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Environmental Damage

Lender liability. On March 3rd, 2011 the Federal Public Prosecution Office (“MPF”, in Portuguese) filed an **environmental civil public action** before the Federal Environmental and Rural Federal Court in Belém, State of Pará, against Banco do Brasil S.A. (“BB”) and the Brazilian Institute of Colonization and Rural Reform (“INCRA”, in Portuguese). The lawsuit has been filed due to the concession of financial credit to farms having alleged **environmental, real estate and labour violations** in the State of Pará and because of failures in the control and registration of rural real estate.

Pursuant to the MPF, BB has not complied with several regulations and, in particular, the obligations established under Resolution No. 3,545/2008 of the Brazilian Monetary Council (the *Conselho Monetário Nacional*, or “CMN”), which imposes against financial entities the duty to verify, based on documental evidence, the environmental compliance of the real estate where the project to be financed will be established, as a

requirement to the concession of rural credit in the municipalities that comprise the Amazon biome. The MPF charges BB for having indirectly contributed to illegal deforestation in the region with the concession of such loans. As far as INCRA is concerned, the MPF understands that there has been inefficiency in the issuance of the Rural Real Estate Registration Certification (“CCIR”, in Portuguese) and inconsistencies in the information released to MPF during the course of the civil inquiry that resulted in the filing of the lawsuit.

In its request, based on the *polluter-pays principle* (in this case, *indirect polluter*) and on the **strict civil liability** regime, the MPF asks for the condemnation of BB to pay an **indemnity for material and moral environmental damage** to be calculated by means of a judicial assessment considering the extension of the area that has been deforested or that has its natural regeneration been jeopardized after the concession of the loan. ■



Solid Waste



National Policy.

On March 17, 2011 the Interministerial Committee of the Brazilian Solid Waste Policy has been formally installed. The Committee has been created pursuant to Federal Decree No. 7,404/2010 with the duty to elaborate and release, under the coordination of the Ministry of the Environment, by June 21, 2011, the first version of the **Solid Waste National Plan**. The preliminary proposal shall be made available for public consultation for a period of 40 days and its elaboration will count on the assistance of technicians from the Institute of Applied Economic Research (the *Instituto de Pesquisa Econômica Aplicada*, or “IPEA”), which will perform a diagnose of the current situation of solid wastes in Brazil from a sectoral perspective. ■

Reverse logistics. On April 11, 2011 the Ministry of the Environ-

ment has published its Rule No. 113/2011, which approves the **Internal Regulation of the Steering Committee** for the Implementation of Reverse Logistics Systems. The Steering Committee was created pursuant to Federal Decree No. 7,404/2010 with the purpose to promote the implementation of reverse logistics systems in Brazil, as required under Federal Law No. 12,305/2010 (Brazilian Policy on Solid Waste). The duties of the Steering Committee include, among others: (i) to establish the **strategic guidance** for implementing reverse logistics systems; (ii) to set priorities and to approve the schedule for the release of announcements of the call for **proposals of sectoral agreement** for the establishment of reverse logistics system at the federal level; (iii) to establish a schedule for the implementation of reverse logistics systems; and (iv) to define the **methodological guidelines** for assessing the social and economic

impacts of reverse logistics systems. ■

State of Minas Gerais. The State Foundation of the Environment of Minas Gerais (the *Fundação Estadual do Meio Ambiente*, or “FEAM”) released for **public consultation** the **State Plan for Waste Selective Collection** (“PECS”, in Portuguese). The Plan defines guidelines, instruments and criteria to be observed in waste management, aiming the promotion of the expansion of the coverage of selective collection, the reduction of regional inequalities and the strengthening of instruments established under state legislation in connection with recycling and urban solid waste. The PECS can be viewed through the following link: <http://ow.ly/4AvmC>. Suggestions and comments can be sent to FEAM by April 30, 2011, to the following e-mail address: pecs@meioambiente.mg.gov.br. ■

Oil, Gas and Biofuels

On March 22, 2011 the General Coordination of Oil and Gas (“CGPEG”, in Portuguese) of the Brazilian Institute of the Environment and Renewable Natural Resources (the *Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*, or “IBAMA”) published the Technical Note No. 01, which addresses impacts mitigation measures to be



established as requirements for the environmental licensing of oil and gas **offshore undertakings for exploitation and production**, including seismic survey, drilling, production and transportation. The purpose of such measures, within what is called Pollution Control Project (“PCP”, in Portuguese) is to avoid on-board generation of waste, its land dis-

posal, the release of waste into the sea and atmospheric emissions.

