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Newsletter

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DOMAIN NAMES IN BRAZIL (".br"): REGISTRATION BY FOREIGN COMPANIES EXPECTED TO BE SOON ADMITTED!

The Brazilian Internet Administration Committee is about to change its policy concerning the requirement of a local presence to register a domain name in our country, which has always been strongly criticized specially for constituting a discrimination against foreigners. In the near future, foreigners may be able to register a domain name in Brazil through FAPESP, the Brazilian Domain Name Registration Authority, as long as they are duly represented by a Brazilian attorney-in-fact.

Currently, and until the new rules are announced, Applicants must still be incorporated locally, what means that they must necessarily hold a local corporate taxpayer registration number (known in Brazil as "CNPJ" number). In case you wish to receive additional informational as soon as the new rules enter into force, please inform us.

Under the current rules, with a view to comply with the local presence requirement, one must consider one of the following options:

- 1) To appoint an already existing local company or representative as the domain name host.
- 2) To incorporate a local subsidiary company. We would like to point out, however, that our firm does not provide services related to the incorporation or maintenance of companies, but would be glad to refer you to a colleague that does, upon your request.
- 3) To appoint a local company which would act as the trustee for the domain name of interest. Such company could be for example a local distributor, or even a completely unrelated entity, as long as it is regularly incorporated in Brazil.

Once any of the above mentioned options is elected, a simple search through the Registrar's web site www.registro.br may verify the availability of a domain name in the Brazilian ccTLD (country code top level domain). As this site does not offer a version in the English language yet, we would be glad to perform searches on your behalf and upon your instructions.

Currently, in order to file a domain name before FAPESP, we must be provided with the following information and documents:

- 1) The full name of the Applicant and its corresponding "CNPJ" number;
- 2) At least the Primary and Secondary domain name system (DNS) which will host the domain name of interest. The DNS servers may be located in or outside Brazil. If you do not have a DNS to host your domain name of interest, we may suggest a reliable local Internet Service Provider which would host the domain name in its servers. However, we take no responsibility over the services rendered by the local ISP and any eventual damages caused by him.
- 3) Applicant must appoint four contacts. A general Entity contact, which is responsible for the general information of the owner/trustee. An Administrative contact, which is authorized to change the DNS information and change the Technical and Accounting contacts. A Technical contact that is authorized to change the DNS information only. Finally, an Accounting contact, responsible for receiving charges from the Registrar and handling payments. A person may act as any of the contacts above upon registering itself at the local Registrar as a User. Our firm is a registered User and may act as any and/or all contacts specified above. We would like to point out that all the contact persons must have an address in Brazil.

It is important to mention that regarding the ccTLD ".com.br", which is the most popular category, it is not required to present a certified copy of the "CNPJ" registration card or any additional document, but in case the ccTLD is ".br", ".am.br", ".fm.br", ".g12.br", ".gov.br", ".mil.br", ".net.br", ".org.br", ".psi.br", ".tv.br", after the domain name application is filed, Applicant must submit to the Registrar this document and the proof of belonging in the relevant activity of such categories within 30 days, under penalty of cancellation of the applied for domain name. Please note that as the new rules have not been published, at the present moment, it is not possible to foresee the exact documents or information that shall be required.

To obtain a complete and updated listing of all categories available under the Brazilian ccTLD please go to www.registro.br/dpn.html.

Under the rules still in force, an Applicant may register only up to 10 (ten) domain names under the same "CNPJ" number and if a Registrant already holds a domain name under the ccTLD ".com.br" he may not apply for an identical domain under the ccTLD ".org.br" or any other (e.g.

“.net.br”). These rules might also change in order to accommodate the registration by foreign companies.

Each domain name must have no less than 2 and no more than 26 characters. A domain name character may consist of letters, numbers and the hyphen. Finally, a domain name may not consist of numerical characters only.

Once a domain name is registered with a hyphen, third parties cannot register a similar domain name which only difference is the presence or absence of a hyphen.

Applications for domain names which reproduce notorious trademarks will be automatically rejected. Notorious trademarks are specifically provided for in a list furnished by the Brazilian Patent and Trademark Office to the local Registrar. Although the rule providing for the protection of well known trademarks was established, such provision has not been enforced by the local Registrar.

Until now our country has not adhered to any existing alternative dispute resolution system and all disputes are resolved either amicably or through a Court action. Fortunately, the Brazilian courts have repeatedly enforced the rights of trademark owners in the Brazilian Internet and determined the cancellation or transfer of illegitimately registered domain names.

A domain name registration is valid for a period of 12 months, at which point renewal is possible upon payment of the corresponding renewal fee. If a domain name is registered after the first month of the calendar year (January), the Registrar's charge is done in a proportional basis.

A use requirement exists under the rules of the Brazilian Internet Administration Committee, as follows: if the servers which are designated to host the domain name of interest are not responding properly to the Registrar's calls during a 180 (one hundred and eighty) day period, the domain name will be automatically cancelled.

Assignment of Brazilian ccTLDs is permitted, however, the procedure is extremely burdensome, requiring the drafting and execution (by both parties) of an assignment document in accordance with a draft furnished by the local Registrar.

Finally, in case of interest we shall be pleased to inform our fees for assisting in the registration of the domain names in Brazil. Should you need further information, please feel free to contact your regular speaking person in our firm, or our attorneys Rodrigo Ouro Preto Santos (ROPSantos@leonardos.com.br) or Daniele M. T. Coelho (DMTCoelho@leonardos.com.br).

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