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## Energy Sector

### *Environmental Licensing.*

Based on the argument of “severe harm to the public order and economy”, on March 3, 2011 the Brazilian Institute of the Environment and Renewable Natural Resources (the *Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*, or “IBAMA”) has obtained from the Federal Regional High Court of the 1<sup>st</sup> Region (“TRF1”, in Portuguese) a ruling determining the suspension of the injunction that suspended the effects of the Partial Installation License issued to **Belo Monte Hydroelectric Plant**

(in the Xingu River, in the State of Pará, with the expectation of an installed capacity of 11.23 thousand MW) and respective Authorization to Forestry Suppression, in the Public Civil Action filed by the Federal Public Prosecution Office (Process No. 968-19.2011.4.01.3900/PA, pending before the 9th Federal Court of the State of Pará).

Pursuant to the ruling adopted by the President of the TRF1, Federal High Court Judge Olindo Menezes, there is no need to comply with all requirements es-

tablished in the Preliminary License for the issuance of the Partial Installation License (destined exclusively to the pioneer construction site) by IBAMA, once such agency has the authority to approve the environmental licensing of the undertaking and because it is not possible to suspend the effects of the environmental license based only on “suppositions that the requirements were not fulfilled, when the environmental agency itself, having the administrative authority pursuant to the relevant matter, represents otherwise”.



Pursuant to the President of TRF1, the maintenance of the injunction would result in **harm against the public order**, as it invades the discretionary power of the public administration to issue specific licenses. In addition, the Federal High Court Judge emphasized that IBAMA has been monitoring and demanding the compliance with the directives and requirements established for the implementation of the new phases of the undertaking. ■

## Rio+20

On March 7-8, 2011, the city of New York hosted the **second preparatory meeting** for the United Nations Conference on Sustainable Development (“Rio+20”) to be held in the city of Rio de Janeiro, on June 04-06, 2012. The meeting was attended by governmental delegates and representatives of international organizations and civil society, which agreed to seek an action-oriented outcome for the Conference.



RIO United Nations  
2012 Conference on  
Sustainable  
Development

The two main themes that will be addressed during Rio+20 will be (i) the **green economy** in the context of sustainable development and poverty eradication and (ii) the improvement of the **institutional framework** for sustainable development. The third and last preparatory meeting shall be held on May 28-30, 2012, in the city of Rio de Janeiro. ■

## Climate Change

On February 18, 2011 the Executive Board (“EB”) of the **Clean Development Mechanism** (“CDM”), which is the body subject to the Secretariat of the United Nations Framework Convention on Climate Change that is responsible for the supervision



of the CDM, has released a 2-year business plan to enlarge and enhance the CDM. The business plan is summarized in five specific objectives: (i) greater ➔

➔ efficiency in the operation of the CDM, by removing unnecessary complexities from the requirements established during the implementation cycle of the projects; (ii) to improve the regional and sub regional distribution of CDM projects and to promote capacity-building; (iii) to improve the objectivity, clearness and integrity of the CDM; (iv) to enhance the transparency of the CDM; and (v) to enhance the promotion of the benefits of the CDM.

The CDM has been created under the Kyoto Protocol (1997) with the purpose to facilitate the compliance with the mandatory greenhouse gases reduction goals that were adopted by developed countries, by means of the purchase of **carbon credits** originated from projects implemented in developing countries. ■

## Air Emissions

On February 9, 2011 the Ministry of the Environment has published the **1st National Inventory of Air Emissions Originated from Road Automobile Vehicles**, which contains the emissions from 1980 to 2009 and the projections until 2020 for **pollutants** regulated under the programs PROCONVE (Automobile Vehicles Air Pollution Control Program) and PROMOT (Motorcycles and Similar Vehicles Air Pollution Control Program).



The National Inventory will help the States in the preparation of similar inventories at regional level. Such regional inventories are required for the preparation of **Vehicle Pollution Control**

**Plans** (“PCPV”, in Portuguese), which must be approved and published by the environmental agencies of the States and of the Federal District by June 30, 2011 pursuant to Resolution No. 426/2010 of the Brazilian Council for the Environment (the *Conselho Nacional do Meio Ambiente*, or “CONAMA”).

