

- conduct a spin-off that results in (a) a change of our corporate purposes, except if the assets and liabilities of the spun-off company are contributed to a company that is engaged in substantially the same activities, (b) a reduction in the mandatory dividend or (c) any participation in a centralized group of companies, as defined under the Brazilian Corporate Law.

In addition, in the event that the entity resulting from a merger, *incorporação de ações*, as described above, or a consolidation or a spin-off of a listed company fails to become a listed company within 120 days of the shareholders' meeting at which such decision was taken, the dissenting shareholders may also exercise their right of withdrawal.

The Brazilian Corporate Law contains provisions that restrict withdrawal rights and allow companies to redeem their shares at their economic value, subject to certain requirements. As our bylaws currently do not provide that our shares would be redeemable at their economic value, our shares would be redeemable at their book value, determined on the basis of the last balance sheet approved by the shareholders. If the shareholders' meeting giving rise to withdrawal rights occurs more than 60 days after the date of the last approved balance sheet, a shareholder may demand that its shares be valued on the basis of a new balance sheet that is as of a date within 60 days of such shareholders' meeting.

According to the Brazilian Corporate Law, in events of consolidation, merger, *incorporação de ações*, participation in a group of companies, and acquisition of control of another company, the right to withdraw does not apply if the shares in question meet certain tests relating to market liquidity and float. Shareholders would not be entitled to withdraw their shares if the shares are a component of a general stock index in Brazil or abroad and shares held by persons unaffiliated with the controlling shareholder represent more than half of the outstanding shares of the relevant type or class.

#### 10E. Taxation

The following discussion, subject to the limitations set forth below, describes material Brazilian and United States tax considerations relating to the ownership of our common shares or ADSs. This discussion does not purport to be a complete analysis of all tax considerations in those countries and does not address tax treatment of shareholders under the laws of other countries. Shareholders who are resident in countries other than Brazil and the United States, along with shareholders that are resident in those two countries, are urged to consult with their own tax advisors as to which countries' tax laws could be relevant to them. This summary is based upon the tax laws of Brazil and the United States as in effect on the date of this annual report, which are subject to change, possibly with retroactive effect, and to differing interpretations.

Although there presently is no income tax treaty between Brazil and the United States, the tax authorities of the two countries have had discussions that may culminate in such a treaty. No assurance can be given, however, as to if or when a treaty will enter into force or how it will affect the U.S. holders of common shares or ADSs.

#### Material Brazilian Tax Consequences

*General.* The following discussion summarizes the material Brazilian tax consequences of the acquisition, ownership and disposition of common shares or ADSs, as the case may be, by a holder that is not considered domiciled in Brazil, ("non-Brazilian holder"), for purposes of Brazilian taxation.

*Taxation of Dividends.* Dividends, including stock dividends and other dividends paid in property, paid by us to the depositary in respect of the ADSs, or to a non-Brazilian holder in respect of the common shares, are currently not subject to income withholding tax, provided that they are paid out of profits generated as of January 1, 1996 (or out of reserves derived therefrom). We do not have retained earnings generated prior to January 1, 1996 (or reserves out of such earnings).

*Taxation of Gains.* According to Law No. 10,833, enacted on December 29, 2003, the disposition of assets located in Brazil, by a non-Brazilian holder, whether to another non-Brazilian holder or to a Brazilian

holder, may be subject to taxation in Brazil. Accordingly, on the disposition of the common shares, which are considered assets located in Brazil, the non-Brazilian holder may be subject to income tax on the gains assessed, following the rules described below, regardless of whether the transactions are conducted in Brazil or abroad and with a Brazilian resident or not. Regarding ADSs, although we believe that the ADSs do not fall within the definition of assets located in Brazil for the purposes of Law No. 10,833/03, considering the general and unclear scope of this law and the lack of any judicial court rulings in respect thereto, we are unable to predict whether our belief will ultimately prevail in the courts of Brazil. Thus, the gain on disposition of ADSs by a non-Brazilian holder to a resident in Brazil (or even to non-Brazilian resident in case the argument above does not prevail) may be subject to income tax in Brazil according to the rules described below for ADSs or those applicable to the disposition of common shares, when applicable.

As a general rule, gains assessed are the positive difference between the amount in *reais* realized on the sale or exchange of a security and its acquisition cost measured in *reais* (without correction for inflation).

