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## How Foreigners Can Benefit From National Content Requirements Under Brazil's New Pay TV Rules

Last year, Brazil's legislature passed Law No. 12,485/2011, which substantially changed the regulatory landscape for pay TV services, revoking outdated regulations that limited foreign investment and cross-ownership between pay TV and other telecommunications services. Brazil's national telecommunications regulator, ANATEL, is currently preparing regulations that specify how services are to be rendered under the new framework and how new licenses will be issued. Additional regulations are expected from Brazil's national audiovisual authority, ANCINE, with respect to mandatory minimum percentages of national content and national independent content to be exhibited in pay TV services.

Although the Law permits foreigners to own companies licensed to deliver pay TV services in Brazil, it created strict requirements with respect to the content of channel line-ups that seek to encourage the development of Brazil's audiovisual industry. The Law contains a complex quota system imposing a minimum number of channels with Brazilian content and also a minimum number of hours of Brazilian content shown on other channels. These restrictions will apply only during the first twelve years that the Law is in force (Article 40).

What appears to be a limitation upon foreign audiovisual providers may prove to be an opportunity. The quota system will raise demand for Brazilian audiovisual content and domestic audiovisual providers may not be fully prepared to respond without partnering with foreign producers. The participation of foreign producers in a co-production does not disqualify content as Brazilian. Current regulations found in subsection V, Article 1, of Provisional Measure No. 2.228-1/2001 define as "Brazilian content" that which is:

- (i) produced by a Brazilian production company that is registered with ANCINE, directed by a Brazilian director or by a foreign one resident in Brazil for more than three years, and that hires for the production at least two-thirds (2/3) of artists and technicians who are Brazilian or naturalized for more than five years;
- (ii) produced by a Brazilian production company that is registered with ANCINE in cooperation with parties from other countries that **have entered** into cinematographic co-production treaties with Brazil; or
- (iii) co-produced by a Brazilian production company that is registered with ANCINE that owns at least 40% of the intellectual rights of the subject production, in association with parties from countries that have **not entered** into co-production treaties with Brazil. Furthermore, at least two-thirds (2/3) of Brazilian artists and technicians or foreign ones resident in Brazil for more than three years must take part in this production.

Brazil has signed cinematographic co-production treaties with numerous countries – Germany, Italy, Spain, India, Venezuela, Argentina, Canada, Chile, France and Portugal. These treaties typically require the participation of Brazilians in the co-production in percentages that are lower than those required under hypothesis (iii) described above. Therefore, an international co-production may be qualified as "Brazilian content" even where it features only a limited presence of Brazilian companies, artists and technicians.

Another possibility available to foreigners with respect to this market is to acquire a minority equity interest in Brazilian production companies. The Law defines these companies as those (i) incorporated under Brazilian law, (ii) headquartered and managed in Brazil, (iii) having at least 70% of its total and voting capital owned, directly or indirectly, by Brazilians or persons naturalized for more than ten years, and (iv) whose activities are managed by Brazilians or by persons naturalized for more than ten years.

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