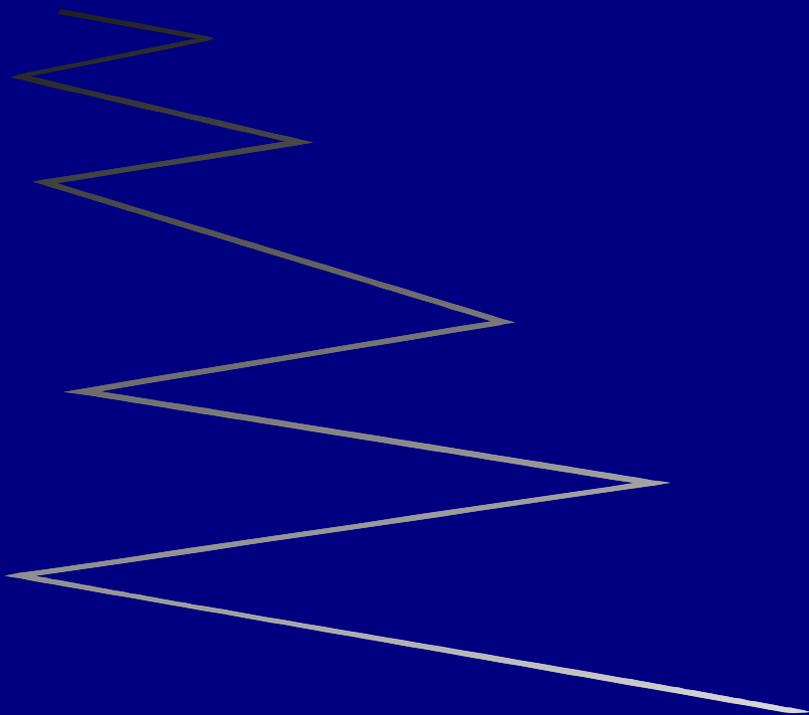


Legal Guide for the Foreign Investor in Pernambuco



CESA | CENTRO DE ESTUDOS DAS
SOCIEDADES DE ADVOGADOS
Seccional Pernambuco

GOVERNO DO ESTADO
DE PERNAMBUCO

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Dados Internacionais de Catalogação na Publicação
Biblioteca da Imprensa Oficial do Estado de Pernambuco.

Guia Legal para o Investidor Estrangeiro em Pernambuco – Legal Guide for the Foreign Investor in Pernambuco. – Recife: Governo do Estado de Pernambuco Recife: CESA – Centro de Estudos das Sociedades de Advogados, 2009.

Textos em português e inglês publicados juntos em sentido inverso.

Notas de rodapé.

Text in English and Portuguese on opposite pages.

1. Investimentos – Pernambuco – Manuais e guias 2. Investimentos estrangeiros – Lei e legislação – Pernambuco 3. Legislação comercial – Pernambuco I. Título. II. Título: Legal guide for the foreign investor in Pernambuco.

Índice para catálogo sistemático:
Investimentos: Pernambuco

GOVERNO DO ESTADO
DE PERNAMBUCO
Palácio Campo das Princesas
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Santo Antônio
CEP 50010-928 | Recife | PE
www.pe.gov.br

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2615 - Salas 504 e 505
Boa Vista | CEP 50050-290
Recife | PE
www.cesa.org.br

Impressão:
GCL Gráfica
e Editora Ltda.
Av. Norte, 1302
Santo Amaro
CEP 50100-000 | Recife PE
Fone 55 81 3423-8500
Fax 55 81 3423-8585

Revisão:
CONSULTEXTO
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Fax 55 81 3442-1444
www.consultexto.com.br

Projeto Gráfico:
GRAFITE
Programação Visual e
Desenho Industrial Ltda.
Rua Tomazina, 57
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CEP 50050-000 | Recife | PE
Fone/Fax 55 81 3224-4666

Impresso no Brasil | 2009.
Foi feito o depósito legal.

INTRODUCTION TO THE LEGAL GUIDE

It is with great pleasure, after the successful Legal Guide for the Foreign Investor in Brazil, drafted by CESA – Law Firms Study Center, with the incentive of the Federal Government, by means of the Ministry of Foreign Affairs, that the regional department of CESA in Pernambuco and the Government of the State of Pernambuco, by means of the Economic Development Secretariat, presents the Legal Guide for the Foreign Investor in Pernambuco.

The purpose of this Guide is to make the foreign investor familiar with the state laws of Pernambuco and complement such information with federal laws and the Brazilian legal system contained in the Legal Guide for the Foreign Investor in Brazil, which has been issued since 1994 and is available in the CESA website (www.cesa.org.br/publicacoes_guia.asp).

CESA-PE organized the texts written by the law firms and expects to contribute for potential investors to become interested in making businesses and investments in our State, and these will serve as an instrument to promote in Brazil and abroad the advantages of investing in Pernambuco and cooperate with the development of our region.

Recife, March 2009.

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PART I

PRESENTATION OF THE STATE OF PERNAMBUCO

Pernambuco has good reasons to become the new business hub of investors willing to increase their global domains. The State has been considered one of the best destinations to start new businesses and further expand existing equipment.

The differentiated geographic position, for instance, plays in its favor and enables air, land and sea connections with many different regions of Brazil and the world, in addition to the variety of gas-duct and telecommunication networks. The territory extends from seashore to backland, thus amounting to 98.3 thousand km², which is larger than countries as Portugal, Austria, Hungary, Czech Republic, Denmark and Holland. Recife, the capital city, has a privileged geographic location in the Northeastern Region, because it reaches within a 800 km radius other six capital cities (Fortaleza, in the State of Ceará; Natal, in the State of Rio Grande do Norte; João Pessoa, in the State of Paraíba; Maceió, in the State of Alagoas; Aracaju, in the State of Sergipe; and Salvador, in the State of Bahia), seven international airports, eight international ports, one river port, which together are able to reach 36 million people (90% of the Northeastern Region's Gross Domestic Product – GDP).

Because of its territory's location (Central Western portion of the Northeastern Region), Pernambuco works as a hub for North America, Europe, Africa and Asia. In addition, the outflow of the industrial and agricultural production seems promising if one elects to supply the domestic market, because Pernambuco is the biggest logistic center of the Northern/Northeastern regions. Such status helps the State to have companies install their distribution centers and industrial plants and be closer to other northeastern capital cities, and even other countries, in particular from the African and European continents, all from a central point.

Production may be distributed, for instance, by SUAPE's Port

Industrial Complex, which is Brazil's best government port and is able to offer all conditions required to install big-sized undertakings and connect to additional 160 other ports, thus enabling it to become the main hub of the South Atlantic.

Other options are, depending on the type of product, the Recife International Airport (with the longest runway in the Northeast, it supports big-sized aircrafts from all South America, Central America, Africa, and to parts of Europe, United States and Canada) and further the Airport of Petrolina (which supports non-stop flights to Miami, New York, Paris and London, thus benefiting the fruit-exporting industry developed in Vale do São Francisco, including mango and grape planting).

Road transportation is also a feasible option. The State has duplicated roads, such as BR232 and BR101, which cross the entire State to the East – West and North – South, respectively. Pernambuco is among the eight Brazilian states with the best transportation infrastructure and Brazil's best road system, approximately 42 thousand kilometers long.

The local economy is based both on more traditional industries, such as agribusiness, and modern industries, such as, for instance, information technology, tourism, and health and education services. Regarding its economic performance, Pernambuco is the tenth biggest Brazilian economy, as published by the Brazilian Institute of Geography and Statistics (IBGE). Its wealth amounts approximately to R\$ 55.5 million (market price GDP), and R\$ 6.5 thousand, if the GDP per capita is considered (last data available refer to 2006).

The State is an education center with five universities (Federal University of Pernambuco, Federal Rural University of Pernambuco, University of Vale do São Francisco, State University of Pernambuco and Catholic University) and several other colleges, amounting to 93 institutions, many professionalizing learning entities and research institutions. Pernambuco has given special attention to the need of constantly investing in training, perfecting and qualification of its

workforce. The Metropolitan Region of Recife, for instance, concentrates countless qualification and research centers, with the highest absolute number of researchers in the Northeast and university-level education level above the Northeastern average.

The State is going through a unique time in its modern history where many important public and private investments are being directed to Pernambuco, which indicates more business opportunities and excellent expectation of market growth. All economic activity segments are becoming dynamic because of the increased income brought by new undertakings currently developed, such as the: Canal do Sertão (backland canal); Estaleiro Atlântico Sul (South Atlantic shipyard); Ferrovia Transnordestina (railroad across the Northeast); Pólo Petroquímico (petrochemical center); Pólo de Preformas Pet (PET preform center); Refinaria Abreu e Lima (Abreu e Lima refinery) and Pólo Farmacoquímico (pharmaceutical and chemical center).

Another reason for the success and excellent socioeconomic time that Pernambuco is going through lies in the fact that the state government is proactive. The government invests with determination, accuracy and full commitment in prospecting new businesses for the State both within and out of Brazil, by means of missions and encouraging manpower qualification; export infrastructure and platform, among other actions.

The work involves all government levels and is being built to develop citizenship and equal opportunities, based on regional balance and generation of knowledge and environmental responsibility. The government is also focused on the universal and modern provision of goods and infrastructure services by meeting the citizens' demands, all in accordance with the tax-balance principles.

Besides all these attractions, whoever chooses to live in Pernambuco also finds unique quality of life, leisure options and culture. The seashore of Pernambuco, for instance, has exciting beaches with good installed infrastructure, resorts and quality services, and even little explored places that seem like real refuges.

The miscegenation of the peoples – the State has been influenced by Portuguese and Dutch colonization, and the participation of Jews and Europeans, African slaves and native Indians – left craftsmanship, food and music as its heritage. Pernambuco also offers excellent infrastructure for high-level living, medical assistance and teaching institutions for those who choose the place as a new cycle of their professional and personal lives.

Some pieces of information:

- Area: 98,938 km²
- Capital City: Recife (1.5 million inhabitants)
- Population: 8.48 million inhabitants (76.2% urban and 23.8% rural)
- Geographic Location: far east of the Northeastern Region of Brazil, between parallels 8 and 9
- Geography: seashore plains, central plateau, depressions in the West and East
- Mesoregions: Metropolitan Region of Recife, Zona da Mata (forest zone), Agreste (arid zone) and Sertão (backland)
- Weather: Atlantic Tropical (Seashore), semi-arid (Agreste and Sertão).
- Main hydrographic basins: São Francisco, Capibaribe, Ipojuca, Una, Pajeú and Jaboatão
- Specific vegetation: mangrove (seashore), rainforest (Zona da Mata), caatinga (Agreste and Sertão)
- Number of municipalities: 185

EDUARDO HENRIQUE ACCIOLY CAMPOS

Governor of the State of Pernambuco

FERNANDO BEZERRA COELHO

Secretary of Economic Development

PART II

INSTITUTIONAL ORGANIZATION OF THE STATE OF PERNAMBUCO

1 INTRODUCTION AND STATE CONSTITUTION

The Federative Republic of Brazil includes the Federal Government, States, Municipalities and the Federal District. The Federal Government is the federative unit itself, divided into states, subdivided into municipalities. The Federal District is a special entity that accrues the roles intended for states and municipalities and it is not subdivided.

Although there is certain overlapping of the Federal Government regarding the States, the Federal District and the Municipalities, and those surrounding the latter, the Brazilian federative system grants financial, administrative and political autonomy to all of its entities. By defining and transferring government assets and revenues, as well as authority to carry out any concrete acts and even enact laws, including State Constitutions and Organic Laws of the Municipalities and of the Federal District, the Federal Constitution of Brazil ensures to each one of them full self-organization, self-government, self-administration and self-legislation capacity.

Therefore, Pernambuco and its municipalities are holders of their own assets, have their revenues to complete their constitutional missions and exercise their legislative and material authorities by acting independently to the extent permitted by the Federal Constitution.

As set forth in the Federal Constitution, the Constitution of the State of Pernambuco structures the state according to the Legislative, Judiciary and Executive branches, which are harmonic and independent regarding themselves. Municipalities, on their turn, have their Executive and Legislative branches, the structures of which are also contemplated in their Organic Laws.

Besides such branches, some institutions have huge importance in the Brazilian constitutional order, in particular the Department of Justice, an independent body in charge of defending the legal order, the democratic regime and unavailable social and individual interests. There are the Federal and the State Departments of Justice, with defined authority and duties. Within each of them, the attorneys organize themselves according to their specialization, such as, for instance, labor district attorneys, who, in general, care for compliance with labor laws. In Brazil, district attorneys are not part of the Judiciary, and they have absolute independency not only regarding the Judiciary, but also regarding any other Branch. The Department of Justice at all levels (federal, labor or state) is provided with modern legal instruments that allow for effective acting in those areas, such as, for instance, Conduct Adjustment Commitments, by means of which individuals or government-owned entities undertake to take certain encouraged actions or not take certain other prohibited actions, or even specific actions, such as the public civil action.

