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2008.001.040420 – 4

Administrative Region of the Capital City
Court Records' Office of the 1st Corporate Court Division

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21/02/2008 –

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Court Records' Office of the 1st Corporate Court Division

2º Ofício

Reg.

Protest

Sort.

Plaintiff: BRANDES INTERNATIONAL EQUITY FUND

Plaintiff: BRANDES EMERGING MARKETS EQUITY FUND

Plaintiff: BRANDES INVESTMENT PARTNERS L P

Counsel:

Defendant: CENTRAIS ELÉTRICAS BRASILEIRAS S.A. ELETROBRÁS

Counsel:

Head Judge: Luiz Roberto Ayoub

JUDGE Dr.

.....
Clerk of Court: Antonio Baptista de Oliveira Silva

FILING

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RECORD OF SENTENCE: BOOK PAGES

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Your Honor, Mr. Justice, Dr. State Judge of the 1st Corporate Court Division of the Administrative Region of the Capital City of the State of Rio de Janeiro

BRANDES INTERNATIONAL EQUITY FUND, an Investment Fund constituted as trust under the laws of the Province of Ontario, with head office at 400 – 20 Bay Street, Toronto, Ontario M5J 2N8, Canada, hereinafter referred to as "1st Notifying Party"; **BRANDES EMERGING MARKETS EQUITY FUND**, an Investment Fund constituted as trust under the laws of the Province of Ontario, with head office at 400 – 20 Bay Street, Toronto, Ontario M5J 2N8, Canada, hereinafter referred to as "2nd Notifying Party" and **BRANDES INVESTMENT PARTNERS, L.P.**, foreign entity constituted and existing under the laws of Delaware, United States of America, domiciled in the city of San Diego, State of California, at 11988 El Camino Real, Suite 500, hereinafter referred to as "3rd Notifying Party", collectively referred to as the "Notifying Parties"; by and through their lawfully appointed counsels who subscribe this claim (docs. N^{os}. 1, 2 and 3), come now to this court to present a

JUDICIAL PROTEST

directed to CENTRAIS ELÉTRICAS BRASILEIRAS S.A. – ELETROBRÁS, hereinafter referred to as "ELETROBRÁS", or simply as "Notified Party", a mixed economy corporation, enrolled in the Brazilian Corporate Taxpayers' Registry [CNPJ/MF] under number 00.001.180/0001-26, with central office in the city of Rio de Janeiro, at Av. Presidente Vargas, 409 – 13th Floor, office of its main executive directors, based on the provisions of Chapter 867 and subsequent chapters of the Civil Proceedings Code and on the following factual and legal grounds:

- THE LEGITIMACY OF THE PETITIONERS TO FILE THIS JUDICIAL PROTEST -

1. The 1st and the 2nd Notifying Parties are investment funds constituted and organized under the laws of Canada, as evidenced in the constitution documents of trusts (consolidated declaration) attached as document 4,

and, although they do not have own corporate legal character, they do have the legal capacity to act lawfully, in the same form of the Investment Funds constituted in Brazil.