The National Inventory shall also contribute to the definition of **new emission limits for vehicles**, to the **improvement of the quality of fuels** and to be used as subsidies to **energy efficiency** programs. The document can be viewed through the following website: <http://bit.ly/hauEXC>. ■

## Solid Waste



**Clarification workshop.** On February 23, 2011 the Federation of Industries of the State of São Paulo (the *Federação das Indústrias do Estado de São Paulo*, or “FIESP”) hosted a large event about the Brazilian Policy on Solid Waste (Federal Law No. 12,305/2010), with the purpose to promote the debate and access to clarifications to all industrial segments, governmental and private entities, specially in connection with aspects of Federal Decree No. 7,404/2010 (regulation of the Federal Law). The topics that have received the greatest focus were the implementation of the **reversal logistics**, its formal enforceability mechanisms and instruments (mainly the **sectoral agreements**) and the reach of the **post-consumption liability**. The support materials used in the event can be viewed through the following website: <http://bit.ly/i6lC9N>. ■

## Environmental Services

**State of São Paulo.** State Law No. 11,160/2002, which created the State Fund for Pollution Prevention and Control (“FECOP”, in Portuguese), has been amended by State Law No. 14,350, of February 21, 2011. The amendments are related to the origin of **FECOP’s proceeds**, which are now also comprised by: (i) fines imposed against violators of the environmental legislation that are converted into environmental quality **preservation, improvement and recovery services** performed by means of bearing the costs of environmental preservation, improvement and recovery actions and projects; (ii) donations performed with the specific purpose to pay for environmental services in the realm of projects undertaken by the public power; and (iii) payment for **carbon fixation and sequestration** through projects performed by the public power in the realm of the State Program of Reminiscent Forests. ■

## Agribusiness

**State of São Paulo.** The website for the electronic **mandatory registration of poultry and suineculture** activities with the environmental agency of the State of São Paulo has become available as a precondition for requesting the respective environmental licensing of such activities, pursuant to Resolution No. 26 of March 31, 2010 of the State Secretariat of the Environment (the *Secretaria de Estado do Meio Ambiente*, or “SMA”), as amended. The registration must be performed through the following websites: <http://bit.ly/fnacbQ> (suineculture) and <http://bit.ly/dKhPUk> (poultry). Among other data, the following information is required for the registration: the water consumption and its origin, the storage of manure and its final destination, the monthly production etc. It is, yet, expected that specific criteria for the environmental licensing of both activities will be approved in this semester. ■

## Specially Protected Areas

**Forestry Code.** On March 2, 2011 the President of the Chamber of Deputies has announced the composition of the **Negotiation Chamber for Amendments to the Forestry Code** (Bill No. 1,876/1999). The mission of the Negotiation Chamber, with a non-deliberation role, is to revise strategic aspects of the Bill, among which are the limits of the legal forestry reserve and of permanent preservation areas

and the requirements for the concession of amnesty to deforestations that were already performed. The Negotiation Chamber will be comprised by representatives from the rural sector, environmentalists, leaders of the government and opposition, under the coordination of Deputy Eduardo Gomes. The expectation is that the Bill will be voted by the plenary of the Chamber of

Deputies in the month of April/2011. ■



## Water Resources

On February 18, 2011 the Brazilian Water Agency (the *Agência Nacional de Águas*, or “ANA”) has published its Resolution No. 33, which addresses the administrative procedures for the imposition of penalties to providers of public services under concession regime of **irrigation** and **bulk water piping** in connection with water bodies of federal domain, when such providers violate the applicable legislation. Pursuant to the Resolution, the control administrative procedure will start with the issuance of a Notification, which will identify the infractions, the facts and the violators. After a term for preliminary manifestation, the Notification may be converted into an Infraction Assessment Notice, which will start the administrative procedure, in which the right of full defence, the right to present evidences and the due process of law must be observed. ■

## Permanent preservation areas.

CONAMA Resolution No. 429 has been published on March 2, 2011, addressing the recovery methodology for permanent preservation areas (“APP”, in Portuguese).