In this summary, specific aspects of these general and specific duties shall be presented in terms that may lead the foreign investor, under a legal point of view, to understand the institutional organization of and within the State of Pernambuco.

2 THE JUDICIARY AND DEPARTMENT OF JUSTICE

The Brazilian legal system is based on codes. Court decisions are based on laws enacted by the Federal Government, States, Municipalities and the Federal District, in accordance with their authority levels. In case there is no provision of law applicable to the conflict, the judge shall decide based on analogy and general principles. Case law has no force of law in Brazil, but it is important assistance for the judges to make their decisions.

Below, the organization and institutional commitment of the Judiciary exercised in Pernambuco, except those relating to special, election and military justices, which, although are very important in their fields, have no influence for the interest of the investor.

2.1 Federal Courts

Within the structure of the Federal Government, with autonomy, there is the Federal Justice, which acts in the entire Brazilian territory, including Pernambuco, and its duties are to file proceedings and judge:

I – cases in which the Federal Government, an autarchic entity, or a federal government-owned company is interested to act as plaintiff, defendant, assistant or opponent, except for those related to bankruptcy, labor accidents and those subject to the Electoral Judiciary and Labor Courts;

II – cases involving a foreign State or international entity and a Municipality or a person domiciled or residing in Brazil;

III – cases based on a treaty or agreement of the Federal Government with a foreign State or international entity;

IV – political crimes and infringements against goods, services or interests of the Federal Government or its autarchic entities or government-owned companies, except breaches and the authority of the Military Courts and the Electoral Judiciary;

V – crimes set forth in treaties or international conventions, when the execution is commenced in Brazil, the result has or should have occurred abroad, or reciprocally;

V-A – cases related to human rights, as referred to in § 5º hereof;

VI – crimes against the labor organization, and, in the cases set forth in the law, against the financial system or the economic and financial order;

VII – habeas-corpus in any criminal matters under its authority or whenever the constraint arises from an authority the acts of which are not directly subject to another jurisdiction;

VIII – injunctions and habeas-data against acts of a federal authority, except for cases of competence of federal courts;

IX – crimes committed on board of vessels or aircrafts, except the competence of the Military Justice;

X – crimes of irregular entrance or stay of a foreigner, execution of letter rogatory after the exequatur, and foreign award after approval, any cases relating to nationality, including the respective option and naturalization;

XI – disputes on Indian rights.

The second level of the Federal Justice is comprised by Federal Regional Courts. The Federal Regional Court (TRF) of the 5th Region, which serves as appellate court for cases of the Federal Justice judged in Pernambuco and neighboring states: Sergipe, Alagoas, Paraíba, Rio Grande do Norte and Ceará, is located in Pernambuco.

The Federal Justice works along with Department of Justice of the Republic at first and second levels. In sum, it is possible to affirm that such district attorneys work as inspectors of the law and social defenders in subjects like environment, historic and artistic assets, etc.

2.2 Federal Labor Courts

The Federal Labor Courts, with specific authority to file proceedings and judge disputes relating to labor relationships are also part of the Federal Government and act within Pernambuco, being present in the entire State.

The second level of such courts is a Labor Court. There is one in Pernambuco.

The Labor Department of Justice, at first and second levels, formed by Labor District Attorneys, works along with such specialized Federal Justice, and it has authority to:

I – take the actions it is entitled to under the Federal Constitution and labor laws;

II – state in any phases of labor proceedings by accepting the judge's decision or by its own initiative, whenever it thinks there is a public interest that justifies any interventions;

III – commence any public civil actions within Labor Courts to defend collective interests, whenever social rights ensured by the constitution are breached;

IV – file any applicable actions in order to declare the nullity of clauses of contracts or collective bargaining agreements breaching the individual or collective freedom or unavailable individual rights of workers;

V – file any actions required to defend the rights and interests of underage, disabled and Indian individuals by virtue of labor relationships;

VI – appeal any decisions by Labor Courts whenever it deems fit, both in proceedings in which it appears as party and those it appears as inspector of the law, and further request the review of the Provisions of the Case Law Rules of the Superior Labor Court;

VII – attend any hearings at Labor Courts and make oral statements on any matters being discussed whenever it deems fit, being entitled to consult ongoing

proceedings and request requirements and diligences it may deem fit;

VIII – file any proceedings in case of strikes, when the defense of the legal order or public interests so require;

IX – promote or participate in the directions and conciliations of collective bargaining agreements arising from the cessation of services of any nature, officially appearing in proceedings and stating its agreement or disagreement in any arrangements executed before approval, being further entitled to appeal in cases of breach of the law and the Federal Constitution;

X – make requests for injunction, whenever it is the authority of Labor Courts;

XI – act as arbitrator if so required by the parties in collective bargaining agreements of authority of Labor Courts;

XII – require the diligences it deems fit for the correct conduct of proceedings and best solution of labor complaints;

XIII – mandatorily intervene in all claims at second and third levels of Labor Courts whenever the party is a state-owned legal entity, a foreign state or international entity.

2.3 State Courts

The State Judiciary, in the top of which the Court of Justice is, comprises the state structure. The exercise of the state power is provided with broadest autonomy and relates with the other government branches, the Legislative and the Executive.

Except for the authority of the Federal Courts and the Labor Courts, and further the very specific authority without the interest of

companies, such as, for instance, electoral matters, any actions are the responsibility of State Courts. The authority is defined by the Constitution in very broad terms, and the State Constitution is in charge of defining them.

State Courts deal with a huge different range of matters and is very centralized. Judicial districts work in the entire State of Pernambuco by means of courts and Judges of Law. The number of existing courts is fixed based on the size of the city, the number of inhabitants and the need thereof, and some municipalities may have one single court for all types of proceedings, and others may have several courts, many times provided with high level of specialization, such as, for instance, Recife, the capital city of the State of Pernambuco.

The second level of State Courts for appeals and specific actions is developed in the Court of Justice, formed by Associate Judges.

The State Department of Justice works along with State Courts. At first level, that is, along with courts, District Attorneys reach the entire state. At second level, that is, before the Court, District Attorneys work as the second level of the State Department of Justice. The members of the State Department of Justice have broad authority and may:

I – file in private any public penal actions;

II – commence any civil investigations and public civil actions in order to protect public and social assets, the environment and other individual and collective interests, such as those related to consumers and labor environment, in order to prohibit abuse of authority or economic power;

III – commence any law-unconstitutionality actions or state or municipal normative actions, as well as represent for purposes of intervention the Federal Government or the State in the cases set forth in the Federal Constitution or the Constitution of the State of Pernambuco;

IV – defend, in court and out of court, the rights and interests of Indian populations by assessing the liability of any offenders;

V – care for actual compliance with public interests and socially relevant services, as set forth in the Constitution, in order to prevent abuse and omission, and further assess any liability related thereto;

VI – issue notices in administrative proceedings under its authority and request information and documents to conduct them as set forth in the respective complementary law;

VII – exercise external control of police activities, as set forth in the complementary law referred to in the subparagraph above;

VIII – request investigatory diligences and the commencement of policy investigations, indicating any legal grounds and procedural statements;

IX – perform other duties conferred thereto, provided these are consistent with its purpose, and it shall not be permitted to represent or act as attorney of government-owned entities in court.

3 THE LEGISLATIVE

3.1 Authority

The Legislative has as primary function to legislate and inspect.

As mentioned above, the Federal Constitution sets forth such legislative authorities specifically designed for the Federal Government, States, Municipalities and the Federal District. The Federal Government is given exclusive authority to legislate on

several matters, such as civil, commercial, penal, procedural, maritime, labor, expropriation, exchange, credit-policy, foreign-trade, citizenship, nationality laws, among others. The Federal Government – enacting general rules – the States and the Federal District may legislate on tax, finance, economic, production and consumption and environmental liability laws, among others. Finally, the legislative authority of municipalities is limited to local interest matters.

Present in such three levels of the Federal Government, it corresponds to the Federal Legislative, Bicameral, the House of Representatives and the Federal Senate; the State and Municipal Legislatives, unicameral, the State Legislative Assembly and the City Council, respectively, which exercise their functions in accordance with the authority granted to the entity of the federal government which it belongs to.

In the items above, the internal structure of the Legislative and its duties shall be discussed, and short comments on the Audit Court of the State of Pernambuco shall be made.

Aspects related to the Federal Legislative shall not be discussed because they do not directly relate or influence investments in Pernambuco.

3.2 Legislative Assembly and House of Representatives

The powers of the State Legislative Branch are exercised by the Legislative Assembly, which is formed by the Representatives elected for a term in office of four (4) years and vested as set forth in the federal laws. Currently, the people of the State of Pernambuco are represented by 49 State Representatives.

The Representatives may not execute or enter into contracts, accept or exercise offices, functions or Compensated Jobs – even those subject to ad nutum dismissal, with government-owned legal entities, autarchies, government-owned companies, partly-government-owned and partly-private companies, foundations

created or maintained by the Government or a public utility concessionaire, except when the agreement is entered with uniform clauses; become owners, controllers or officers of a company enjoying of favors from contracts with a government-owned legal entity or exercising therein any compensated jobs; take any positions or functions subject to ad nutum dismissal from a Company enjoying of favors from a government-owned legal entity; sponsor any causes in which a Company enjoying of favors arising of a contract with a government-owned legal entity is interested; to hold more than one position or public office attained by election.

Harmony among the three branches is critical, so much so that the State Constitution grants the duty of the Legislative Assembly to hold a meeting, provided it is previously scheduled, with the Governor of the State and the Chairman of the Court of Justice, whenever they state the purpose of deciding on subjects of public interest. Still regarding this subject, the Secretaries of State – assistants of the Executive – may attend committees or the plenary of the Legislative Assembly and discuss projects related to the respective Secretary.

3.3 Duties of the Legislative

The duties of the Legislative are listed in sections 14 and 15 of the State Constitution. By reading it, it is possible to verify that the Legislative is in charge of, besides the historic and purely legislative function, inspecting and exercising the internal financial control of the State and other specific activities of that Institution.

Among several duties of the Assembly not related to its legislating or inspecting function, it is possible to list some of huge importance, such as, for instance: inaugurating the Governor and the Vice-Governor of the State, inform them on the resignation and assess their requests for leave of absence; decide on the exoneration of the Attorney General of Justice before the end of his/her term in office, approve the choice of the Commissioners of the State's Audit Court; request upon resolution by the absolute majority federal

intervention to ensure compliance with the Constitution of the Republic and the State Constitution, among others¹.

Regarding the purely legislative function, section 15 of the Constitution of the State of Pernambuco lists the matters under authority of the State, in compliance with the limits imposed by the Federal Constitution, which may be legislated by the Assembly. Considering the objectivity of this guide, it is didactic to include excerpts of the subparagraphs thereof:

“Section 15 – The Legislative Assembly, with the consent of the Governor, is in charge of legislating on matters which are the authority of the State, in particular:

I – the pluriannual plan, budget directives and annual budgets;

II – the public debt of the state and authorization to start and conduct credit operations;

III – the tax system, collection and distribution of income and financial matters;

IV – authorization to dispose of, assign and lease real estate of the State and receive donations as charges; [...].”

Inspecting Function – Internal Control

Together with the legislating function, the Legislative exercises inspecting power on the Finance, Budget, Operation and Asset management of the State and its entities of the indirect and foundational Government.

The Legislative is in charge of exercising external control upon accounting, finance, budget, operation and asset control, exercised with the assistance of the State’s Audit Court.

¹ All duties referred to above are listed in section 14 of the State Constitution.

Regarding the Financial Control, the three branches act in an integrated manner in order to: assess compliance with the goals set forth in the pluriannual plan; execution of Government programs and the State's budgets; evidence the legality and assess the results related to efficiency and efficacy, budget, financed and asset management in the bodies and entities of the state administration, as well as application of government resources by private entities; exercise control of credit operations, consents and guaranties, as well as the rights and duties of the State; support the external control in the exercise of its institutional mission.

Still regarding the inspection function, the Legislative has authority to judge the Governor's accounts and assess reports on the execution of Government plans, as well as take any accounts from the Governor whenever these are not submitted to the Legislative Assembly within sixty days after opening of the legislative session. Within that same term it inspects further the Judiciary.

In addition, whenever the State is interested in financial operations, the Legislative is the one to authorize in advance the respective contracting, all within the limits of possible indebtedness. After this authorization, the Governor of the State may take his/her actions and contract operations.

The individuals in charge of the internal control, when they become aware of any irregularities or abuse by the Governor shall inform the State's Audit Court Tribunal, subject to penalty of those individuals held liable.

3.4 State's Audit Court

In order to best understand the functioning of the Legislative regarding its inspecting function, it is important to make some comments on the State's Audit Court, an ancillary but independent institution, which is in charge of inspecting the state and municipal treasuries. The Audit Court has its head offices in Recife and jurisdiction in the entire Territory of the State, including regarding accounts of the municipalities.

It is comprised by seven Commissioners, who will have the same assurances, privileges, impediments, terms in office and benefits of Associate Judges of the Court of Justice of the State. Such Commissioners are supported by a technical body of high-level deputy commissioners and auditors, admitted by means of public contest and working under several specializations which are critical for the inspection function.