2. In addition, the 1st and the 2nd Notifying Parties are indirectly holders of 913,223 (nine hundred and thirteen thousand, two hundred and twenty three) and 161,530 (one hundred and sixty one thousand, five hundred and thirty) American Depositary Receipts (ADR), respectively, as evidenced in the attached documents (documents numbers 5 and 6), securities traded in the North American market at Level 1 of the New York Stock Exchange, under the stock heading “CAIFY”, backed by stock lots of 500 nominative common stocks issued by the Notified Party that mirror the same rights over the underlying nominative common stocks of Eletrobrás, such as the right to receive dividends and all other payments pursuant to the depositary receipts program managed by the depositary institution (JP Morgan Chase Bank), which underlying stocks are under the custody of Banco Bradesco S.A.
3. The 3rd Notifying Party is an entity that in its country of origin is called investment adviser, which is subject to registration with the regulatory entity Securities and Exchange Commission – SEC of the United States of America, equivalent to the Brazilian Securities Commission – CVM, to legally carry out its activities. All the Notifying Parties belong to the same economic group, holding the full powers to manage the securities.
4. By force of an Investment Advisory Agreement, as evidenced in the declarations issued by 33 institutional investors (document number 7), the 3rd Notifying Party operates directly to the benefit of the investors holding on November 2, 2007, 62,581,218 (sixty two million, five hundred and eighty one thousand, two hundred and eighteen) American Depositary Receipts (ADR) backed by common stocks of ELETROBRÁS equivalent to approximately 32% of the outstanding stocks issued by the Notified Party¹, that is, excluding the majority interest of the Federal Government, BNDES Participações S.A. – BNDESPAR, the National Development Fund – FND and of the FGP (Guarantor Fund of Public – Private Joint Partnerships), such securities representing on that date (November 2, 2007) 5,52% of the Notified Party’s capital.
5. The 3rd Notifying Party, vested with the applicable legal powers, widely operates in the management of the securities issued by the Notified Party since 1997, and is duly authorized by its clients to buy and sell securities they own in Brazil, as well as to exercise the rights ensured by law to stockholders of limited liability corporations, including the right to vote by using the proxy service, in which the votes are exercised by the custodian of the stocks in Brazil, in this case, Banco Bradesco S.A.

6. ARNOLDO WALD, writing about Investment Funds, regard them as “an equity with specific purpose, encompassing assets and liabilities bound to a certain system that unites them by affecting the assets to determined purposes, which justifies the adoption of a legal system”, and further strengthens his analysis to affirm: “discussing about a most special or *sui generis* joint owned property of an entity without a corporate legal character, following the terminology of the Civil Proceedings Code, or about a form of trust already adapted and recognized by the Brazilian law, the designation and semantics are secondary as the important matter is the substantive capacity of the Fund to acquire and grant rights, act before court and perform all activities of the commercial life, although it may only perform its activities through its manager”².
7. The Investment Funds offer the advantage that several persons gathered together with mutual objectives and interests orient their savings to reach better financial results for the group as a whole, compared to the performances obtained individually.
8. Therefore, the Funds are real investment channels, especially for small investors that may access a wide variety of financial products, which would otherwise be inaccessible.
9. In a technical – legal sense, for a set of congregated, gathered, juxtaposed, collected assets to fulfill certain objectives, it constitutes an universality in fact (*universitas facti*); when the universality of things is set forth by law itself, that subjects it to a special and separate system, to which the assets and rights that composed it are subjected, it constitutes an universality of right (*universitas iuris*). Included in this category is the estate of a deceased person, the bankrupt estate and the investment funds.
10. From a broader point of view, the investment funds may be regarded as entities of collective investments, where the amount of accumulated funding is applied to a diversified investment portfolio of securities and values available in the financial market.
11. Thus, the Notifying parties, acting as indirect stockholders of ELETROBRÁS, are lawfully supported to file this judicial protest and require the fulfillment of the legislation in force, on its own or on behalf of its clients, with the purpose of and to the effects of obtaining the payment of the dividends which were retained and not paid, relative to several fiscal years.

- PROOF OF CLAIM FOR THE PRESENT JUDICIAL PROTEST -

12. ELETROBRÁS approved, in a General Meeting of Stockholders, the allocation of the portion of the minimum compulsory dividend set forth in

Article 202 of Law number 6.404, dated December 15, 1976 and set out in the article 45, 1st paragraph of the By Laws of the Notified Party³, relative to past fiscal years, for the formation of special reserves, under the weak argument assumed by the accounting entry used in the financial statements that the cash flow of the Notified Party is not compatible with full distribution of dividends.

¹ Refers to the position of the Notifying Party on November 2, 2007.

² The original text is not underlined.

³ Article 45 (...) 1st Paragraph – in each fiscal year, shareholders shall have the right to receive a mandatory dividend corresponding to at least twenty five per cent of the net profit, adjusted in accordance with applicable laws.