Among the most relevant aspects of the Resolution is the waiver for obtaining an authorization from the environmental agency to



the voluntary recovery with native species. Pursuant to the Resolution, the admitted APP recovery methods are the following: (i) conducting **natural regeneration** of native species; (ii) **planting** native species; and (iii) **consortium** between planting native species with conducting natural regeneration with the existing ones. In addition, technical requirements and procedures have been established aim-

ing the assurance of flora regeneration and, as a consequence, of local fauna. ■

**Amazon region.** Until March 28, 2011 the Phase II project of the Involuntary Allocation

Framework and Process Matrix of the **Amazon Protected Areas Program** (“ARPA”, in Portuguese) will be under public consultation. ARPA

is a large program that was structured aiming the biodiversity conservation of the Amazon biome and maintenance of the environmental services of the region, which counts on the participation of public and private entities, under the coordination of the Ministry of the Environment. The document is available at the following website: <http://bit.ly/gDckPg>. ■

## Cultural Heritage

**Federal District.** District Law No. 4,550 has been published on March 4, 2011, addressing the preservation of the **historical and cultural heritage of African or Afro-Brazilian** origin in the Federal District.

Pursuant to the Law, all manifestation, production or artefact having material or immaterial nature that has a reference with the identity, action, way of life or

memory of the people with African or Afro-Brazilian origin.

The instruments established in the Law for the preservation of such heritage include, among others: (i) the registration; (ii) the inventory, catalogue, recording and restoration; (iii) the protection and recovery of documents; and (iv) preventive actions against damages. ■



## Mining and Environment



On February 9, 2011 the Ministry of Mines and Energy has published its Regulation No. 121, which approves the Brazilian Mining Plan 2030.

The Plan analyse in detail the context of the mining sector, establishing general directives for the areas of geology, mineral resources, mining and mineral transformation (including metallurgy) and presents prognosis and strategies for the future.

Chapter 2 of the Plan addresses transversal themes that directly affect the **sustainability of the mining sector**, such as occupational health and safety, mining

in legally restricted areas, mining in the Amazon region, climate change, recycling and decommissioning of mines. ■



## Environmental Governance

On April 5, 2011, the consulting firm Finanças Sustentáveis will promote the course “**Legal Aspects of Sustainability in the Environmental Field**”, which will feature special participation, as invited speakers, of Fernando Tabet and Lucas Baruzzi, from the firm Tabet Advogados. The course aims to provide the participants with an overview, in the environmental field, of the inclusion of the concept of sustainability in the corporate routine, from the analysis of the basic premises (legislation) and reflexes (liabilities) of sustainability management in the legal sphere. More information and registration form can be obtained through the following webpage: [www.financassustentaveis.com.br](http://www.financassustentaveis.com.br). ■

## Global Links



**Bolivia.** One can say that Bolivia is living a period of reconfiguration of the State, whereas during the last years the country has experienced a series of transformations, including the “**New Political Constitution of the State**”, which entered into force on February 7, 2009 as the first one in Bolivian history to contemplate a chapter on the Environment.

Although Bolivia already counted on a Law on the Environment dated year 1992, in addition to environmental regulations and a series of associated provisions adopted through decrees and resolutions, there was a lack of an Environmental Regime in its Constitution, unlike other Latin-American countries.

In former decades, the Bolivian State did not have its own environmental policies and therefore it used to adopted directives

emerging from international policies. Thus, the incorporation of the Environmental Regime in the New Political Constitution of the State means a great advance.

Among its relevant aspects, such Constitution includes (i) the idea of **engaged management and social control** in connection with environmental management, respecting uses and traditions of indigenous people, which have the right to be consulted and informed about decisions ➔

➡ that may affect the quality of the environment; (ii) the **lack of statutes of limitation for environmental violations**; and (iii) the creation of **agri-environmental courts** to the knowledge and resolution of controversies related to natural resources.

Bolivia is still at a stage of implementing its New Constitution and there is the expectation that the State will fulfil its job to protect natural resources, promote its sustainable use and the development of the economy of the country and its productive processes, as well as to guarantee the fair distribution of the benefits derived from the exploitation, utilization and processing of such resources among

the population and particularly among indigenous people, as required pursuant to the Constitution. ■

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