The Audit Court is in charge of acting on regular basis or upon any denunciations, whenever irregularities regarding expenses are verified, including those arising from contracts. It is important to stress that the authority of the Audit Court reaches those that contract works or services with the government or regarding other specific contracts.

The Audit Court conducts External Control by supporting the Legislative in its joint inspecting function. Although it is named a "Court", it is not part of the Judiciary, so that its decisions do not produce immediate coercive effects.

4 THE EXECUTIVE

The Executive has two functions: one purely political, consisting in the act of governing the State, and the other purely technical of managing the government. Therefore, governing and managing are typical functions given to the heads of the Executive in the states.

4.1 Duties of the Governor of the State

The Governor is the chief of the Executive, he is elected based on the federal laws, and has a term in office of four (4) years. His/her administration is continually supported by the Secretaries of State, who are freely appointed by the Governor and are in charge of promoting and implementing projects for the benefit of the population.

The Governor has the individual duties of representing the State before the Federal Government, other States and in respect of its

legal, political and administrative affairs, and he/she may delegate some specific acts to its assistants.

Besides the political and administrative functions themselves, the Governor has a legislating duty as well, such as, for instance, commencing a legislative proceeding, as set forth in the Federal Constitution, and enact and publish the laws, as well as issue decree and regulations for the accurate execution thereof; and further veto bills in whole or in part.

The Governor is subject to Liability Crimes as set forth in the federal law, and has privileged forum before the Superior Court of Justice for regular breaches, or before the Special Court for liability crimes.

4.2 The Vice-Governor

The Vice-Governor shall be elected together with the Governor for a term in office of four (4) years, and he/she must satisfy the same eligibility conditions and appear as chief of the government in the event of impediment or vacancy of the governor.

His/her duties are to assist the Governor whenever convened and perform the acts of interest of the State, and further attend the meetings of secretaries, and in this event shall act as chairman whenever the Governor is absent.

4.3 Secretaries of State

The Secretaries of State assist the Governor and are appointed and freely exonerated thereby. They must be Brazilian citizens, with age above twenty-one years and enjoy of their civil and political rights. They have the same impediments established for State Representatives.

The Secretaries of State are in charge of: directing, coordinating and supervising bodies and entities of the state administration in the area under their authority, in accordance with the general plan of the Government, among other activities, and in each area they

are the Governor's closest assistants, with duties similar to those of the ministers of State at federal level.

PART III

TAXES AND TAX INCENTIVES

The subject of this chapter shall be taxes and tax incentives directly related to the State of Pernambuco, considering that the tax system at national level has already been discussed in the Legal Guide for the Foreign Investor in Brazil.

1 FEDERAL TAXES / SUDENE

The Northeast Development Superintendence - SUDENE, created by Complementary Law No. 125 of Jan 3, 2007, is an administratively and financially independent special autarchy that is part of the Federal Budget and Planning System, with head offices in the city of Recife, capital city of the State of Pernambuco, and affiliated to the Ministry of National Integration.

The purpose of SUDENE is to promote inclusion and sustainable development in its acting area (States of Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Sergipe and Bahia, as well as in other regions and municipalities described in section 2 of Exhibit I, Decree No. 6.219 of Oct 4, 2007) and competitive integration of the regional production base in the domestic and international economies.

In order to attain that goal, SUDENE manages tax benefits related to federal taxes², thus encouraging priority private investments, production activities subregional development initiatives in its acting area, as described below.

1.1 Legal Entity Income Tax - IRPJ

The Legal Entity Income Tax- IRPJ – which may have as its calculation

² Ruling No. 2091-A of Dec 28, 2007, of the Ministry of National Integration, approved the Restated Tax Incentive Regulations, which are the same for the Regions of Amazônia (SUDAM) and Northeast (SUDENE).

base, depending on the taxpayer, actual profits, presumed profits or arbitrated profits – is required on profits, revenues or capital gains assessed in Brazil or abroad by legal entities. The IRPJ tax rate is 15%, regardless of the company's activity, and additional tax is required at a rate of 10% over the portion of the actual, presumed or arbitrated profits exceeding twenty thousand reais (R\$ 20,000.00) per month.

The IRPJ is the subject matter of three tax incentives managed by SUDENE: (i) IRPJ reduction for new undertakings; (ii) IRPJ reduction for existing undertakings; (iii) IRPJ reinvestment.

New Undertakings – seventy-five percent (75%) IRPJ reduction, including non-refundable surcharges for a term of ten (10) years for projects filed until December 31, 2013, as calculated based on exploitation profits. It is intended to legal entities holding projects related to the implementation, modernization, enlargement or diversification of undertakings, the criteria of which are currently set forth in Decree No. 6.539 of August 18, 2008.

Existing Undertakings – twenty-five percent (25%) IRPJ reduction, including non-refundable surcharges, for assessment periods from Jan 1, 2004 to Dec 31, 2008, and twelve point five (12.5%) for assessments periods from Jan 1, 2009 to Dec 31, 2013. It benefits legal entities with ongoing undertakings within SUDENE's acting area.

Reinvestment – thirty percent (30%) of the IRPJ due by legal entities having ongoing undertakings in SUDENE's acting area may be deposited up to Dec 31, 2013 with Banco do Nordeste do Brasil S/A – BNB, for reinvestment, plus fifty percent (50%) of its own funds in equipment complementation and technical modernization and economic projects.

In order to enjoy any of such three benefits, the legal entity shall meet the following conditions: 1. manufacturing plant of the undertaking must be located and operating within SUDENE's acting area; 2. undertaking deemed as priority for the regional development, as set forth in Decree No. 4.213, of April 26, 2002;

3. legal entity holding the undertaking electing for actual-profit taxation regime.

1.2 Encouraged Accelerated Depreciation and Social Integration Program (PIS/PASEP) and Social Security Funding Contribution Credit Deduction – COFINS

The Social Security Integration Program Contribution (PIS/PASEP) applies on the gross operating revenues of legal entities, as assessed on a monthly basis, at the rates of 0.65% or 1.65%, the former cumulatively and the latter non-cumulatively, in accordance with the rules contemplated in the law.

The Social Security Funding Contribution - COFINS, applies, on a monthly basis, on the gross revenues at the rates of 3% or 7.6%, the former cumulatively and the latter non-cumulatively, also in accordance with the legal rules.

The Restated Tax Incentive Regulations further sets forth the following benefits: (i) encouraged accelerated depreciation surcharge of property purchased for purposes of calculation of the Income Tax, which consists in the full depreciation of the property in the very year of purchase thereof; and (ii) the right to deduct within twelve (12) months such credits of the PIS/PASEP and COFINS Contributions in the event of purchase of machines, devices, instruments and new equipment relating to Decrees Nos. 5.789 of May 25, 2006, intended to be incorporated to its fixed assets.

Such benefits are granted exclusively to legal entities benefiting from the 75% IRPJ reduction (New Undertakings) with the undertaking's manufacturing plants located within less developed IBGE's geographic micro regions, as listed in Exhibit I of Ruling No. 1.211 of the Ministry of National Integration.

1.3 Merchant Marine Renewal Freight Surcharge – AFRMM, and Financial Operation Tax – IOF

The AFRMM is a surcharge calculated on the freight at a rate of

twenty-five percent (25%) for the shipping of any load entering a Brazilian port, on long-distance shipping, and it is deemed as one of the resources of the Merchant Marine Fund intended to renew, enlarge and recover the domestic merchant fleet.

The IOF is a tax applicable on credit, exchange and insurance operations or relating to bonds and securities.

SUDENE further grants exemption of the Merchant Marine Renewal Freight Surcharge – AFRMM, and exemption of the IOF in exchange operations conducted to pay imported goods to legal entities the undertakings which are implemented, modernized, enlarged or diversified until Dec 31, 2010, provided the undertaking's manufacturing plant is located in the Northeastern Region of Brazil and the undertaking is deemed as a priority for the development of the region (Decree No. 4.213/2002).

2 STATE TAXES / DEPARTMENT OF TREASURY OF THE STATE OF PERNAMBUCO - SEFAZ

The State of Pernambuco provides three big tax incentive programs to companies with head offices in that State and paying the Tax on Circulation of Goods and Services – ICMS.

2.1 Development Program of the State of Pernambuco - PRODEPE

The PRODEPE has been created by State Law No. 11.675 of Oct 11, 1999 and regulated by State Decree No. 21.959 of Dec 27, 1999. The program provides ICMS presumed and deferred credit as a way to encourage industrial activities, port activities (wholesale importer) and distribution centers.

- **Industrial Activity:** the incentive varies according to the activity fitting a "priority industrial group" or "other relevant activities". Priority industrial grouping includes the following production chains, whenever these are formed by companies located in the State of Pernambuco:

- I – agricultural industry, except for sugar and alcohol and wheat grinding;
- II – metal, mechanics and transportation material industry;
- III – electrical and electronic;
- IV – pharmaceutical and chemical;
- V – beverages;
- VI – non-metal minerals, except cement and red ceramic;
- VII – textile;
- VIII – plastic;
- IX – furniture.

Companies fitting the “priority industrial grouping”, in the cases of implementation, enlargement or modernization of the undertaking may receive an ICMS presumed incentive regarding industrial grouping products referred to in Stated Decree No. 22.217 de 25/04/2000, for a term of 12 years, which may be extended or renewed for equal periods.

Presumed credit is equal to the percentage of up to 75% of the tax assessed in each tax period. The percentage may be increased to 95% in the event the undertaking is located out of the Metropolitan Region of Recife or is part of one of the “special” sub-group industries formed by the car, pharmaceutical and chemical, metallurgic and hot-lamination-manufacturing industries. In the case of the industry of plastics, the percentage shall be reduced 5% when the processed product is not biodegradable or fails to use as raw material at least 30% of recycled material.

Companies rated as “other relevant activities” are those not included in production chains of the priority industrial grouping, except civil construction, extraction industry, sugar and alcohol agricultural industry and oil liquefied gas storage industry fitting the events of implementation, enlargement or modernization of the undertaking. Those companies may receive ICMS presumed credits for a term of up to eight years, which may be extended or renewed for equal periods.

Presumed credit is equal to the percentage of 47.5% of the tax

assessed in each tax period in the case of manufacture of a product without a similar version in the State. Presumed credit shall be 25% in the case of manufacture of products with similar versions in the State, and an increase to 47.5% may be approved in the event the undertaking is located without the Metropolitan Region of Recife or is part of the car, pharmaceutical and chemical, metallurgical or hot-aluminum-lamination-manufacture industries.

- Port Activities (importer): concession for a maximum period of seven years, which may be extended or renewed for an equal period of approval to collect the ICMS applicable on import operations carried out by ports or airports in the State of Pernambuco for subsequent export by the importer. There is further concession of presumed credit in the case of subsequent export, with percentage limits as contemplated in State Law No. 11.675 of Oct 11, 1999.

Concession of the benefit for the import of raw material used in the manufacture of Prodepe non-encouraged products or raw material transferred to undertakings, the parent company or branches in another State to be used in industrial processes may be authorized.

- Distribution Centers: concession for a period of 15 years, which may be extended or renewed for equal periods of presumed credit corresponding to 3% of the total exports in the event of interstate operations, and, in the case of import operations by means of transfer of goods from an industrial undertaking located in another State, presumed credit of 3% of the transfer's total amount. Presumed credit percentages may be increased 1% in the event of motor vehicle distribution operations, provided it does not imply collection below 30% of the amount originally due as tax.

2.2 Other Incentives: Development Program for the Naval and Related Heavy Mechanics Industry of Pernambuco - PRODINPE and Development Program for the Shoe, Purse, Belt and Sports-Ball Industry.

2.2.1 PRODINPE

The Development Program for the Naval and Related Heavy

Mechanics Industry of Pernambuco was created by State Law No. 12.710 of Nov 18, 2004 and provides tax incentive to the naval and related heavy mechanics industry.

The program provides ICMS exemption in the following events:

- for internal shipments of raw material and inputs whenever the recipient is a shipyard, except for electric power;
- for the provision of services, except communication services, whenever the recipient is a shipyard; and
- for internal and interstate shipments of vessels promoted by a shipyard, as well as parts used in repairs.

There is further concession of ICMS collection deferral in the following events:

- for internal shipments, imports and purchases from another State (in this case approval of complementary ICMS) of pieces of equipment, machines and parts for mounting or replacement, whenever these are intended to form the fixed assets of the purchasing shipyard;
- for the import of raw material and other inputs, whenever the importer is a shipyard, and the goods are intended to be used in the respective manufacturing process;
- for the purchase in another State of goods or assets contemplated in a decree of the Executive, whenever it is carried out by a civil construction company in charge of such shipyard's works, in respect of the tax due to such State under specific laws.

The benefits set forth in the PRODINPE also apply to undertakings that although might have a nature different of that of a shipyard,

develop activities of construction, enlargement, repair, modernization and transformation of platforms or the respective modules thereof.