13. Such portions of the minimum compulsory dividends which should have been fully paid were directed to a “Special Reserve of Dividends” of the Common Stocks of the Notified Party and in midst the last fiscal year totaled the substantial and significant amount of R\$ 7,421,521.00 (seven million, four hundred and twenty one thousand, five hundred and twenty one reais), as acknowledged in the financial statements of the Notified Party, included in the Board of Directors’ Report for the 2006 financial statements, available on the CVM Internet Page (document number 8).

14. It is interesting to note that the reserve of “dividends not paid” is placed into the “Profits Reserve” entry, accounted as an item of the Net Equity, and is not included as an account of the Liabilities, as one can learn from the analysis of the last Balance Sheet of the Notified Party, leading to a clear illegality subject to correction by the applicable public authorities, since it is an open capital corporation, of which it must require full disclosure with the presentation of results under the maximum possible transparency for the investors, in compliance with their rights and liabilities.

Let us see:

	R\$ thousand	
	2006	2005
Legal reserves (art. 193 – Law 6.404/76)	1.653.644	1.595.578
By Laws Reserves:		
Studies and projects (art. 194 – Law 6.404/76)	240.422	228.809
Investments (art. 194 – Law 6.404/76)	14.658.843	14.078.184
Others (art. 194 – Law 6,404/76)	11.081	11.081
Retention of Profits (art. 196 – Law 6.404/76)	68,748	-
Dividends not paid (art. 202 – Law 6.404/76)	7.421.521	6.448.973
	<u>24.054.259</u>	<u>22.362.625</u>

15. Its sounds equally strange to note the inclusion as legal framing for the retention of the mentioned dividends, in an abstract way, the article 202 of Law number 6.404 dated December 15, 1976, without any further detailed specification or more accurate information, since the several paragraphs of the mentioned law set forth and/or treat independent situations. Nevertheless, the Notified Party implies reference to paragraphs 4 and 5, which provide for the case of releasing the obligation for the payment of the minimum compulsory dividend in a fiscal year in which such payment is not compatible with the financial standing of the company; in such an event the dividends not distributed shall be recorded as “Special Reserve” and, if not absorbed by losses in subsequent fiscal years, they are deferred for payment as soon as the financial situation of Notified Party permits such payment.
16. Nevertheless, the company’s positioning shows clear losses for the Notified Party’s stockholders. It should also be noted that the same paragraph 4 of the article 202 provides for a pre-requisite in such situations, in an open capital corporation such as ELETROBRÁS, that “its management shall forward to the Securities Commission, within 5 (five) days to be counted from date of the general meeting, an explanation justifying the information furnished to the general meeting”. Definitely, such procedure was not considered and the creation of the special reserve of retained dividends was carried out under complete disregard of the applicable law, making ELETROBRÁS delinquent with its obligations before the entity that regulates the Brazilian capital markets, the Securities Commission – CVM.
17. Concerning the same subject matter, the Special Federal Office of the Attorney General – PFE of CVM already released an opinion by Dr. Clóvis S. de Souza, on page 4 of the MEMO/PFE-CVM/GJU-2/Nº 90/06), pages 146 to 152 of the Process CVM/SP nº 04/00381:

“Furthermore, it is correct that even if the limited liability company profits in the fiscal year, it will be possible to retain the dividends in case the dividends distribution is incompatible with the financial standing or is due to expansion purposes of the company, in such case, it becomes mandatory to prepare a detailed report by the managing entity, informing the General Meeting about such situation. By virtue of the exceptional rule, this Securities Commission must also be notified of the impossible distribution status when the company is an open capital entity (article 40 of the Limited Liability Company’s Law), through the submission of that report to its appreciation, pursuant to article 8 of Law 6.385, dated December 7, 1976. Thus, a solid foundation is imposed over the lawful refusal to the profits distribution (article 202, paragraph 4 of Law 6.404/76)”.

