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Specially Protected Areas

Amazon Region. Federal Decree No. 8,505, enacted on August 20, 2015 addresses the **Program for Protected Areas of the Amazon Region** (“ARPA”), which was created under the Ministry of the Environment (“MMA”). With a 25-year duration period, the Program has the following objectives: (i) to support the **creation and consolidation of federal and state conservation areas** of thorough protection and sustainable use in the Amazon region that are included in the Program; (ii) to assist the maintenance of such conservation areas; (iii) to propose mechanisms that guarantee the **financial sustainability** of conservation areas in the long term; and (iv) to promote the conservation of biodiversity in the region and to contribute to its sustainable development in a decentralized and participatory way. ARPA will be conducted by a Committee that will be presided by MMA’s Executive Secretary and the resources for its implementation will be originated from MMA itself and its subordinated entities, from instruments signed

with other federal public administration entities, from donations and from the intake of assets and services provided by public and private entities. ■

Permanent Preservation Areas.

The Chamber of Deputies is analysing Bill No. 6,830/2013, written by deputy Valdir Colatto (PMDB-SC), which allows the change of the limits of permanent preservation

areas located in urban zone through municipal zoning plans and land use and occupation municipal laws.

The subject of the proposal was already contemplated by Provisional Measure No. 571/2012, which amended Federal Law No. 12,651/2012 (the New Forestry Law). However, in such particular point, the original text of the Provisional Measure was not maintained in Federal Law No. 12,727/2012 (conversion law).

The Bill was already analysed by the Environment and Sustainable Development Commission, which issued an opinion that ➡



➔ recommended the rejection of the Bill. On such occasion, the rapporteur, deputy Sarney Filho (PV-MA), understood that the proposal would mean an “attempt to misrepresent fundamental principles of forestry protection” that were inserted in the New Forestry Law.



Currently, the appreciation of the Bill is in process at the Urban Development Commission, which has been hosting public hearings to discuss the matter. The latest hearing occurred on August 26, 2015 and on such occasion the environmentalists were heard. In the two former hearings, representatives of the government and of the entrepreneurial sector were respectively heard.

After the analysis by the Urban Development Commission, the Bill will be submitted to the appreciation of the Constitution, Justice and Citizenship Commission. ■

State of Minas Gerais. On September 8, 2015 the Government of the State of Minas Gerais launched the “Sicar Offline”, a computer program oriented to the implementation of the **Rural Environmental Registry** (the

Cadastro Ambiental Rural, or “CAR”).

The program is similar to the one adopted by the Brazilian Federal Revenue Office for Income Tax declarations, allowing the insertion of the data regardless of the existence of Internet connection and, therefore, minimizing possible mistakes of the system.

The former system, known as “Sicar Online”, was deactivated at midnight of September 7, 2015 and the registrations that were not finalized will be excluded. The rectification and access to receipts of the registrations that were already concluded will be possible only after September 22, 2015 through homepage www.car.mg.gov.br. Such registrations will not need to be redone.

Internet connection will only be necessary for the information to be downloaded and sent to the registry. The data required by the new system are exactly the same of those of the former system: rural land ownership status, geographical location, situation of permanent preservation areas, legal reserve and areas of restricted use, among others. ■

State of Santa Catarina. During the session held on July 27, 2015 the Santa Catarina State Court of Justice, by majority of votes, ruled in favour of the Appeals that were presented by the Civil Construction Union of Great Florianópolis (“SINDUSCON”), the

Environment Foundation of the State of Santa Catarina (“FATMA”) and by a co-defendant company in the Public Civil Action (No. 002189840.2012.8.24.0023) that was filed by the State District Attorney of Santa Catarina in 2012. Pursuant to such lawsuit, the plaintiff has sought that any area covered by coastal vegetation, regardless of the existence of the associated typical geographic formation, should be deemed as a **permanent preservation area**. In the same lawsuit, the plaintiff also sought that FATMA should be restrained from issuing environmental licences to any cutting and/or suppression of vegetation in the same areas.

The State Court of Justice has changed the first level ruling, making use of an interpretation that is more compatible with Federal Law No. 12,651/2012, which considers the coastal vegetation area as a permanent preservation area just when the vegetation has the **function** of “settling dunes or stabilizing mangroves”.



➔ The lawsuit was initially ruled in favour of the plaintiff by the judge of the 3rd Public Treasury

Court of the State of Santa Catarina, causing enormous losses to entrepreneurs in the State, due to

the interruption of environmental licensing procedures that involved such type of vegetation. ■

Combat against Desertification



National Policy. Federal Law No. 13,153 has been promulgated on July 30, 2015, creating the National Policy of Combat against Desertification and Mitigation of Drought Effects. For the purposes of the Law provisions, *desertification* is defined as “the land degradation in desert, semi-desert and dry sub-humid zones that result from various factors and vectors, including climate variations and human activities”.