2.2.2 Development Program for the Shoe, Purse, Belt and Sports-Ball Industry

The Development Program for the Shoe, Purse, Belt and Sports-Ball Industry of the State of Pernambuco was introduced by Law No. 13.179, of Dec 29, 2006 and provides tax incentives to industrial undertakings currently manufacturing or assembling or that may manufacture or assemble in the future such types of products, as well as those manufacturing inputs and components intended for those undertakings.

The program provides ICMS presumed credit in the amount of 47.5% of the debt balance, as assessed in each tax period, for undertakings located in municipalities of the Metropolitan Region of Recife, and 90% for those located without that Region.

There is further concession of the ICMS deferral in situations similar to those conferred regarding the PRODINPE.

3 LOCAL TAXES

Several Municipalities of the State of Pernambuco provide tax incentives to companies established within its territories with the purpose of promoting the region's economic and social development. In view of the impossibility of dealing with all benefits granted by several municipalities of the State of Pernambuco, this chapter will review some of the incentives granted by the Municipalities of Recife, Ipojuca and Cabo de Santo Agostinho, the latter two compared to the growing development of SUAPE.

3.1 Recife

Municipal Law No. 17.244/2006 and Municipal Decree No. 22.449/2006 created in the Municipality of Recife the Digital Port incentive program by granting tax benefits to undertakings paying the Services

Tax – ISS and with head offices in the History Site of Bairro do Recife, and further carrying out activities related to computer and related services, including education and computer-product-certification, as well as activities related to remote relationship with customer by means of active or receptive high-volume processing call centers.

The tax benefit is granted by reducing the ISS tax rate, as calculated under the provisions of the law, taking into accounting factors as individual turnover of each company and the turnover of undertakings participating in the program.

3.2 Ipojuca

Municipal Law No. 1.412/2005 and Municipal Decree No. 62/2005 offer tax incentives on the Services Tax – ISS and the Real Estate Tax – IPTU for undertakings with strategic interest for the economic and social development of the Municipality of Ipojuca.

For undertakings deemed as priority, the Municipality offers ISS and IPTU tax rate reduction for up to 10 years. For undertakings deemed as relevant, the reduction is conferred for up to five years.

In the case of priority undertakings, the Municipality of Ipojuca may also grant, under the law, ISS tax exemption in respect of the construction of installations and works, or further extend for additional two years such tax rate reduction benefits, as well as suspend collection of the IPTU and ISS until the start of the undertaking's operating activities. Regarding the other services provided by third parties to an undertaking company, the Municipality may further grant ISS tax rate reduction at the same percentage as granted to the contracting company, provided the service is directly related to the activities of the priority undertaking.

Such undertakings being rated as priority or relevant shall be according to the opinion of Secretariats of the Municipality of Ipojuca, according to the criteria set forth in the law.

3.3 Cabo de Santo Agostinho

Municipal Law No. 1.781/1997 and Municipal Decree No. 66/1997 offer incentives related to the Services Tax – ISS and the Real Estate Tax – IPTU, many location and operation fees, besides partial refund of the ICMS generated by the company to the Municipality, for new undertakings, and enlargement or reallocation of undertakings that may be of strategic interest for the economic and social development of the Municipality of Cabo.

Incentives are offered for up to 10 years in percentages varying according to the contracting of manpower and purchase of goods and services of the municipality, as set forth in the local laws.

PART IV

AGREEMENTS WITH THE STATE GOVERNMENT

1 BIDS AND ADMINISTRATIVE AGREEMENTS

1.1 Applicable Law

In Brazil, the general rules to contract with authorities and entities that are part of the Federal, State and Local Governments are governed by Federal Law No. 8.666/1993 (“Bids Law”)³ and further Federal Law No. 10.520/2002 (“Auctions Law”). The Bids Law deals both with the bid proceeding and the execution of administrative agreements for the purchase of goods and contracting of services by the Government.

The Bids Law further contemplates procedures to dispose of government assets, as well as the penal types and administrative penalties related to the matter. Under the provisions of its section 116, the rules thereof are similarly applicable, as the case may be, to agreements, adjustments and letters of intentions entered into by the authorities and entities of the Government, both among authorities and entities that are at the same level of the Government and among third parties.

On the other hand, there are also rules on bids set forth in Federal Law No. 8.987/1995 (“Concessions Law”), which provides on the public service provision permission and concession regime; and Federal Law No. 10.079/2004 (“PPP Law”), which implemented general bid and contracting rules for public-private partnerships.

³ Currently, Federal Bill No. 32/2007 is being discussed in the Federal Senate. It contains a proposal to amend the Bids Law. The main amendments to be introduced in the Brazilian legal order in case the new law is eventually enacted refer to the requirement of officially posting in the official Government’s website any bids, inversion of qualification and judgment phases (under the current text of the Bids Law, qualification of the bidders takes place first and then judgment of the proposals) in applicable cases, strengthening of the approved machine of the State and the creation of new limits for additions and deletions of the purpose of administrative agreements. The project has been the subject matter of much discussion by congressman, but there is no forecast for the enactment of the new law.

Such laws deal both with bid proceedings and the execution of concession agreements and public-private partnerships.

Furthermore, application of the rules set forth in agreements, protocols, convention or international treaties is permitted as set forth in section 42 of the Bids Law, in the execution of works, provision of services or acquisition of goods with funds from financing or donation arising from a foreign official cooperation agency or multilateral financial authority which Brazil is a party to, provided the rules have been duly approved by the National Congress. In the cases above, the Bids Law shall be complied with whenever it does not conflict with the rules of the fund provider.

The rules set forth in the Bids Law, the Auctions Law, the Concessions Law and the PPP Law should be complied with by all authorities and entities that are part of the direct and indirect Federal Government, the Federal District and Municipalities.

In the State of Pernambuco, the direct State Government includes Secretariats of State and other government authorities hierarchically subordinated to the Governor of the State, and all of them are unincorporated entities. The indirect State Government includes autarchies, public foundations, government-owned companies and partly-state-government-owned and partly-private companies. Although government-owned companies and partly-government-owned and partly-private companies are incorporated these are directly or indirectly controlled by the State of Pernambuco, and therefore are deemed as government-owned companies.

It is worth mentioning that section 173 of the Federal Constitution permits that a specific law governs the bid and contracting of works, services, purchases and disposals of government-owned companies and other corporations exploiting economic activities. However, such law has not been enacted yet by the Brazilian National Congress, so that such entities should comply with the provisions of the Bids Law, except for *Petróleo Brasileiro S.A - PETROBRAS*, which follows its own rules, as set forth in Federal Decree No. 2.745/1998.

Although general bid and administrative contract rules, as well as concession of public services and contracting of public-private partnerships, have been imposed by the Federal Government, this does not prevent that the States, the Federal District and Municipalities further enact their own rules. These should be in line with the general rules referred to above, which may be subject to supplementation and adaptation, but contradictions and innovations shall be prohibited.

In the State of Pernambuco, it is possible to verify that no general bid and administrative contract law has been enacted. On the other hand, State Law No. 12.986/2006 has been enacted and deals specifically with Auctions (bid proceeding modality), besides other specific rules for the concession of public services and contracting of public-private partnerships, which shall be discussed below.

It is important to stress that, with the purpose of promoting sustainable growth of the local economy, the State of Pernambuco created the Economic and Social Development State Council – CEDES, which has as purpose to identify areas with which the Government should contract concessions, permits or execute partnerships with private companies in order to promote social wellbeing.

1.2 Bid

Because this study complements the Legal Guide for the Foreign Investor in Brazil, which discusses the general bid rules, it shall further deal with particular aspects existing in the laws of the State of Pernambuco.

Bid modalities adopted in the State of Pernambuco are those set forth in the federal law, that is to say: bid, pricing, invitation, auction and contest, because it is the exclusive duty of the Federal Government to enact general rules in respect of bids and administrative agreements, which includes the authority to create modalities of bid proceedings. The particular aspects of such

modalities are duly described and explained in the Legal Guide for the Foreign Investor in Brazil.

The choice among several bid modalities by the State Government is not free, that is, it shall vary according to the complexity and amount involved in the contracting, which shall be evaluated in the concrete case. The more complex the object of the bid and the amount involved in the contracting, the more complex the bid modality to be elected by the State Government shall be. Similarly, the simpler the object of the bid and the lesser the amount involved in the contracting, the simpler the bid modality to be elected by the State Government shall be.

In the State of Pernambuco, section 4 of State Law No. 12.986/2006 contemplates the need to use the auction as a bid modality to purchase goods and contract regular services as a rule, and the choice of the bid modality by the Government should be based on the amount of the contracting.

However, this rule may have an exception in cases where the goods and services to be contracted are regular, that is to say, specified based on usual market parameters. In this case, the choice of the auction modality by the Government is based on the characteristics of the goods and services, not the amount of the contracting as in the other modalities.

In the event of purchase of regular goods, the auction shall be mandatorily electronic, that is to say, over the Internet. However, by virtue of section 5 of such law, the electronic auction may not be adopted to contract engineering works. In general, the auction is not used to contract engineering works and services, because these are complex services not able to be specified by usual market definitions.

On the other hand, competition, pricing and invitation should be mandatorily used to contract engineering works and services and other complex services, and the decision between one or another shall depend on the amount of the contracting. In addition, the

option for contest, bid or auction is subject to the object of the bid only, and there is no cap set forth in the law.

The State of Pernambuco has provided to businessmen the Rede Compras channel (www.redecompras.pe.gov.br), in which direct purchases (with no need of bid), electronic auctions and supplier registration are made.

The portal contains the rules to participate in bids, the caps for the modalities of purchase of materials and services from the direct and indirect Government, registration of materials and services that may be contracted and further publication of bid proceeding results.

1.3 Administrative Agreements

After a bid is processed and after due judgment of the proposals, the subject matter of the bid shall be granted to the winner that submits the best proposal to the State Government and evidences compliance with all qualification requirements. The winning bidder shall be entitled to enter into an administrative agreement with the Government, and it is expressly forbidden to change the order of classification of the bid participants, as set forth in section 50 of the Bids Law.

Such administrative agreements set forth in the Bids Law, as a rule, are intended to contract works, services and goods of which the Government itself is the main user. Such agreements are not deemed as adequate legal instruments in order to delegate public services, which should be performed under public service concession agreements (in accordance with the Concessions Law) or upon contracting of public private partnerships (under the PPP Law).

2 PUBLIC SERVICE PERMITS AND CONCESSIONS

Public service concession rules are contemplated in section 175 of the Federal Constitution, as well as in the Concessions Law, which provides on the public service provision permit and concession

regime, and Federal Law No. 9.074/1995, which similarly contemplates the rules used to grant and extend service permits and concessions.

Such general rules are complemented by other rules set forth in the law governing several infrastructure industries. For instance, we may mention Federal Law No. 11.445/2007, which represents a regulatory landmark of the basic sanitation industry (water and sewage), which also contains specific rules for concession of such services.

The State of Pernambuco has enacted its own rules for the concession and permit of public services, as set forth in State Law No. 10.904/1993, and also State Law No. 12.524/2003, which contains specific rules for concession of piped gas distribution services in the State of Pernambuco. State Law No. 10.904/1993 was regulated by State Decree No. 17.659/1994.

2.1 Concessions

Concessions have been much used all over Brazil to delegate to private companies the provision of public services for which the Government has no available funds, whenever such activities may be profitable for economic exploitation by private companies, and such companies accept at their own risk to bear alone the risks related to the business.

Under section 2, II, of the Concessions Law, the concession of public services assumes delegation of the service by the granting power (the State of Pernambuco), by means of competition under the public bid modality, to a legal entity or consortium of companies evidencing performance capacity at its own expense and risk for an indeterminate term.

In bids for concession of public services, inversion of the phases of the bid process is allowed⁴, which is not admitted in bids governed exclusively by the Bids Law. In the State of Pernambuco, the winning

⁴ Usually, the check of qualification documents takes place before assessment of technical and commercial proposals. However, in bids for concession of services and contracting of public private partnerships it is possible to invert the phases, and assess the qualification documents of the winning bidder only.

consortium may organize a specific purpose company (“SPE”) in order to enter into the concession agreement, and further manage and implement the object of the concession.

Regarding the concession agreement aspects, compensation of the concessionaire is primarily from fees charged from users. In addition, considering the risk assumed by the concessionaire, the possibilities of resuming the economic and financial balance of the concession agreement are more restrict than in administrative agreements. In general, such possibilities are restricted to a fee review.

However, according to the nature of the service granted, the State of Pernambuco may allow the concessionaire to obtain funds from alternative, complementary or ancillary sources or from related projects. This is the case of concessions in which domain range exploitation is allowed (in case of roads) and development of carbon credit generation projects (basic sanitation projects).

In the State of Pernambuco, it is important to mention that State Law No. 10.904/1993, that deals with state permits and concessions, provides on preferably delegable industries, such as, for instance: water supply, sanitary sewage; transportation; public cleaning; construction and conservation of streets and public places; penitentiary system and telephony.