18. It should be noted that such “detailed report”, if any, was never submitted to the higher entities of the Notified Party, neither was informed to the stockholders, nor forwarded to the Securities Commission – CVM in order to comply not only with the law in force, but also with the principles of total transparency and full disclosure that must head the decisions of ELETROBRÁS management and the good practice of corporate governance.
19. In addition to that, it is crucial to note, according to the accounting principles clearly stated in the partnership legislation (article 198 of Law 6,404/76), that the allocation of profits to constitute statutory reserves and retention for expansion purposes may in no event be approved in each fiscal year with prejudice to the distribution of compulsory dividends.
20. Considering that the balance of the special dividends reserve was not absorbed by fiscal losses of the Notified Party because ELETROBRÁS is notably a surplus company, as one can easily learn from its last balance sheets, and notwithstanding, the non compliance to the provisions set forth in paragraph 4, article 202 of the Limited Liability Company Law, which requires a detailed report to support the incompatibility with the financial standing of the Notified Party and justify the non distribution of the minimum compulsory dividends in a specific fiscal year, in the worst case and notwithstanding the requirement of the due amount, the mentioned balance of the referred to special reserve should have been paid “as dividend, as soon as the financial standing of the company permits” (pursuant to paragraph 5, article 202 of the Limited Liability Company Law), that is, within the past three fiscal years, since at least within this short period, the financial standing unquestionably supported such disbursement, as above shown, what may be effortlessly proven through a review of the Notified Party’s accounting.
21. In the fiscal years ended December 31, 2004, 2005 and 2006, the differences between the Current Assets and Liabilities of ELETROBRÁS⁴ corresponded to approximately R\$ 3.8 billion, R\$ 6.5 billion and R\$ 8.7 billion, respectively. According to the trial balance dated September 2007 (third quarter), such difference nearly reached the amount of R\$ 11.4 billion. On the other hand, according to the last released trial balance, the Notified Party closed the third quarter 2007 with 12 liability contracts of loans, financing and bonus, totaling R\$ 1,852,533 thousand, that is, less than 1% of its net equity.
22. In addition to that, the economic and financial data made available by the Notified Party on November 13, 2007 relative to the period closed on September 30, 2007, demonstrated that the financial availability of the Notified Party (“Cash” and “Cash Equivalents”) at the end of that accounting period was of R\$ 4,851,560 thousand, that is, an amount sufficient to pay

more than half of the debt owed to the stockholders relative to the retained dividends.

23. Besides being highly capitalized and with a very low debt level, the Notified Party also holds stockholder interests in several Brazilian companies, which amount is above R\$ 4.73 billions and, if we take into consideration only the shares not burdened (or released) held by the Notified Party, such stockholder interests exceed the amount of R\$ 2.25 billions.
24. If we further consider the particular consolidation procedures in the Balance Sheet of the Notified Party for the controlled company ITAIPU Binacional, of which ELETROBRÁS, herein notified, holds 50% interest jointly with the Government of Paraguay, that excludes all the income result generated by ITAIPU under the entry "ITAIPU Carry Forward Result", but includes co-obligation of the Notified Party in the Non Current Liabilities, we can conclude that the long term assets of the Notified Party are far stronger.
25. Therefore, its is clear that the financial standing of the Notified Party permitted and still permits to support the payment to the stockholders of the dividends not declared but recognized. Thus, there is no reason to continue postponing the payment of those dividends, since the stockholders hold the express right to "participate in the corporate profits", pursuant to the provisions set forth in article 109 of Law number 6.404/76.
26. It should also be considered that the Notified Party is an open stock private - public company, with its financial instruments traded abroad (New York Stock Exchange) through ADRs with performance in the stocks under the custody of Banco Bradesco S.A., holding legal obligations which it may not default, such major obligations being the profit sharing and the payment of dividends to the stockholders, an express right set forth in the article 109 of Law number 6.404/76⁵.

⁴ Considering only the Controlling Stockholder and Unconsolidated.

⁵ "Article 109 - Neither the By Laws nor a general meeting may deprive a stockholder of the right: I - to participate in the corporate profits; (...)".

27. Before the legal authority of CVM (*ex-vi* of article 22, paragraph 1 of Law 6.385/76) and the regulatory and supervisory powers held by the supervisory entity, the Notified Party forwarded to CVM a mail informing its completely anomalous and irregular current situation, requesting urgent and strict measures to avoid harmful repercussions not only for the market but also for the image of the country abroad, considering that the Notified Party is a holding of the power system with majority interest held by the Federal Government.