The deposit of common shares in exchange for ADSs may be subject to Brazilian income tax on capital gains at the rate of 15% or 25%, in case of a non-Brazilian holder located in a tax haven jurisdiction (as defined below), if the acquisition cost of the common shares is lower than (1) the average price per common share on a Brazilian stock exchange on which the greatest number of such shares were sold on the day of deposit or (2) if no common shares were sold on that day, the average price on the Brazilian stock exchange on which the greatest number of common shares were sold in the 15 trading sessions immediately preceding such deposit. In such case, the difference between the average price of the common shares, calculated as above and the corresponding acquisition cost, will be considered a capital gain. Such taxation is not applicable in case of non-Brazilian holders registered under Resolution No. 2,689 ("2,689 holder") that are located in a tax haven country or jurisdiction, which is defined as the jurisdiction that does not impose any income tax or which imposes such tax at a maximum rate of less than 20%, or in which the domestic legislation imposes restrictions on the disclosure of the shareholders' composition or the ownership of the investment ("tax haven holder"). The withdrawal of ADSs in exchange for common shares is not subject to Brazilian tax as far as the regulatory rules in respect to the registration of the investment before the Brazilian Central Bank are duly observed.

Gains assessed on the disposition of the common shares carried out on the Brazilian stock exchange (which includes the transactions carried out on the organized over-the-counter market):

- are exempt from income tax when assessed by a non-Brazilian holder that is a 2,689 holder and is not a tax haven holder ; or
- are subject to income tax at a rate of 15% in any other case, including the gains assessed by a non-Brazilian holder that (i) is not a 2,689 holder; or (ii) is a 2,689 holder but a tax haven holder. In these cases, a withholding income tax of 0.005% shall be applicable and can be offset with the eventual income tax due on the capital gain.

Any other gains assessed on the disposition of the common shares that are not carried out on Brazilian stock exchanges are subject to income tax at a rate of 15%, except for tax haven holders, which, in this case, are subject to income tax at a rate of 25%. In case the gains are related to transactions conducted on the Brazilian non-organized over-the-counter market with intermediation, the withholding income tax of 0.005% shall also be applicable and can be offset with the eventual income tax due on the capital gain.

In the case of redemption of or capital reduction with payment in common shares or ADSs, the positive difference in *reais* between the amount effectively received by the non-Brazilian holder and the acquisition cost of the securities redeemed or returned, is treated as capital gain derived from sale or exchange of common shares not carried out in a Brazilian stock exchange market and is therefore subject to income tax at the rate of 15% or 25%, as the case may be.

Any exercise of preemptive rights relating to the common shares will not be subject to Brazilian taxation. Any gain on the sale or assignment of preemptive rights relating to our common shares by the

depository on behalf of holders of our ADSs will be subject to Brazilian income taxation according to the same rules applicable to the sale or disposition of common shares.

**Taxation on Interest on Shareholders' Equity.** Any payment of interest on shareholders' equity (see "Item 8A. Consolidated Statements and Other Financial Information—Dividends and Dividend Policy—History of Dividend Payments and Dividend Policy and Additional Payments on Shareholders' Equity") to non-Brazilian holders of ADSs or common shares, is subject to Brazilian withholding tax at the rate of 15% at the time Embraer records such liability, whether or not the effective payment has been made at that time. In the case of non-Brazilian residents that are tax haven holders, the applicable rate for income tax is 25%. The Brazilian Corporation Law establishes that a notional interest charge attributed to shareholders' equity can either be accounted for as part of the mandatory dividend or not. In the event that the payment of such interest is accounted for as part of the mandatory dividend, we would be required to pay an additional amount to ensure that the net amount received by the shareholders, after the income tax, is at least equal to the minimum mandatory dividend. The distribution of interest attributed to shareholders' equity would be proposed by our Board of Directors and subject to subsequent declaration by the shareholders at a general meeting.

**Taxation on Foreign Exchange Transactions ("IOF/Câmbio").** Pursuant to Decree No. 4,494 of December 3, 2002, the conversion into Brazilian currency of proceeds received by a Brazilian entity from a foreign investment in the Brazilian securities market (including those in connection with an investment in common shares or the ADSs and those under Resolution No. 2,689) and the conversion into foreign currency of proceeds received by a non-Brazilian holder is subject to IOF/Câmbio, the rate of which is currently 0% for most cases. However, the Minister of Finance has the power to increase the IOF/Câmbio rate at any time to a maximum of 25%, but only in relation to future exchange transactions.

**Taxation on Bonds and Securities Transactions ("IOF/Títulos").** IOF/Títulos may be imposed on any transactions involving bonds and securities, even if these transactions are performed on the Brazilian stock, futures or commodities exchange. As a general rule, the rate of this tax is currently 0% for transactions involving common shares and ADSs, although the executive branch may increase such rate up to 1.5% per day, but only with respect to future transactions.