Nevertheless, the Technical Note clarifies that, depending on the specific characteristics of the undertaking, as well as on the area where it is intended to be installed and/or to operate, other requirements may be imposed for the environmental licensing, in addition to the PCP. ■

Energy Sector



Environmental licensing. The Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) has notified the Brazilian government requesting the immediate suspension of the environmental licensing of **Belo Monte Hydroelectric Plant**. The request has been motivated with the necessity of alleged adoption of urgent measures to protect life and integrity of **indigenous communities** at the Xingu River Basin, in the State of Pará, which will supposedly be affected with the project, including the performance of consultation to such communities, after having them been granted the access to a Social and Environmental Impact Assessment about the project, duly translated to the respective indigenous languages.

In response, the Ministry of Foreign Affairs (“MRE”, in Portu-

guese) alleges that the Commission could only act on a subsidiary and complementary way, which means that such action would require the occurrence of a failure in the protection of human rights under internal jurisdictional mechanisms. The Ministry also emphasizes that the Brazilian Congress authorized the establishment of the undertaking pursuant to Legislative Decree No. 788/2005, imposing as a requirement the performance of studies on technical, economic and environmental viability, with the due consultation to indigenous communities located in the area of influence of the undertaking. Finally, the MRE pointed out that the applicable laws are being observed with “absolute strictness”, that “the Brazilian government is acting effectively and diligently to respond to the existing demands” and that it considers the IACHR’s requests to be “precipitate and unjustifiable”. ■

Climate Change

On March 28, 2011 Resolution No. 27 of the Federal Management Board of the Diffused Rights Defense Fund (“CFDD”, in Portuguese) has been published. The Resolution establishes requirements for **special projects** related to climate change, which goals include the reduction of greenhouse gases emissions, the promotion of adaptation and mitigation of the effects of global warming, in order to allow such projects to become eligible for the **financial support** from the **Diffused Rights Defense Fund** (“FDD”, in Portuguese). Pursuant to the Resolution, the projects must emphasize the development of socio-environmental diagnoses and strategies for adaptation, mitigation, vulnerability control and environmental education. The proceeds of the FDD shall also be granted to those projects related to public policies that aim the reduction of deforestation, family farming with low carbon emissions, environmental regularization of rural properties, solid waste, CDM (Clean Development Mechanism) and REDD (Reducing Emissions from Deforestation and Forest Degradation). ■



Payment for Environmental Services

State of Amazonas. On March 21, 2011 the Secretariat of Environment and Sustainable Development (“SDS”, in Portuguese) of the State of Amazonas released the draft Bill on the **State Policy for Environmental Services**. The general purposes of such Policy include the valuing of the environmental assets existing in the territory of the State of Amazonas, such as the carbon stored by the forest, the biodiversity, the water resources and the scenic beauties.

Several programs are contemplated for the implementation of the Policy, including, among others, the Carbon Program, which is oriented to the emissions reduction and sequestration of greenhouse gases (“GHG”) originated from deforestation and degradation, to the sustainable forestry management and to the conservation, maintenance and enlargement of carbon stocks. The Carbon Program has two sub-programs: the **REDD+**, which aims to promote a new model of ➡

Water Resources

Local and regional sustainable development based on a low carbon intensity, with the creation of economic and financial instruments for such purpose, and the **World Cup 2014**, which encompasses the compensation of GHG emissions generated from the activities of the World Cup in the city of Manaus. The draft Bill will be available for **public consultation** in SDS's webpage (www.ceclima.sds.am.gov.br) until June 22, 2011. Suggestions can be sent to SDS through a proper form that can be accessed in the same webpage. ■



Effluents. At its 101st Ordinary Meeting, held on March 30-31, 2011 the Brazilian Council for the Environment (the *Conselho Nacional do Meio Ambiente*, or "CONAMA") approved a Resolution that establishes conditions, parameters and standards for the discharge of effluents, supplementing and amending CONAMA Resolution No. 357/2005. Pursuant to the new Resolution, the effluents originated from any pollution source can only be released directly into water-bodies after appropriate treatment and provided that the conditions, standards and requirements set in the Resolution and other applicable regulations have been fulfilled. According to the Resolution, the competent environmental authority may exceptionally and based on a technical analysis, authorize the release of effluent in disagreement with the conditions and standards set in the Resolution. The Resolution also establishes that the environmental agency may indicate the **maximum pollutant level** for the release of certain substances that may be present or generated in production processes. Moreover, the Resolution determines that enterprises and other polluting activities that, on the date of publication of the Resolution, have already obtained the required environmental license, may, at the discretion of the competent environmental agency, have up to

three years to perform the required adjustments to the conditions and new or more stringent standards established by the Resolution. The Resolution will become effective on the date of its publication. ■