It is interesting to stress that, at the discretion of the granting power, the corporate control of the concessionaire may be transferred to financiers, what shall be performed only if such financiers meet legal and tax conditions required to assume the service, and if there is a commitment that they shall comply with all clauses of the agreement. The granting power may further require evidencing of technical capacity and financial good-standing of such financiers. In addition, assuming the control of the concession shall not change the obligations of the concessionaire with the granting power.

2.2 Permits

The permit of public services is governed by the Concessions Law

and Federal Law No. 9.074/1995, and it shall be preceded by a bid, as set forth in section 175 of the Federal Constitution. It is different from the concession because it is a simpler act and lacks the guaranties contained in the concession agreement.

The permit consists in the government delegating the provision of public services to an individual or legal entity that evidences capacity to comply therewith at its own account and risk, and is formalized by means of an agreement similar to adhesion agreements. The permit is granted for an indeterminate term and is revocable at any time, which means that revocation shall not give rise to indemnification.

As a rule, the permit is adopted in cases where the individual obtains return of his/her investments in the short term, which is a modality less used to delegate public services, and further contains a lesser range of guaranties as compared to concession agreements and PPPs.

3 PUBLIC PRIVATE PARTNERSHIPS - PPP

3.1 Applicable Law and Modalities

Public private partnerships (“PPPs”) have been created in the Brazilian law by the PPP Law. In the State of Pernambuco, this matter is governed by State Law No. 12.765/2005, which created the State Public Private Partnership Program. According to section 2 of the PPP Law, the PPPs are concession administrative agreements that may be entered into under sponsored or administrative modalities.

Sponsored concession has been created with the purpose of delegating to private companies projects that are economically little attractive or impossible to be provided under the regular concession regime contemplated in the Concessions Law, which therefore has as a characteristic the concession of public services and public works compensated by fees charged from users and the consideration provided by the Government.

On the other hand, administrative concession managed to stabilize the economic and financial structure of regular concession agreements to agreements that in the past were governed by the Bids Law only, thus creating a more flexible structure for agreements involving the provision of services taken by the Government, which compensate the private partner in full. In fact, the PPPs in Brazil are deemed as new form of already existing administrative agreements.

In the State of Pernambuco, the Partnership Coordination Operating Unit and the Managing Committee of the State Public Private Partnership Program – CGPE have been created. The former has the duty of executing the preliminary review of PPPs proposals under a technical point of view. On the other hand, the CGPE has as main duties to define priority public services to be delegated by means of PPPs; review and approval of projects; authorization to commence bids within the scope of the State Public Private Partnership Program.

3.2 Bid and PPP Agreement

The choice of the private partner in PPPs shall be preceded of a contest under the public bid modality, in accordance with the rules set forth in the very PPP Law, the Concessions Law and, ancillary, the Bids Law. PPP bids and projects have some peculiarities regarding the procedure set forth in the Bids Law, such as, for instance: the need to submit notice drafts and agreement for public consultation and authorization to invert phases.

The Permanent Bid Commission – CPL/PPP, which has as main private and exclusive function to review and judge PPP bids, has been created in the State of Pernambuco.

As it occurs in regular concession projects, in PPP projects as well the bidders may state their interest before the granting power (the State of Pernambuco) to make studies to implement PPP projects. In case such studies are adopted by the State of Pernambuco, the authors, although they do not win the bid, shall be refunded by part of the State Government or the winning bidder for the costs

disbursed in studies actually used in the project.

Mandatorily before the execution of the PPP project, the winning bidder shall organize a specific purpose company (“SPE”) in order to implement and manage the PPP object, with the purpose of rendering the management of the business more transparent and secure.

In PPPs agreements, the contracting amount shall be above twenty million reais (R\$ 20,000,000.00), and the service provision term shall be mandatorily above five (5) and below thirty-five (35) years, which includes any extensions. Simple execution of public works may not be the object of PPP agreements, nor simple supply of manpower or supply and installation of equipment, which are fully governed by the Bids Law. The PPP is not applicable either for regular concession of public services and public works, which are governed by the Concessions Law, and the use of PPPs in order to delegate jurisdictional, regulatory or police activities is further forbidden.

As opposed to the delegation of services performed under the regular concession regime, under the PPPs there is a division of risks between the government and the private partner. Thus, PPP agreements have further as a characteristic the fact they allow application of penalties not only to the private partner, but also to the Government, and they further enable sharing of economic gains by the parties. Conflicts arising from rights available under the PPP agreement may be settled by arbitration, which, within the scope of the State Public Private Partnership Program, might take place in Recife, Capital City of the State.

In the State of Pernambuco, inspection of PPP agreements is conducted both by the State Government entity acting as public partner and the Delegated Public Service Regulation Agency of the State of Pernambuco – ARPE, under the provisions of section 16, § 6, of State Law No. 12.765/2005.

3.3 Guaranties and Consideration

One of the main novelties of PPP agreements in Brazil is the

possibility of the Government providing guaranties for compliance with the financial obligations assumed in the agreement, in particular those related to payment of the consideration. In the State of Pernambuco, payment of the consideration of the State Government may occur by using funds from the State Treasury, assignment of non-tax credits, transfer of real and personal property, public debt securities and other forms admitted by the law.

On the other hand, such consideration payment guaranties provided by the State Government may occur by means of: blocking of revenues; creation or use of special funds; contracting of a guaranty-insurance with insurance companies; international authorities; financial institutions; guaranteeing fund or a government-owned company created for that purpose; and other forms admitted by the law.

The State Public Private Partnership Guaranteeing Fund – FGPE in the State of Pernambuco was created by State Law No. 12.976/2005, with the purpose of providing guaranties for the payment of financial obligations assumed by state public partners under PPP projects.

The Fund's operating control is performed by the Partnership Coordination Operating Unit. The FGPE may offer the following guaranties: security; pledge of personal property or FGPE related rights; mortgage of FGPE real property; fiduciary disposal; real or personal guaranty related to assets created by virtue of separation of goods and rights related to the FGPE.

Besides, it is possible to transfer the control of the SPE to project financiers, without the need of evidencing their technical capacity and financial good-standing. Financers may further receive indemnity in the event of early termination of the PPP agreement, including by executing guaranties provided by the Government.

PART V

ENVIRONMENTAL LAW ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT A CONSTITUTIONAL OVERVIEW

Since the 70's, more precisely after the Stockholm Declaration in 1972, which set forth many environmental protective principles aimed to direct balanced economic development, the concern with the environment has increased more and more, in particular in the last years by virtue of the economic development of nations that search, many times, natural resources without the concern of finding a balance between economic development and environmental preservation.

Under this scenario, Brazil is following the trend of including environmental protection in the Constitution and drafted a whole chapter on environment to be included in our Constitution, in order to create rights and duties for the entire society regarding the environment (Chapter VI, section 225).

In this environmental awareness maturing process, the Government plays a very important role, and all entities of the Federation (Federal Government, States and Municipalities) have the duty of defending and preserving the environment. So, section 23 of the Federal Constitution sets forth that the duty of the Federal Government, States and Municipalities is to protect the environment and fight pollution in all of its forms, and further preserve the forests, fauna and flora. Along with that, defending the environment is a general principle of the economic activity (section 170, subparagraph VI of the Federal Constitution).

The National Environmental Policy is contemplated in the law and has as purpose to make effective environmental principles and directives also contained in the Federal Constitution (Federal Law

No. 6.938, of August 31, 1981), and the result of this legislative advance is the appearance and/or fitting of State and Local laws, in an attempt to make effect the economic development in a sustainable and harmonic manner with the environment.

Actions by the States in this context are very important, because they have state policies allowing them to attain the purposes contained in the Federal Constitution regarding environmental issues.

1 STATE ENVIRONMENTAL POLICY

In line with the Federal Constitution, the State Constitution of Pernambuco provides that the purpose of the State Environmental Policy is to ensure proper environmental quality of life, serving as an instrument to ensure a permanent environmental management process with the purpose of attaining environmental protection purposes (section 204 et. seq.). The State Environment Council – CONSEMA, a collegiate and deliberative body is in charge of defining the State's environmental policy (section 208).

As set forth in section 209 of the Constitution of the State of Pernambuco, the principles governing the environmental policy of Pernambuco are: governmental actions to maintain the ecologic balance; rationalization on the use of the ground, underground, water and air; protection of ecosystems, with consequent preservation of significant areas; planning and inspection on the use of environmental resources; control and zoning of potentially and actually polluting activities; incentive to studies and research of technology intended for rational use and protection of environmental resources; recovery of damaged areas; protection of endangered areas; grant of tax incentives for the implementation of conservationist nature projects intending to make rational use of natural resources, in particular those intended for reforestation, preservation of the environment and basins that favor social-interest springs; and environmental education at all teaching levels, in an integrated and multidisciplinary manner, including community

education, with the purpose of enabling it to actively participate in the defense of the environment.

The constitution maker thus intended to take a series of preventive actions to protect the environment. In this sense, besides environmental licensing, the installation of works or activities potentially causing significant environmental damage should be preceded by an Environmental Impact Study (section 215). The purpose of such actions is to make effective the provisions contained in the Federal Constitution, always seeking to attain sustainable development with a balance between capital and environment.

Still seeking to balance development and environmental protection, grant of any benefits, tax incentives or credits to individuals or legal entities that pollute the environment by exercising their activities is strictly forbidden (section 211). Furthermore, the State Constitution expressly forbids the installation of nuclear plants in the State until the entire hydroelectric power production capacity and other power sources are exhausted (section 216).

State Law No. 12.916, of November 8, 2005, intended the execution of the Environmental State Policy in Pernambuco to CPRH – State Environment and Water-Resource Agency. The purpose of that state authority is to protect and conserve natural resources in the State and act in researches applied to environmental control activities by following the principles and directives set forth in the Federal Constitution and the National Environment Policy (see Legal Guide for the Foreign Investor in Brazil), and the Constitution and Environmental Policy of the State of Pernambuco.

2 INSPECTION AUTHORITIES

The National Environment System - SISNAMA, is comprised by authorities and entities of the Federal Government, States, the Federal District, the Territories and Municipalities, as well as foundations established by the Government that are in charge of protecting and improving environmental quality. Thus, all governmental entities have the joint responsibility of protecting

the environment, and, as a result, exercising their police authority (see Legal Guide for the Foreign Investor in Brazil).

Among inspection authorities we may mention the executing authority, represented by IBAMA; sectional authorities, which are state authorities or entities, such as the CPRH; and local authorities, represented by municipal authorities or entities.

IBAMA, an autarchic entity affiliated to the Ministry of Environment, has as purpose to execute, as a federal authority, the policies of preservation, conservation, inspection, control and sustainable use of natural resources. Because it is impossible for IBAMA to inspect the entire Brazilian territory, sectional authorities are in fact the foundations of SISNAMA.

The sectional (state) authority in charge of environmental inspection in Pernambuco is CPRH – State Environment and Water-Resource Agency. Therefore, CPRH is responsible for most environmental control activities within the State of Pernambuco.

Section 28 of State Law No. 12.916/2005 ensures to “CPRH agents the entry and stay, for as long as necessary, in undertakings and public or private properties, for the conduct of inspection actions”. And further, in case of impediment, use of police force is further authorized to ensure full exercise of its activities.

CPRH inspectors have authority to: collect samples required for control analyses; assess irregularities and infringements; check compliance with environmental rules and standards; draft infringement reports and perform all acts necessary for the good conduct of environmental surveillance within the State of Pernambuco. (Art. 29).

Local municipal authorities are represented by the Environment Departments. Each municipality should have its own Department, which shall be in charge of controlling and inspecting activities having local impact.

3 ENVIRONMENTAL LICENSING

One of the most important control instruments of the Government is the environmental licensing. With it the Government creates conditions and limits for the conduct of activities damaging or potentially damaging the environment.

Environmental licensing is therefore the administrative procedure whereby the competent environmental authority licenses the location, installation, enlargement and operation of undertakings and activities using environmental resources deemed actually or potentially pollutant, which, in any way, may cause environmental damage, considering the legal and regulatory provisions and applicable standards.

3.1 State Authority

Federal Law No. 6.938/81 sets forth that the environmental licensing shall be conducted by a "competent state authority" (section 10) and additionally by IBAMA, without prejudice of other required licenses. Under the amendment of section 10, §4, of the Federal Law referred to above, IBAMA shall be in charge of the environmental licensing of activities and works with significant environmental impact, at national or regional level.

The federal authority of IBAMA is restricted to the cases set forth in Resolution Conama No. 237, of December 19, 1997, section 4, such as the licensing of undertakings and activities located or developed jointly in Brazil and a neighbor country; in the territorial sea; in the continental platform; in the exclusive economic zone; in Indian lands or conservation units owned by the Federal Government; located or developed in two or more States; as well as in the cases in which direct environmental impacts exceed Brazil's territorial boundaries or of one or more States, and, as an exception, in radioactive activities or military bases or areas.

