIM, there are other ongoing projects designed to simplify and ease business transactions and the establishment of companies and business organizations. One is the Public Digital Certification which will allow public bookkeeping for commercial and tax purposes,²⁶ and the electronic invoice²⁷ (it will replace the paper invoice), which will be hosted on a common database accessible by state, Federal District, and federal governments. The other is the Synchronized National Registry (*Cadastro Sincronizado Nacional*),²⁸ which will allow simultaneous registration for municipalities, states (or Federal District), and federal purposes under a sole registry number (for tax, social security system, and other purposes). These measures will speed transactions and make all the registries cheaper and as reliable as any notarized document (they will actually be electronically notarized).

IV. OTHER ISSUES

The Federal Law No. 11,562/2008 authorized the creation of the Brazilian Company of Communication (*Empresa Brasil de Comunicação* - "EBC"), a public broadcast company, through the Executive Power of the federal government, and instituted new provisions to regulate public communication services delivered directly by the government or through companies controlled by the government.²⁹ This law prescribes principles and directions for public broadcasting, of which we highlight the following: public, private, and state broadcasting systems are complementary; public broadcasting is designed to offer a venue for debates on relevant national and international themes; and the use of public broadcasting for political ends is denied.³⁰ Federal Law No. 11,562/2008 also imposed new earmarked taxes (called Contribution to Foster Public Broadcasting) to fund the EBC.³¹

The Federal Law No. 11,516/2007 created a new federal independent agency of public law that has administrative and financial autonomy and is connected to the Environment Ministry: the *Chico Mendes Institute for the Conservation of Biodiversity* (*Instituto Chico Mendes de Conservação*

25. See *id.*

26. See generally Public Digital Certification for Public Bookkeeping Homepage, <http://www1.receita.fazenda.gov.br/Sped/> (last visited Aug. 7, 2008).

27. See generally Electronic Invoice Homepage, <http://www.nfe.fazenda.gov.br/portal/> (last visited Aug. 7, 2008).

28. See generally Synchronized National Registry Homepage, <http://www.receita.fazenda.gov.br/CadastroSincronizado/CadSincrDefault.htm> (last visited Aug. 7, 2008).

29. Lei No. 11.652, de 07 de abril de 2008, D.O.U. de 08.04.2008 (Brazil).

30. See *id.* at art. 2-3.

31. See Lei No. 11.652, *supra* note 30.

da Biodiversidade - "ICM").³² Article 1 of this law prescribes that ICM has the following duties: (i) proposal, implementation, management, protection, and inspection of conservation units established by the federal government; (ii) enforcement of policies relating to the sustainable use of natural resources and to the support of gathering activities and native populations in sustainable conservation units instituted by the federal government; (iii) support and enforcement of programs for research, protection, preservation, and conservation of biodiversity and environmental education; (iv) exercising authority over environmental policy to protect the conservation units instituted by the federal government; and (v) support and enforcement, together with other agencies and entities, of public recreational programs and eco-tourism projects in conservation areas, where such activities are allowed.³³ The duty performed in item (iv) above does not preclude the environmental policy authority of the Brazilian federal environmental agency (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis* - IBAMA).

32. Lei No. 11.516, de 28 de agosto de 2007, D.O.U. de 29.08.2007 (Brazil).

33. *See id.* at art. 1.