28. Aware of its responsibility, the prestigious Self-Managed Federal Entity shall certainly take the applicable administrative measures within the scope of its legal authority, aiming to keep the health and reliability of our strong capital markets and attract continued and growing foreign capital investments in the Country.

29. It is appropriate to quote the provisions set forth in Article 8, V, of Law 6.385/76 which requires priority in CVM's supervision and inspection of the open capital companies that do not pay the minimum compulsory dividend, *verbis*:

Article 8 – The Securities Commission is responsible for:

V – the inspection and supervision of the open capital companies, giving priority to the companies that are not profitable, or to the companies that do not pay the minimum compulsory dividend.

30. The good operational conditions of a developed and credible securities market is also a strong component of public and social interest, since it motivates the participation of new and important players in that market, generating more wealth, employment and tax collection. In the statements of the Attorney General of the Self-Managed Federal Entity, Dr. Ilene Patrícia de Noronha, in its brilliant essay, Police Power of CVM⁶, “the central position of the securities market in the economic system makes its transactions and alterations incur consequences over the entire productive chain, directly affecting those who do not participate in such market. Thus, the acts and facts relative to the securities market are of public interest and under its sponsorship all of its principles and fundamentals must be headed (...). Aiming to keep the market reliability and attract a growing number of participants, it is necessary an equitable treatment to all of its players, namely to the individual player”.

31. Pursuant to the provisions of article 205 of Law number 6.404/76, the dividends payment includes two basic requisites. According to BORBA's teachings, “the first requisite to pay dividends is profit; the second requisite is the decision that supported its distribution⁷” .

⁶ Symposium on Securities Law, Oct / Nov 1997, held at the head offices of the Regional Federal Tribunal of the 4th and 5th Regions (Book Series – Center of Legal Studies of the Federal Justice Committee, Vol. 15)

⁷ BORBA, José Edwaldo Tavares, Corporate Law: pursuant to Law 9.457/97 and EC 19 / 98. 5th revised and updated Edition. Renovar, 1999; page 417.

32. There is no doubt that the first requisite mentioned by José Edwaldo Tavares Borba occurred and, as there is no reason to omit the dividends as required by law and extensively mentioned herein, only by submitting to CVM the detailed report explaining the incompatibility between the financial standing of the company and the payment of the minimum compulsory dividends to the stockholders, such payment could be considered not compulsory in the mentioned fiscal years.
33. The Notifying Parties understand that the Market Release issued by the Finance and Investor Relations Director, Mr. Luiz Augusto Figueira on August 24, 2007, stating that the "Management of Eletrobrás is seeking a solution for the "Special Reserve of Dividends", is excessively evasive and in no circumstance weakens or justifies the current delinquent situation of the Notified Party and the responsibility of the management of ELETROBRÁS.

- THE REQUEST AND LEGAL GROUNDS OF THE NOTIFYING PARTIES -

34. In several occasions, the Notifying Party sought agreements with the Notified Party, the latter always presenting a short term solution to solve the pending issue, nevertheless such solution was never executed.
35. Promises were made, market releases were issued, explanations were given, though not convincing, and worse, conflicting with the actual facts and figures existing in the official documents of the company, herein Notified Party, and no concrete result was obtained, ELETROBRÁS remaining inactive up to the present moment, in relation to the payment of the dividends due in past fiscal years.
36. As no other alternative was left, the Notifying Parties draw up this Judicial Protest pursuant to the provisions of article 867 of the Civil Proceedings Code, aiming to prevent responsibility and provide for the preservation and confirmation of its rights.
37. Finally, pursuant to article 870 of the Civil Proceedings Code, the Notifying Parties request the notification of ELETROBRÁS, through its legal representative, to acknowledge the content of this judicial protest, delivering the records irrespective of transcript, after payment of the court fees.

Respectfully submitted,
Requests approval.

Rio de Janeiro, February 21, 2008.