In the other end, the environmental licensing of undertakings and

activities having local environmental impact, as well as those delegated thereto by the State under a legal instrument or agreement, is the responsibility of municipalities. In all other cases, the responsibility shall be of the state environmental authority, that is, state authority is residual.

However, this state authority is not absolute, because section 5, sole paragraph, of Resolution CONAMA No. 237/1997 provides that the state environmental body shall make the licensing after considering the technical test conducted by the environmental authorities of the Municipalities in which the activity or undertaking is locate, and further, as applicable, the opinion of other competent authorities of the Federal Government, States, the Federal District and Municipalities involved in the licensing process.

As a rule, the authority for environmental licensing is of the State, but if the impacts of an undertaking occur within the limits of the Municipality only, it may conduct the respective licensing. In the event the activity or impact exceeds the direct limits of a State, the authority is transferred to IBAMA.

It is important to stress that double environmental licensing is not permitted, as set forth in section 7 of Resolution CONAMA No. 237/1997.

3.2 Environmental Permits

State Law No. 12.916/2005, which provides on the State Environmental Policy in Pernambuco, has the same types of permits as the federal system, with an additional modality of simplified permit, as transcribed below:

Prior Permit (LP) – granted in the preliminary phase of the undertaking's or activity's planning, it approves the conception and location thereof by certifying its environmental feasibility and establishing such basic requirements and conditions to be complied with in its subsequent implementation phases, in accordance with the directives of the environmental planning and zoning and other applicable laws.

Installation Permit (LI) – it authorizes the start of implementation of the undertaking or activity, in accordance with the specification contained in approved plans, programs and projects, including environmental control actions and other conditions.

Operation Permit (LO) – it authorizes the start of the activity, the undertaking or scientific research after checking actual compliance with environmental control actions and conditions determined for the operation, as set forth in the provisions of the permits above.

Authorization – it authorizes in a regular and discretionary manner the execution of activities that may result in changes to the environment, for a short and fixed period of time, and not resulting in significant impacts, without prejudice of the requirement of environmental studies that may be necessary;

Simplified Permit (LS) – granted for the location, installation and operation of undertakings or activities of companies subject to micro-company and small-company regimes with low polluting/damaging potential with specification and terms under the regulations.

In Pernambuco, the term of validity of the Prior Permit cannot exceed two (2) years, and it may be extended only one time, and the draft schedule of the plans, programs and projects related to the undertaking or activity shall be considered.

The validity of the Installation Permit cannot exceed four (4) years, which similarly may be extended only once, and shall further consider the schedule for installation of the undertaking or activity.

Last, the validity of the Operation Permit shall comply with environmental control plans and shall be from one (1) to ten (10) years, in accordance with the size and polluting potential of the

activity, without prejudice of any declaration of discontinuation of the development or activity, for reasons supervening the environmental order, and renewal thereof is admitted for an equal or different period, in compliance with the limits defined. Regarding undertakings with low polluting potential, a minimum validity of two (2) years is admitted.

It is important to stress that permit extensions should be requested before expiration of the validity of those already in force, and, in the case of the Installation Permit, it shall only be possible if there has been no amendments to the initially approved project.

3.3 Licensing Procedure

For the installation of a development or an activity which is potentially polluting or damaging to the environment a prior permit (LP) from the environmental authority shall be requested, without prejudice to other requirements or permits provided by law at the initial planning stage in the basic project level.

This permit does not authorize the beginning of the development implementation, since it is intended to inform the interested party of the relevance of the development implementation in the intended place.

Should an environmental impact analysis be necessary the CPRH will specify the type of study to be prepared by the developer and provide the respective reference instrument. If an EIA/RIMA (Environmental Impact Study) and the respective Environment Impact Report are required for developments or activities that may cause a significant environmental impact the environmental licensing may include a public hearing.

The CPRH normally grants the LP within ninety (90) days, unless the preparation of an EIA/RIMA is required, in which case the legal period is twelve (12) months, excluding the period for the study preparation. Even in those cases the state environmental authority

in Pernambuco has been issuing such permits within shorter periods than that provided by law.

Once this phase has been completed, the installation permit (LI) is intended to authorize the beginning of the development implementation, according to the specifications contained in the executive project approved. Similarly to the prior permit periods, the LI is granted within ninety (90) days.

Finally, after the necessary checks by the CPRH, the operation permit (LO) allows the beginning of the development operation and the operation of its control equipment. It is also granted or denied within the legal period of ninety (90) days.

If the developer has a more complex project including many implementation phases, which can exceed the periods provided by law, the CPRH may define a specific procedure for the next licensing stages, considering the nature, characteristics and peculiarity of the project, and it normally approves the development implementation schedule upon granting the first LI.

The environmental permit grants its holder the right to perform a potentially polluting activity as long as the legal requirements are met, and it cannot be considered as an acquired right to operate until it deems fit. In fact, the environmental permit should be understood as a commitment between the developer and the Government. On the one hand, businesspersons undertake to implement and operate the activity according to the conditions contained in the permits granted; and on the other hand, the Government guarantees them the right to perform the activity while the permit remains in force.

4 ADMINISTRATIVE VIOLATIONS

The Federal Constitution, as provided in its art. 23, assigned common administrative authority to the Federal Government, States and Municipalities for the environment protection and pollution control. Thus, any of the three government levels may act

on the environmental defense, without excluding the other. For such purpose, in general, the state or municipal laws as well as the federal laws shall be applied.

Federal Law No. 9.605 of February 12, 1998, also known as Environmental Crime Law, considers all actions or omissions that violate the legal rules of use, enjoyment, fostering, protection and recovery of the environment as administrative violations (see CESA's Guide for Domestic Investors).

At the state level, art. 3 of Law No. 12.916/2005 provides that the CPRH has authority to "impose sanctions and penalties due to an action or omission resulting in environmental pollution or damage, which results in violation of the relevant environmental and administrative laws and failure to comply with normative rulings or the technical requirements contained in the environmental permits issued by the CPRH".

Companies that operate in Pernambuco must strictly abide by the rules contained in the chapter on administrative violations and penalties of said law, since any conduct fitting in one of the legal provisions may result in an administrative environmental violation, subject to a fine ranging from R\$ 50.00 to R\$ 10,000,000.00.

The actions specified include: installing, building, testing, expanding, starting or continuing an activity which is effectively or potentially polluting or damaging to the environment without an environmental permit or in a manner inconsistent with the requirements established upon the prior permit, the installation permit or the operation permit and in the authorization; failing to meet the call from the CPRH for environmental licensing or corrective procedure; withholding data or information requested by the CPRH; failing to comply with Liability Commitments, whether in whole or in part; hindering or impairing the inspection by the CPRH; and providing false information or altering technical data requested by the CPRH.

For purposes of imposition and gradation of the appropriate penalty, violations will be classified as minor, material and severe and will

depend on the risk or damage they may cause to the health, safety and wellbeing of the population as well as to the biota and natural resources; the violator's previous failures to comply with environmental laws; the violator's economic situation; and the mitigating or aggravating circumstances. These penalties may be considered as highest level in the cases where the violator creates an artifice, trick, simulation or hindrance to inspection.

Minor violations will be subject to a fine of fifty reais (R\$50.00) and two thousand reais (R\$2,000.00); fines for material violation will be from two thousand and one reais (R\$2,001.00) to one hundred thousand reais (R\$100,000.00); and fines for severe violation range from one hundred thousand and one reais (R\$100,001.00) to ten million reais (R\$10,000,000.00). In the cases of sanctions imposed due to lack of the mandatory environmental licensing the fine will correspond to the permit value.

It should be noted that the imposition of a fine is independent of the violator's obligation to repair the environmental damage and the imposition of civil and criminal sanctions and, cumulatively, the products and instruments used in the violation will be seized; the works will be barred and demolished; the activities will be suspended, whether in whole or in part; the registration, permit or authorization will be suspended or cancelled; and contracting with state public administration will be prohibited. In case of recidivism of the same nature and seriousness the fine will be twice the value of the one previously imposed.

PART VI

PRIVATE REAL ESTATE MATTERS

1 TIDE LANDS

Tide lands are located in the sea coast and in river, lake and island banks (up to the point where the influence of the tide is perceived), in a depth of 33 meters, measured horizontally to the land portion, counted from the position of the mean high water level of 1831 (art. 2 of Decree-Law No. 9.760 de 1946).

The annual variation of the mean high water level makes impossible for it to be considered as a point of reference for delimiting tide lands. Thus, the mean high water level of 1831, which is in force until now, was established.

A new sea retreat land, in relation to that level of 1831, or “added tide land”, a name given to the properties arising from the sea retreat will arise.

Approximately 60% of the territory of Recife, the capital of the State of Pernambuco, is composed of tide lands. Three thousand properties are reached in the municipality. As in the case of Recife, part of the territory of the other municipalities of the State is also composed of tide lands.

Tide lands belong to the Federal Government and may be used by individuals through occupancy or fee farm, with the transfer of useful ownership (right of possession, use and enjoyment of the property, which also allows the transfer by succession or disposal) to third parties.

Fee farm results from the Federal Government ownership, through an administrative proceeding in the Federal Government Heritage Department, the former Federal Government Heritage Service – SPU,

imposing on the beneficiary an obligation to pay the rent on an annual basis – corresponding to 0.6% of the adjusted market value of the property. In case of disposal of the useful ownership the tenant in fee shall pay the laudemium (recognition fee) – a fee of 5% of the sale value.

The occupancy of tide lands is authorized upon payment of an annual occupancy fee and does not imply recognition by the Federal Government of any property right of the occupant over the land.

The Federal Government's vesting in possession of these lands may occur within 90 days when they are located in urban areas, or within 180 days when they are located in rural areas.

In the disposal of the right of fee farm or occupancy of tide lands or added tide lands, in addition to the documents required for the transfer of the property ownership, it is also necessary to submit the Federal Government tax certificate and the certificate of transfer and payment of laudemium.

2 TAXES IMPOSED ON REAL ESTATE IN BRAZIL

The Brazilian law created three types of real estate taxes: ITBI (Property Transfer Tax), IPTU (Municipal Real Estate Tax) and ITR (Rural Land Tax).

2.1 ITBI – Property Transfer Tax

The ITBI is charged upon the transfer of property in two ways:

(i) If the transfer results from donation or inheritance it will be performed by the State where the property is located; (ii) if the transfer results from a purchase it will be charged by the municipality where the property is located.

The quantification of the ITBI value depends on the calculation basis and tax rate established by each municipality. The calculation

basis is not the sale value, but rather the market value. In Recife the rate is 2%.

The time of payment of the ITBI is provided in the law of the location in which the property is located, which may occur either before or after the public deed has been recorded.

2.2 IPTU – Municipal Real Estate Tax

The IPTU is a tax imposed on urban properties of locations fitted with the basic improvements defined in the law.

Buyers shall request a tax clearance certificate from the municipal government where the property is located, since they will be responsible for paying the property tax debts, even those prior to the acquisition.

2.3 ITR – Rural Land Tax

When a rural property is acquired a certificate must be requested at the Federal Revenue Service in order to check any ITR debts, since it is essential to confirm the ITR payment for the past five (5) years in order for the public deed to be registered.

The acquirer shall submit, on annual basis, a Rural Land Tax Return (“DITR”) and inform Federal Revenue Service – through the ITR Information and Record Update Document (“DIAC”) – of the property acquisition.

PART VII

TRADE REGISTER

1 GENERAL ASPECTS

For the regular exercise of a business activity the Brazilian law requires the registration with the Public Register of Business Companies of individual businesspersons and business companies organized for the production and circulation of goods and services. In addition to individual registration and organization of business companies, all alterations to the Articles of Association and Bylaws as well as the record of books and other acts specifically provided by law shall be submitted to the Public Register of Business Companies.

In order to avoid unnecessary expenses businesspersons shall consult – before any formalization – a qualified professional and the Municipal Government of the location where they intend to settle so as to check whether there is permission for developing the purpose of the intended business activity.

Municipalities establish residential, commercial, industrial and combined zones in which certain developments may or may not be authorized. Investors shall only start the formal stages of the Commercial Register upon a positive response to the consultation.

The other types of non-business companies, associations and entities are not subject to the Commercial Register and their Certificates of Incorporation shall be filed with Company Registers.

In Pernambuco, the relevant entity for the Commercial Register is the Board of Trade of the State of Pernambuco – JUCEPE, headquartered in Recife and associated to the State Office for Economic Development.

2 BUSINESS ACTIVITY

The Brazilian law allows the development of the business activity by means of Individual Businesspersons and Business Companies. Business companies – due to the complexity of the investments required and the separation between the company's and its shareholders' equity – is the most common form.

The law provides for various corporate types for the performance of a variety of business activities. However, two types have proven to be most attractive and represent nearly 99% of the registrations with the State Trade Register: Limited Liability Companies and Corporations – they conciliate the dynamics of the corporate organization and the level of responsibility and transparency among the partners.

It should be noted that some activities such as management of consortiums, insurance, bank institutions, among others, must be organized as a Corporation under the law.