**Other Brazilian Taxes.** There are no Brazilian inheritance, gift or succession taxes applicable to the ownership, transfer or disposition of common shares or ADSs by a non-Brazilian holder, except for gift and inheritance taxes which are levied by some states of Brazil on gifts made or inheritances bestowed by individuals or entities not resident or domiciled in Brazil within such state to individuals or entities resident or domiciled within such state in Brazil. There are no Brazilian stamp, issue, registration, or similar taxes or duties payable by holders of common shares or ADSs.

**Transactions on Bank Accounts.** As a general rule, the *Contribuição Provisória sobre Movimentação Financeira*, the tax on transactions on bank accounts, or CPMF, is imposed on any debit to bank accounts at a rate of 0.38%. Therefore, transactions by the depository or by holders of common shares that involve the transfer of Brazilian currency through Brazilian financial institutions could be subject to the CPMF tax. Currently, the funds transferred to Brazil to acquire shares on Brazilian stock exchanges and the remittance abroad of the proceeds earned on the disposition of common shares in Brazil are exempted from the CPMF. In addition, according to Article 4 of Provisional Measure No. 281, of February 15, 2006, which is currently in effect, the CPMF rate is reduced to zero on withdrawals from bank accounts used to buy common shares in a public offering, provided that (i) the public offering is registered with the CVM and (ii) the issuer is listed on a Brazilian stock exchange. In order for the effects of this Provisional Measure to become permanent it must be converted into law, with due observance of the legal procedures applicable thereto. As of the date of this annual report, the sanction by the president of Brazil is pending to convert the Provisional Measure into law.

#### **Material U.S. Federal Income Tax Consequences**

The following discussion, subject to the limitations and conditions set forth herein, describes the material U.S. federal income tax considerations to U.S. Holders (as defined below) in owning and disposing of Embraer common shares and ADSs. The discussion is only applicable to U.S. Holders that hold common shares or ADSs of Embraer as capital assets (generally for investment purposes). This discussion does not address all

aspects of U.S. federal income taxation that may be applicable to a U.S. Holder subject to special treatment under U.S. federal income tax law (including, but not limited to, banks, tax-exempt organizations, insurance companies and dealers in securities or foreign currency, partnerships or other pass-through entities, holders who have a functional currency other than the U.S. dollar, holders that hold Embraer common shares or ADSs as part of a hedge, straddle or conversion transaction, holders that own directly, indirectly, or constructively, 10% of more of the total combined voting power of the stock in Embraer and holders who acquired shares pursuant to the exercise of an employee stock option or otherwise as compensation).

In addition, except as otherwise specifically provided above, there is no discussion of state, local, or non-U.S. tax consequences of the ownership of Embraer common shares or ADSs. The discussion is based upon the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), U.S. Treasury regulations, rulings and other pronouncements of the U.S. Internal Revenue Service (the "IRS") and judicial decisions as of the date hereof. Such authorities may be repealed, revoked or modified (with possible retroactive effect) so as to result in U.S. federal income tax consequences different from those discussed below.

**Shareholders are urged to consult their own independent tax advisors concerning the U.S. federal income tax consequences of the ownership of Embraer common shares and ADSs in light of their particular situations, as well as any consequences arising under the laws of any other taxing jurisdiction.**

As used herein, the term "U.S. Holder" means a beneficial owner of Embraer common shares or ADSs representing Embraer common shares that is (i) an individual who is a citizen or resident of the United States, (ii) a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any State or the District of Columbia, (iii) an estate the income of which is subject to U.S. federal income taxation regardless of its source or (iv) a trust (X) that is subject to the supervision of a court within the United States and the control of one or more United States persons as described in Section 7701(a)(30) of the Code or (Y) that has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

If a partnership holds Embraer common shares or ADSs, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. A U.S. Holder that is a partner of a partnership holding such common shares or ADSs is urged to consult its tax advisors regarding the consequences of the ownership of Embraer common shares or ADSs.

In general, for U.S. federal income tax purposes, a U.S. Holder who is a beneficial owner of an ADS will be treated as the owner of the underlying Embraer common shares that are represented by such ADS. Deposits or withdrawals of underlying shares by U.S. Holders for ADSs will not be subject to U.S. federal income tax.

#### *Distributions on Embraer Common Shares or ADSs*

Subject to the discussion below under "–Passive Foreign Investment Company Rules," the gross amount of any distributions (including distributions of notional interest charges attributed to shareholders' equity) paid to U.S. Holders of Embraer common shares or ADSs (including Brazilian withholding taxes imposed on such distributions) will be treated as a dividend under Section 301 of the Code, to the extent paid out of current or accumulated earnings and profits of Embraer and its predecessor as determined under U.S. federal income tax principles. Such a dividend will be includable in the gross income of a U.S. Holder as ordinary income on the date received by the U.S. Holder. To the extent that the amount of any distribution exceeds Embraer's current and accumulated earnings and profits for a taxable year (as determined under U.S. federal income tax principles), the distribution will first be treated as a tax-free return of capital to the extent of a U.S. Holder's adjusted tax basis in the Embraer common shares or ADSs, and thereafter as capital gain.