Reuse of water. On March 16, 2011 the National Council for Water Resources – CNRH has published its Resolution No. 121, establishing guidelines and criteria for performing the reuse of non-potable water in **agriculture and forestry activities**. Pursuant to the Resolution, the characterization and periodic monitoring of water reuse shall meet the criteria established by environmental agencies. However, the Resolution recommends certain criteria to be used, such as those related to: (i) the nature of the reused water; (ii) the type of treatment process used; (iii) the size of installations and treated water flow; (iv) the variability of inputs; (v) the changes in the flows involved; and (vi) the type of agriculture and forestry activity. Moreover, the Resolution establishes that the producer of reused water is responsible for the information contained in its characterization and monitoring, whereas the utilization of reused water may be subject to other **specific requirements** imposed by environmental agencies. ■

Environmental Taxation

Municipality of Rio de Janeiro, RJ. On March 17, 2011 the Secretariat of Environment of the Municipality of Rio de Janeiro has published its Resolution No. 487/2011, which addresses the destination of a portion of proceeds originated from the **tax reduction** established pursuant to Municipal Laws Nos. 4,372/2006 and 5,133/2009. Such tax reduction has been established to benefit the **steel complex** of the Western Zone of the city of Rio de Janeiro and is subject, among other requirements, to the mitigation of greenhouse gases emissions through environmental recovery

projects, including the reforestation of coastal zones and mangroves, the revegetation of riparian forests and the dredging and cleanup of water courses and bays, as well as the acquisition of land for the establishment of conservation areas, among others. The Resolution, specifically, provides that the reforestation projects must comply with **technical specifications** to be established by a regulation that shall be published by the Coordination of Environmental Recovery (“CRA”, in Portuguese) of the Municipal Secretariat of Environment. ■

Fauna Protection

On April 4, 2011 the Brazilian Institute of the Environment and Renewable Natural Resources (“IBAMA”, in Portuguese) has published its Normative Instruction No. 3, which addresses the **mandatory registration of amateur or commercial raisers of exotic birds** for contemplation, study or conservation purposes. The registration must be performed until December 31, 2011 by completing the electronic form available in IBAMA’s online services webpage (www.ibama.gov.br). ■




Environmental Education

State of Ceará. State Law No. 14,892 has been published on April 5, 2011, establishing the **State Policy on Environmental Education** in the State of Ceará. The purpose of such Law is to develop a critical consciousness of the population about the importance of environmental sustainability, through a continuous education process. Therefore, the Law establishes environmental

education guidelines to public and private formal and non-formal education. The coordination of the Policy will be subject to the Management Body, comprised by the Environmental Policies and Management Council (“CONPAM”, in Portuguese) and by the State Secretariat of Education (“SEDUC”, in Portuguese). ■

Global Links

 **Korea.** The Ministry of Environment (“MOE”) officially announced on February 25, 2011 the draft Act on Registration, Evaluation, Authorization and Restriction of Chemical Substances

(the “Draft Act on Korean REACH”, or “Draft Act”) as its Public Notice 2011-74. This Draft Act is expected to pass through the National Assembly some time during 2011. Specific rules and regulations implementing the **Korean**

REACH are currently being drafted and, following a transitional period, the registration requirements will apply to most existing chemicals by steps, not just to “new chemicals” as is currently required. ➡

➔ Since the Toxic Chemicals Control Law (“TCCL”) entered into force in 1991, **chemical substances** in South Korea have been regulated under the TCCL.

Because the TCCL only requires the registration of what are considered new chemicals, it has been criticized for its failure to make available information on the majority of existing chemicals that were introduced in the Korean market prior to 1991. To address this need, the MOE plans to adopt an advanced system of chemicals management that regulates most chemicals available in the domestic market including existing chemical substances, subject to a threshold. The new system, which requires the registration of information relating to chemicals and an assessment of their hazard and risks, encompasses all areas of **risk management** from the production or importation to the distribution and use of chemicals in the market.

The Korean REACH is expected to apply to **chemicals manufactured or imported** in quantities of 0.5 metric ton or more per year, as designated by the MOE. The MOE believes the threshold of 0.5 ton will bring under regulation approximately 80% of the

chemical substances currently circulated in the market. It also proposes the classification of **substances of very high concern**, such as carcinogens and mutagens, as a restricted or prohibited substance, the use of which for certain purposes will be restricted or prohibited based on information available on their **risk posed to health or the environment**. Further, the documents required for registration under the Korean REACH will be much more extensive than those required under the current system, and the penalties for violation more severe.

Much like the EU REACH that entered into force in 2007, the adoption of the Korean REACH will mean a fundamental change to the chemicals regulation in Korea. Companies engaged in the business of manufacturing, importing, or handling chemicals are advised to pay close attention to this new bill and prepare in advance for the upcoming change to ensure a smooth transition into the Korean REACH.

In relation to the details of this Draft Act, public comments are currently being solicited until April 26, 2011. ■

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