2.1 Limited Liability Companies

Limited Liability Companies are governed by the Civil Code and organized upon execution of the articles of association by two or more partners, whether individuals or legal entities. At the time of organization their capital stock, which represents the financial investment made by the incorporators, has to be established.

The capital stock may be subscribed for and fully paid at the time of organization or only subscribed for future payment, which may be made in cash or in assets, provided that they are liable to appraisal in cash. The capital stock will be divided into shares, which will be assigned to shareholders in proportion to the investments made by each one.

As a rule, partners only answer with their personal assets up to the full payment of the capital stock. After full payment, the company will answer with its assets for the debts incurred.

However, there are exceptions to this rule, in which partners and officers may answer with their own assets, as in the case of employment relationships, debts with social security and tax debts, for acts performed by the officers or partners in violation of the Law or the articles of association.

2.1.1 Articles of Association: The Certificate of Incorporation of a Limited Liability Company

The Articles of Association shall contain the following elements: a) title; b) preamble; c) body of the articles of association with mandatory and optional clauses; d) closing.

The body of the articles of association contains mandatory and optional clauses. The mandatory clauses are: a) corporate name; b) capital, expressed in currency, the share of each partner, payment form and term; c) full address of the headquarters and branches, if any; d) accurate and detailed description of the corporate purpose; e) duration; f) the date on which the fiscal year shall end; g) managers and their responsibilities; h) participation of each partner in profits and losses; i) courts or arbitration clause.

The optional clauses are established according to the interests of the partners, for instance: a) the rules of the partners' meetings; b) accessory application of Corporation rules; c) removal of partners for cause; d) authorization for a non-partner to become a manager; e) creation of an audit committee.

The closing shall establish the place, execution date, the signatories' names and signatures and the attorney's initials.

2.2 Corporations

Corporations are governed by Federal Law No. 6.404/1976. They are organized by means of public or private subscription by recording the minutes of the organization meeting or a public deed.

Corporations are also known as joint-stock companies and may be

publicly-held or closely-held. In both types shares are always registered and bearer shares are prohibited. Publicly-held companies are authorized to distribute and trade their shares with the public, and prior to any trade it must be registered with the Brazilian Securities Commission (CVM).

Corporate relations are governed by the Bylaws, which are approved at the time of organization. The capital stock is represented by shares and depending on the nature of the rights or advantages granted to shareholders said shares may be common, preferred, or participating.

The shareholders' liability is limited to full payment of their interest in the capital stock and the possibility of answering with their own equity for the Company's debts is more limited than that found in other corporate types.

2.2.1 Minutes of the Organization Meeting of a Corporation

The minutes of the general organization meeting of a Corporation shall contain: a) the place, time, month, day and year in which it was held; b) presiding officers: full name of the chairman and secretary; c) quorum required to hold the meeting; d) publication of notice of meeting, except in the case where all subscribers are present; e) the agenda; f) resolutions.

The resolutions shall govern: a) the approval of the Bylaws; b) the declaration of organization; c) the election of officers and their term of office; e) the election of the members of the Board of Directors, if any; f) the election of the members of the Audit Committee, if permanent; g) establishment of directors' fees.

For the organization, a deposit with a bank agency of at least 10% of the issue price of shares subscribed for in cash is required – this amount will become available to the company after evidence of its regular organization has been provided. In the case of incorporation of assets into the capital the organization meeting will appoint three

experts or a specialized company in order to prepare an appraisal report on the assets incorporated.

The Bylaws shall contain: a) the name of the corporation; b) the duration of the corporation; c) the address of the headquarters; d) the corporate purpose; e) the capital stock expressed in national currency; f) the number of shares in which the capital stock is divided, their type (common, preferred, participating), classes of shares and whether or not they will have a par value, convertibility, and registered form; g) duties and powers of management, form of substitution, term of office; h) audit committee, establishing whether or not it will be permanent, with the specification of the number of members; i) the duties of the Board of Directors, if any; and i) the date on which the fiscal year shall end.

The partners' names and signatures as well as the attorney's initials shall be included at the end of the minutes.

3 PARTICIPATION OF FOREIGN INVESTOR

Foreign investors may participate in economic activities organized in Brazil basically in two ways: (i) as a partner of a business company organized under the Brazilian laws; (ii) opening a branch or office of a foreign company in the national territory upon authorization of the Federal Executive Branch.

The capital allocated to the operations in Brazil shall be registered by the interested party or its representative through SISBACEN (Central Bank Information System).

3.1 Participation in Companies Organized under the Brazilian Laws

Limited Liability Companies and Corporations have the same legal rule as to the participation of foreigners in their corporate structures, as set forth in Normative Ruling No. 76/1998 from the Brazilian Trade Register Department – DNRC.

In the case of foreign individuals who are part of the corporate structure of a domestic business company, their identification shall specify: a) name; b) nationality; c) marital status; d) date of birth, if single; e) occupation; f) address; g) identification document specifying the issuing body; and h) registration number with the Individual Taxpayer Registry (“CPF”).

Foreign partners domiciled abroad shall appoint a representative in Brazil by a public power of attorney with powers to receive service of process in legal actions related to the company. All foreign documents shall be certified by the local notary office and initialed by the Brazilian Consulate in the country of origin and accompanied by an official translation.

The articles of incorporation of the company – if a foreign company participates therein – shall be accompanied by the following documents: a) a document supporting the foreign company’s legal existence and legitimate representation therefor; b) a copy of the articles of association or bylaws of the foreign company; c) a power of attorney appointing a representative in Brazil with powers to receive service of process; d) an official translation of the documents into Portuguese by a translator registered with any Board of Trade.

Foreigners may only fill a management position at the company or be a member of the Audit Committee if they have a permanent visa to reside in Brazil and do not fall within the cases of disqualification to fill a management position; otherwise, the company shall be managed or conducted by a manager residing in Brazil.

Finally, subject to the specific formalities, the law restricts or prohibits the direct or indirect participation of foreign people in certain activities. The participation of foreigners in health assistance activities is prohibited. The participation in the following activities is restricted: (i) in coastal shipping companies; (ii) an interest greater than thirty percent (30%) in news, broadcasting and audiovisual companies; (iii) cable TV service companies; (iv) mining and hydraulic power companies; (v) road cargo transport companies; and (vi) airline companies.

Regarding rural activities, there are currently restrictions in the borders with other countries, which is not the case of the State of Pernambuco, which does not have international borders.

3.2 Opening of Branches by Foreign Companies

Foreign companies may only perform business activities in Brazil by means of a branch or an office upon authorization of the Federal Executive Branch, subject to the formalities set forth in Normative Ruling No. 81/1999 of DNRC.

Thus, foreign companies shall file an application with the DNRC, addressed to the Ministry of Development, Industry and Commerce, which will analyze it, without prejudice to the jurisdiction of other federal bodies, depending on the activity to be performed.

At the time of application the law requires that the following documents be submitted: a) resolution on the branch installation in Brazil specifying the activity to be performed; b) articles of association or bylaws; c) list of partners, if possible; d) evidence that the foreign company has been organized under the laws of the country of origin; e) resolution on the representative in Brazil, with a power of attorney granting management powers and powers to receive service of process; f) a declaration by the representative in Brazil that he or she accepts the conditions under which the Federal Government has granted the authorization for installation and operation; g) last balance sheet; and h) payment of service fee.

The documents shall be certified by the Brazilian consulate and accompanied by an official translation.

Once the authorization for installation and operation has been granted by the Federal Executive Branch, the foreign company shall submit the following to the Board of Trade: a) the page of the *Diário Oficial da União* (Official Government Gazette) that published the authorization decree; b) the application to the Federal Executive Branch; c) the deposit in cash of the amount of capital allocated to the Brazilian operations; d) the address of the establishment.

In order to be effective in the Brazilian territory subsequent alterations will also be subject to the previous authorization of the Federal Executive Branch (Ministry of Development, Industry and Commerce).

4 TAXPAYER REGISTRATIONS AND OPERATION PERMITS

Once the company's Certificate of Incorporation has been filed, the JUCEPE will provide a Company Register Identification Number – NIRE, and therefore the company will be formally organized. However, the trade register itself does not make the company qualified to start its activities.

The next stages consist in registering the legal entity with the Federal Revenue Service (mandatorily) and with the State and Local Treasury Departments if it is a taxpayer thereof, and obtaining operation permits from the relevant public authorities.

The registration with the Federal Revenue Service occurs upon registration with the Brazilian Roll of Legal Entities (CNPJ) by registering with the service “Expresso Empresa” (Company Express) of the JUCEPE.

Once this stage has been completed, the CNPJ number will be issued and the company may obtain the state or municipal registration with the Treasury Department of the State of Pernambuco or the respective Municipality.

The state registration will only be required for business companies that perform activities on which the ICMS is imposed. Business companies whose activities are not included in the ICMS jurisdiction must obtain a registration with the Municipal Treasury Department and will be subject to the ISS (Service Tax).

After the trade register, the company registration as a taxpayer with the Federal, State and/or Municipal Revenue Service, the company shall obtain the municipal permits required to perform the intended activity.

Businesspersons shall go to the Municipal Government in order to request an operation permit for the establishment, which permit is a document that allows establishments to operate subject to the rules as to the opening hours, zoning, building, sanitary hygiene, public safety, occupational hygiene, and environment. A certificate of compliance from the Military Fire Department of Pernambuco shall also be obtained upon submission of the relevant documents and inspection in the establishment.

Finally, it should be noted that some activities will require authorization from the Municipal Health Surveillance Department, such as: a) production, marketing and supply of food; b) accommodation; c) nursery and child day care centers; d) health services; e) opticians; f) medical, dental, medical/veterinarian, nutritionist and psychologist offices; g) pharmacies; i) fitness, beauty and massage centers and saunas; j) barbershops and beauty salons; k) marketing and distribution of cosmetics and perfumery; l) agricultural/veterinarian products; m) sanitary hygiene products, and n) chemical products.

Once the aforementioned permits have been obtained, the business company will be entitled to freely perform the intended activity.

5 REGISTRATION OF TRADEMARK AND DOMAIN NAME

The trademark registration is submitted to the Brazilian Institute of Industrial Property – INPI, a federal instrumentality associated to the Ministry of Development, Industry and Foreign Trade, also responsible for the registration of patents, technology transfer agreements, business franchise agreements, etc.

Although it is not mandatory, the registered trademark grants its holder the right of exclusive use throughout the Brazilian territory in its business industry. The registration process is performed by means of an electronic application form on INPI's website (www.inpi.gov.br), and it may be made by the interested party or an attorney.

In order to register an Internet domain name an application should be submitted to the Brazilian Internet Management Committee – CGI-Br. The registration will be granted to the first applicant that meets the formal requirements.

All domain names on the Internet with the “.br” extension are registered at www.registro.br. In order for a foreign company to register a “.br” domain it shall have a legally qualified proxy in the country and a registration with the “.br” register system. Information on the registration for foreign companies may be obtained at <http://registro.br/info/reg-estrangeiros.html>.

PART VIII

SUAPE INDUSTRIAL AND PORT COMPLEX

1 LEGAL CONFIGURATION OF THE PORT

The public company, SUAPE – Complexo Industrial Portuário, was established by State Law No. 7.763 of November 7, 1978 in order to manage and coordinate various works and it is currently responsible for the management of the entire complex, which is not limited to the port. As set forth in State Decree No. 15.750, dated May 8, 1992, within the port limits SUAPE has the authorities provided in Federal Law No. 8.630 of February 25, 1993, which establishes the legal system related to port operation, as well as in said State Decree.

Referring to a public company means to say that although SUAPE is organized as a Private Company, its control is exercised by the State Government of Pernambuco (State Executive Branch), in such a way that its legal system is composed, in general, of the legal rules that govern the relations among private entities and some rules of public law specifically provided by law are applied to this system in special cases. For illustration purposes, it should be noted that State Law No. 12.765 of January 27, 2005, which deals with the State Program for Public-Private Partnerships – PPPs, applies to SUAPE, since it is a state public company.

State Decree No. 8.447, dated March 3, 1983, approved the Rules on the Use of Soil, Use of Services and Ecological Conservation of the Industrial Port Complex, which govern the occupancy and rational use of soil, for the purpose of preserving the local biodiversity, as provided in the Master Plan.

Thus, in addition to the areas intended for environmental conservation and management, there are currently five sub-areas for industrial purposes within SUAPE: (i) ZIP – Industrial Port Zone;

(ii) ZPE – Export Processing Zone; (iii) ZI-3 – Industrial Zone, located in the margins of PE-60 and Northern Distribution Trunk; (iv) ZI-3A – Industrial Zone, located between ZPE and the Southern border of SUAPE; (v) ZI-3B – Industrial Zone, intended for the implementation of an Oil Refinery.

The organized port area, dealt with in Federal Law No. 8630/1993, is part of the SUAPE company and is defined by Ruling No. 1.031, dated November 20, 1993, of the Ministry of Transportation. The delimitation of its area is contained in the Agreement of April 9, 1992, entered into between the Federal Government and the State of Pernambuco in order to improve the commercial exploitation of the SUAPE Port.