The following objectives of the aforementioned National Policy were established among others: (i) the prevention and combat against desertification and the recovery of areas in land degradation process in all Brazilian territory; (ii) the prevention, adaptation and mitigation of the effects of drought in all Brazilian territory; and (iii) the institution of natural resource protection, preservation, conservation and recovery mechanisms.

The National Policy included in its set of principles, among others, the promotion of the synergy and harmonization between the United Nations Convention to Combat Desertification (1994), the Convention on Biological Diversity (1992) and the United

Nations Framework Convention on Climate Change (1992).

Pursuant to the Law, in order to achieve the objectives of the National Policy of Combat against Desertification, the Public Power shall map and diagnose the status of the environmental desertification and degradation processes, define a **contingency plan** for the mitigation and adaptation to the effects of droughts and of the combat against desertification and to implement technologies for the **efficient use of water and its reuse** in the production of seedlings for **revegetation and reforestation**, in urban and rural areas, in addition to other tasks. ■

Water Resources



Control of Water Pollution. On July 16, 2015 the National Council of the Environment (the *Conselho Nacional do Meio Ambiente*, or “CONAMA”) approved Resolution No. 467, which addresses the criteria for the **authorization of the use of products or agents in physical, chemical or biological processes** for the control of organisms or contaminants in superficial water bodies and brings

other provisions. Pursuant to the Resolution, the use of products and agents of processes without prior registration, as required under specific legislation, is forbidden. When the superficial water body is an artificial reservoir with an issued license or under licensing process, the procedures for the use of products and agents of processes will be established by the competent licensing agency, in the context of the respective licensing of the under-

taking. When the issued licenses do not address this matter, the competent environmental agency shall issue an **authorization for specific interventions**, by means of a request filed by the interested party, with the presentation of a project for such purpose.

The Resolution, however, is not applicable to certain cases, such as the measures adopted due to **environmental accidents** ➔

➔ and the use of **chemical dispersants at sea.** ■



State of São Paulo. On August 18, 2015 the Department of Waters and Electric Energy (the *Departamento de Águas e Energia Elétrica*, or “DAEE”) published Regulation No. 2,617, which declares the existence of a **critical**

water availability situation in the region of the High Tietê Water Basin, considering the low rain precipitation in the respective tributary water basins and the current storage level of the reservoirs that supply the Metropolitan Region of São Paulo.

The Regulation establishes that, due to the seriousness of the situation of storage levels of the reservoirs that belong to the High Tietê Water Production System, with risk to public supply, **special character actions** shall be adopted in order to assure the water availability in a safe and efficient way. ■

Biodiversity



Endangered Species. On July 10, 2015 the Ministry of the Environment issued Instruction Rule No. 02, in order to regulate the **suppression of vegetation** and the **capture, transportation, maintenance and management of fauna**, in the context of the environmental licensing of activities and undertakings, as well as the suppression of vegetation for the **alternative use of the soil** (farming, industrial, energy generation and transmission, mining and transportation activities, ur-

ban developments and other forms of human land use), when species of the Official National Lists of Endangered Species of Flora and Fauna are involved. Such activities require the **prior authorization** from the competent environmental agency.

For the issuance of the authorization in the context of the environmental licensing, the environmental agency shall evaluate the following aspects, during the phase of the environmental viability analysis: (i) undertaking ➔

Solid Waste



Civil Construction Waste. On July 29, 2015 the National Council of the Environment (“CONAMA”) approved Resolution No. 469, which amends CONAMA Resolution No. 307/2002 (guidelines, criteria and procedures for the management of civil construction waste). With the amendment, **empty packaging of decorative paints** was expressly included in the exemplified set of Class B wastes (recyclable for other destinations). Such packaging was characterized as the one whose recipient contains just dry film of paint in its internal coating, without the accumulation of liquid paint waste. Pursuant to the new Resolution, such packaging must be submitted to **reverse logistics system**, observing the requirements established under Federal Law No. 12,305/2010 (National Policy of Solid Waste) and contemplating the environmentally adequate destination of existing paint wastes. ■



➤ or activity location alternatives; and (ii) importance of the area for the conservation of the endangered species, considering the extinction risk associated with each species. In the case of environmental licensing procedures in which the

environmental viability of the undertaking has already been recognized, the issuance of the authorization will depend on the consultation of the environmental agency to the entrepreneur about the occurrence of en-

dangered species. In all cases where such occurrence is demonstrated, **mitigation and compensation measures** shall be adopted by the entrepreneur, in order to ensure the conservation of the species. ■

Administrative Environmental Liability

Amnesty. On August 26, 2015, the Plenary Session of the Chamber of Deputies approved Bill No. 8,170/2014, written by deputy Jovair Arantes (PTB-GO), which grants an amnesty to the **debts associated with fines** imposed by the Brazilian Institute of the Environment and Renewable Natural Resources (the *Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*, or “IBAMA”) for environmental administrative infractions committed by Municipalities that occurred before Complementary Law No. 140/2011 (administrative author-

ity regime associated with environmental issues) became enforceable. Pursuant to the Bill, a requirement for the amnesty will be the evidence that the undertaking or activity that was subject to the infraction notice was already under environmental licensing or authorization process with the competent environmental agency when the notice was issued.