Thus, the use of the port facilities that constitute the organized SUAPE port area must be in accordance with the conditions contained in the “SUAPE Regulation”, subject to the jurisdiction provided by federal laws for other authorities that intervene in the port activity.

Said Regulation establishes basic operation rules for the organized SUAPE port, which must be complied with by all of those who perform activities within the facilities under the direct management of the Port Authority. This Regulation contains the rules that govern the use of the land facilities that support the port operation (including storage facilities, circulation of vehicles, wharf, boarding and sheltering works and supply facilities); waterway access facilities and boarding of vessels; and govern the port operation (such as movement and storage of goods).

In the event of a violation of the rules contained in the Regulation penalties may be imposed individually or cumulatively and, according to the seriousness of the failure, they may result in a warning, a fine or cancellation of the accreditation of the defaulting port operator.

The engagement of port labor – in addition to the general labor law – shall be performed according to Federal Law No. 8.630/1993 and

the specific rules for employment relations at the port area, defined by the Labor Management Authority.

Port facilities under private management are also governed by Federal Law No. 8.630/1993 and will be organized upon a bidding procedure for lease. Said Law also contains some important provisions in relation to the environment, which must be complied with by port managers at the time of lease. Such environmental aspects will be dealt with in a specific topic later in this CHAPTER.

According to the final and transitory provisions of the Regulation, it should be noted that while the Port Zoning and Development Plans have not yet been approved the SUAPE Port Authority Council – upon the request of the Port Authority – shall approve the lease of the Port areas for support activities for port operators and enterprises of significant importance to the SUAPE Port and the economy of the State of Pernambuco.

Thus, the port administration has authority to establish rules for the lease of said port facilities, which shall always be performed in accordance with Federal Laws Nos. 8.630/1993 and 8.666/1993⁵.

For the acquisition of real estate in industrial zones properties may be purchased and sold – in which conditions for the exercise of ownership will be established, such as compliance with SUAPE's rules and use of the property acquired, for instance.

In addition to the aforementioned rules, for delimitation of SUAPE's legal paradigm, other legal instruments must be observed, such as (i) the Internal Regulation of the SUAPE Port Authority Council; (ii) SUAPE's Master Plan; (iii) the Maritime Traffic Regulation; (iv) Traffic and Stay Rules of the SUAPE Port, approved by Ruling No. 40 of June 4, 1993, of the Harbor Master's Office of the State of Pernambuco; (v) other operational rules and instructions currently in force.

⁵ Also known as Bids Law.

2 TAX INCENTIVES

In order to foster the activities performed in the SUAPE Industrial and Port Complex various tax incentives are granted by the different government levels (federal, state and municipal), which will be described in CHAPTER III of this Guide.

At the federal level, we should point out the Tax System for Incentive to the Modernization and Expansion of the Port Structure – REPORTO; and the incentive related to the AFRMM – Merchant Marine Freight Surcharge (CHAPTER III, subitem 1.3).

At the state level, the ICMS provided in the PRODEPE is deferred for port activities (CHAPTER III, subitem 2.1) and the ICMS exemption is provided in the PRODINPE (CHAPTER III, subitem 2.2.1).

Regarding municipal taxes, we should mention the ISS and IPTU exemptions in the municipalities where SUAPE is located: Cabo de Santo Agostinho and Ipojuca (CHAPTER III, subitems 3.2 and 3.3)

It should be noted that the State Government's political decision to expand the strategic area of SUAPE's influence for the municipalities of Jaboatão dos Guararapes, Moreno, Escada, Sirinhaém, in addition to the municipalities of Cabo de Santo Agostinho and Ipojuca, where SUAPE is located, should enable an increase in the incentives mentioned above.

3 ENVIRONMENTAL ASPECTS

The port activity is considered by the law as a potentially polluting activity due to the impacts caused to the environment. For this reason, organized ports and port facilities must abide by the general and specific rules relating to environment conservation.

The Port Authority Council is responsible for ensuring compliance with environmental protection rules. Likewise, the port

administration shall “inspect port operations and ensure that services will be performed regularly, efficiently, safely and with respect for the environment”.

Note that SUAPE intends to zero its environmental liabilities by 2010, with investments of R\$16.5 million in 39 projects, which include the preparation of an environmental port agenda, the implementation of Basic Environmental Plans (PBA), the review of the Master Plan and other actions.

In addition to SUAPE’s port authorities, in Pernambuco the state environment authority with jurisdiction to control and inspect factors related to environment protection, compliance with environmental and licensing rules is the State Environment and Water Resource Agency (“CPRH”).

Thus, a Technical Cooperation Agreement was executed, whereby an Advanced Unit of said agency was installed in SUAPE in order to facilitate the licensing of companies which have already been installed and those that will be installed as well as to conduct a systematic inspection to follow licensing rules.

The inspections conducted by the CPRH always take place as a prerequisite for the issue of the environmental and operation permit under its jurisdiction. They may also be performed as a result of a complaint from third parties which may believe they are somehow adversely affected by the company’s activities. Moreover, inspections may be carried out for routine control by that authority or the Military Police Department of Pernambuco, which is also responsible for the environment conservation.

For the lease of port facilities, Federal Law No. 8.630/1993 provides that the agreement execution and the authorization for the lease of port facilities must be preceded by a consultation with the customs authority and the municipal government, and the approval of the Environment Impact Report – RIMA.

On the other hand, the public deeds related to the purchase and

sale of lands in SUAPE contain obligations for environment conservation, such as the submission of an environmental impact report to SUAPE on annual basis.

Thus, in addition to the rules already mentioned in this Guide, the environmental management shall comply with the guidelines established by the administration of the SUAPE Industrial and Port Complex.

Finally, it should be noted that according to SUAPE's Regulation "the surveillance and security at port facilities consist in inspecting the entry and exit of people, vehicles, equipment and goods in the organized port area and will also cover stored goods and environment protection". Therefore, although the surveillance and security of port facilities may be carried out by personnel hired by the Port Authority as well as the lessees and owners of facilities in the organized port area, the inspection of the environment protection is also within SUAPE's duties.

4 REGULATORY MATTERS

We list below some topics that, though not exclusively related to the State of Pernambuco, cover important aspects regarding the regulatory matters and law enforcement power at SUAPE.

ANTAQ – Brazilian Agency for Waterway Transportation

The ANTAQ, the agency that controls waterway transportation operations, was created by Federal Law No. 10.233/2001 and its responsibilities include: "XIV – establishing rules and standards to be observed by port authorities under Law No. 8.630/1993" and "XIX – establishing technical standards and rules in connection with the waterway transport of special and dangerous cargo".

In addition to establishing rules and standards, the ANTAQ shall also act as an inspecting authority. According to Resolution No. 858/2007, "Art.10: The obligation of Port Administration include:

XXII- comply and ensure compliance with rules and regulations relating to environmental protection and safety of port works”.

The general waterway and overland transportation rules, listed in said Law, also mention the compatibility of “transports with the environment conservation, thus reducing sound pollution levels and atmospheric contamination as well as soil and water resource contamination” (art. 11, V).

Therefore, the rules issued by port authorities shall also observe the provisions of that agency, since the same has authority to supervise and inspect the activities performed by Port Administrations in organized ports.

ANP – Brazilian Oil, Natural Gas and Biofuel Agency

The ANP is the agency that governs the activities performed by the oil, natural gas and biofuel industry in Brazil. It is a federal instrumentality associated to the Ministry of Mining and Energy, responsible for the execution of the national policy for that energy industry, according to the so-called Petroleum Law (Federal Law No. 9.478/1997).

The agency’s regulatory duty is provided in the Federal Constitution (article 21, subparagraph XI) and it was created by Federal Law No. 9.478 of August 6, 1997 and implemented by Decree No. 2.455 of January 14, 1998.

The main responsibilities of the ANP include: (i) establishing rules by means of ordinances, normative rulings and resolutions; (ii) holding bids and executing agreements on behalf of the Federal Government with concessionaires in activities in connection with the exploitation, development and production of oil and natural gas and (iii) inspecting the activities of the regulated industries (such as refinement, processing, transportation and import or export of oil or natural gas; distribution and resale of petroleum derivatives; production and impost of biodiesel, among others), whether directly or by means of agreements with other government bodies.

ANVISA – Brazilian Health Surveillance Agency

Companies that have snack bars, refectories or clinics must be licensed by the Health Surveillance Department from the Local Health Office of the Municipality in which they are located.

Regarding the Brazilian Health Surveillance Agency, there are specific technical regulations that must be observed, such as rule RDC ANVISA No. 217/2001, which — by engaging in the epidemiologic surveillance and control of vectors and the means of transportation in those areas — deals with ballast water; and RDC ANVISA No. 56/2008, which contains the Technical Regulation of Good Sanitary Practices in the management of solid waste in port areas and airports and amends RDC 217/2001.

ARPE – Pernambuco Regulation Agency

The Pernambuco Regulation Agency – ARPE, is a special state instrumentality that has financial, budget, functional and administrative autonomy and is headquartered in Recife, but operates throughout the State territory.

In accordance with State Law No. 12.524, the ARPE is responsible for the regulation of all public services delegated or provided directly by the State of Pernambuco, although they are subject to delegation, whether of its jurisdiction or delegated to it by other States as a result of a legal or regulatory rule, agreement or contractual provision.

Thus, ARPE's scope of operation includes energy, water and sewage services, state lotteries and games, passenger transportation and piped gas.

ARPE is also responsible for:

- (i) - establishing, adjusting, reviewing, approving or sending to delegated entities tariffs, their values and structures;

(ii) - complying and ensuring compliance with specific laws on delegated public services in the State of Pernambuco;

(iii) - requesting information required to perform its regulatory duty;

(iv) - imposing administrative and monetary penalties as a result of failure to comply with the applicable law, schedule of conditions, concession agreements, permission instruments and authorization of public services;

(v) - inspecting, whether directly or through an agreement with the State of Pernambuco, the technical, economic, accounting, financial, operational and legal aspects of the public services delegated;

(vi) - establishing procedures for assessing the quality of the services delegated;

(vii) - issuing rules and executing conduct agreements within the limits of its jurisdiction, designed for the entities regulated;

(viii) - acting in the defense and protection of users' rights;

(ix) - performing prior and subsequent control of legal instruments and transactions to be executed among concessionaires, grantees, authorized parties and their controlling or affiliated companies, imposing restrictions on the mutual constitution of rights and obligations, in particular commercial, and ultimately refraining from performing an act or agreement.

PART IX

BODIES AND ASSOCIATIONS OF INTEREST FOR INVESTOR

1 CONSULATES

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www.hollandaconsul.cc

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ARGENTINA

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Fax 55 81 3327-1450 / 3327-1497

BELGIUM

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Piedade | CEP 54410-350
Jaboatão dos Guararapes | PE
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BULGARIA

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Casa 2 | Imbiribeira | CEP 51170-001
Recife | PE
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Fax 55 81 3428-2821

CYPRUS

Praça do Arsenal da Marinha, 34
14º andar | Bairro do Recife
CEP 50030-360 | Recife | PE
Fone/Fax 55 81 3484-0190

COLOMBIA

Rua José Aderval Chaves, 78 - Sala 110
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Recife | PE
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DENMARK

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Fax 55 81 3325-2022

SPAIN

Rua Serinhaém, 105 - 2º andar
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Fax 55 81 3326-7203

UNITED STATES

Rua Gonçalves Maia, 163
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Recife | PE
Fone 55 81 3416-3050
Fax 55 81 3231-1906

FINLAND

Rua Líbia de Castro Assis, 59 - Sala 7
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Recife | PE
Fone 55 81 3462-4254 / Fax 3341-8924

FRANCE

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Boa Viagem | CEP 51020-020
Recife | PE
Fone 55 81 3117-3290 / Fax 3117-3280

GREAT BRITAIN

Av. Conselheiro Aguiar, 2941 - 3º andar
Boa Viagem | CEP 51020-020
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www.visainfoservice.com

GREECE

Rua do Hospício, 194 - Sala 801
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GUATEMALA

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HAITI

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PARAGUAY

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PERU

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CZECH REPUBLIC

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PREFEITURA DO RECIFE

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CEP 50030-230 | Recife | PE
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Fax 55 81 3232-8862
www.recife.pe.gov.br

DELEGACIA DA RECEITA FEDERAL DO BRASIL

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Fax 55 81 3797-5307
www.receita.fazenda.gov.br

JUNTA COMERCIAL DO ESTADO DE PERNAMBUCO – JUCEPE

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www.jucepe.pe.gov.br

SECRETARIA DE DESENVOLVIMENTO ECONÔMICO DE PERNAMBUCO

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The Government of the State of Pernambuco and the CESA's local office in Pernambuco would like to thank the law firms listed below for the preparation of the technical content of this Legal Guide for Foreign Investors in Pernambuco by their members, as well as the Executive Project Coordinators, Messrs. João Vicente Jungmann de Gouveia (Martorelli e Gouveia Advogados) and Oswaldo Naves Vieira Júnior (Advocacia Piauhyli no Monteiro).

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