The approval was given despite the fact that the Commission of Environment and Sustainable Development issued an unfavorable opinion on this matter,

based on the understanding that the amnesty to the Municipalities exclusively and not to other environmental violators would not have legal consistency, based on Complementary Law No. 140/2011, and also on the perception that the potential extension of the amnesty to other violators would, on the other hand, generate very negative impacts to the **effectiveness of environmental protection rules.**

The Bill will be analysed by the Senate, yet. ■

Genetic Resources



Requests for Access, Remittance and Accreditation. On July 21, 2015 the Council for the Management of Genetic

Resources (the *Conselho de Gestão do Patrimônio Genético*, or “CGEN”) approved Resolution No. 43, which establishes procedures for the requests for the access to and remittance of a component sample of genetic resources and/or

to associated traditional knowledge and for the accreditation of a national public institution as bona-fide custodian of a component sample of genetic resources, which shall be submitted to the analysis of CGEN, revoking the former CGEN regulation on this matter. The requests must be formulated through the presentation of a specific form that is available in the following address in the Internet: <http://bit.ly/1gdZDO3>. The Resolution,

however, shall become ineffective as from November 17, 2015, when Federal Law No. 13,123/2015 (New Law of the Access to Genetic Resources) will enter into force.* ■

* About the New Law of the Access to Genetic Resources, please see the issue of our Semi-Annual Environmental Summary related to the first half of 2015.

Mining



New Code. On August 26, 2015 the rapporteur of the Special Commission that analyzes the Bills of the New Mining Code (Bills Nos. 37/2011 and 5.807/2013, written by deputy Weliton Prado – PT-MG – and by the Executive Branch, respectively), deputy Leonardo Quintão (PMDB-MG) presented a new preliminary report with some amendments in comparison with the former text, such as the creation of a chart containing rates for

the Financial Compensation for Mining Exploitation (“CFEM”), specifically in connection with iron ore, which is the main raw material exported by the sector in Brazil.

Another important aspect brought by the Bills is the creation of the National Mining Agency (the *Agência Nacional de Mineração*, or “ANM”), which will undertake the current tasks performed by the National Department of Mineral Production (the *Departamento Nacional de Produção Mineral*,

or “DNPM”).

More than one fifth of the 362 amendments that were presented in connection with the Bills are related to **socio-environmental issues**.

Due to the controversies faced and the complexity of the topics, the Special Commission decided to postpone the voting of the final report to September 22 or 23, 2015. Until then, new public hearings and negotiations around the current preliminary report

Fauna Protection

Animal Experimentation. On August 6, 2015 the National Council of Animal Experimentation Control (“CONCEA”) issued Normative Resolution No. 24, which addresses the **procedures for the establishment of administrative process** to investigate administrative infractions involving the **utilization of animals in education or scientific research** that is not in compliance with the applicable legislation. Among the infractions

that are specified in the regulation is the performance of experiments that are restricted or prohibited by CONCEA. Administrative penalties associated with such infractions, applicable against individuals and legal entities, include, among others, the imposition of warnings, fines and interdiction (of the practice of the activity, in the case of individuals, and of the establishment, for legal entities) and shall be specified by CONCEA pursuant

to the seriousness of the infraction, the associated damages, the aggravating or attenuating circumstances and the background of the violator. ■



Environmental Education



Climate Change and Protection of Biodiversity. On August 19, 2015 the Environment and Sustainable Development Commission of the Chamber of

Deputies issued a favourable opinion in connection with the approval of Bill No. 1,733/2015, written by deputy Luciano Ducci (PSB-PR), which has the purpose to amend the Law of the National Policy of Environmental Education (Federal Law No. 9,795/1999),

promoting special attention to the matters of climate change and the protection of biodiversity.

The Bill aims to include, among the objectives of environmental education, the **stimulus to the participation** in actions related to climate change and to the →

➔ control of biodiversity loss, as well as the contribution to the achievement of the goals of the National Policy of Climate Change (Federal Law No. 12,187/2009) and of the National Policy of the Environment

(Federal Law No. 6,938/1981). The Bill also contemplates intervention actions to be adopted by the public federal, state and municipal powers in order to build the consciousness of the society about the matter.

The Bill shall be analysed by the Education Commission and by the Constitution, Justice and Citizenship Commission, yet. ■

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