As used below, the term "dividend" means a distribution that constitutes a dividend for U.S. federal income tax purposes under Section 316 of the Code.

Dividends paid by Embraer will not be eligible for the dividends received deduction allowed to corporations under the Code.

The amount of any dividend paid in *reais* will equal the U.S. dollar value of the *reais* calculated by reference to the exchange rate in effect on the date the dividend is received by the U.S. Holder regardless of whether the *reais* are converted into U.S. dollars. If the *reais* received as a dividend are not converted into U.S. dollars on the date of receipt, a U.S. Holder will have a tax basis in the *reais* equal to their U.S. dollar value on the date of receipt. Any gain or loss realized on a subsequent conversion or other disposition of the *reais* will be treated as U.S. source ordinary income or loss for U.S. federal income tax purposes.

Pursuant to Section 901 of the Code, a U.S. Holder will be entitled, subject to a number of complex limitations and conditions (including those discussed in Section 904 of the Code), to claim a U.S. foreign tax credit in respect of any Brazilian withholding taxes imposed on dividends received on Embraer's common shares or ADSs. U.S. Holders who do not elect to claim a credit for foreign taxes may instead claim a deduction in respect of such Brazilian withholding taxes (in accordance with Sections 164 and 275 of the Code). Dividends received with respect to the Embraer common shares or ADSs will be treated as foreign source income for U.S. federal income tax purposes, subject to various classifications and other limitations. The rules relating to computing foreign tax credits are complex, and U.S. Holders are urged to consult their own tax advisors regarding the availability of foreign tax credits with respect to any Brazilian withholding taxes in regards of dividends paid on Embraer's common shares or ADSs.

Distributions of additional Embraer common shares to U.S. Holders with respect to their common shares or ADSs that are made as part of a *pro rata* distribution to all shareholders of Embraer generally will not be subject to U.S. federal income tax.

Subject to certain exceptions for short-term and hedged positions, the amount of dividends received by certain U.S. holders (including individuals) prior to January 1, 2011 with respect to the Embraer common shares or ADSs will be subject to taxation at a maximum rate of 15% if the dividends represent "qualified dividend income." Dividends paid on the Embraer common shares or ADSs will be treated as qualified dividend income if (i) the Embraer common shares or ADSs are readily tradable on an established securities market in the United States and (ii) neither Embraer nor its predecessor was in the year prior to the year in which the dividend was paid, and is not in the year in which the dividend is paid, a passive foreign investment company or "PFIC". Under current guidance issued by the IRS, the ADSs of Embraer should qualify as readily tradable on an established securities market in the United States so long as they are listed on the NYSE, but no assurances can be given that the Embraer ADSs will be or remain readily tradable under future guidance. In the case of Embraer common shares held directly by U.S. Holders and not underlying an ADS, it is not clear whether dividends paid with respect to such shares will represent "qualified dividend income." U.S. Holders holding Embraer common shares directly and not through an ADS are urged to consult their own tax advisors.

Based on its audited financial statements as well as relevant market and shareholder data, Embraer believes that neither it nor its predecessor was a PFIC for United States federal income tax purposes with respect to its 2005 taxable year. In addition, based on Embraer's audited or projected financial statements and current expectations regarding the value and nature of its assets, the sources and nature of its income, and relevant market and shareholder data, Embraer does not anticipate becoming a PFIC for its 2006 taxable year. However, because this determination is based on the nature of Embraer's income and assets from time to time, involves the application of complex tax rules, and since Embraer's view is not binding on the courts or the IRS, no assurances can be provided that Embraer (or its predecessor) will not be considered a PFIC for the current, or any past or future tax year. The potential application of the PFIC rules is further discussed below.

The U.S. Treasury has announced its intention to promulgate rules pursuant to which holders of ADSs and intermediaries through whom such securities are held will be permitted to rely on certifications from issuers to establish that dividends are treated as qualified dividends. Because such procedures have not yet been issued, it is not clear whether Embraer will be able to comply with them. U.S. Holders of Embraer common shares and ADSs should consult their own tax advisors regarding the availability of the reduced dividend tax rate in light of their own particular circumstances.

#### *Sale, Exchange or Other Taxable Disposition of Embraer Common Shares or ADSs*

Subject to the discussion below under “–Passive Foreign Investment Company Rules” for U.S. federal income tax purposes, a U.S. Holder will recognize taxable gain or loss on any sale, exchange or other taxable disposition of Embraer common shares or ADSs in an amount equal to the difference between the amount realized on the sale, exchange or other taxable disposition and the U.S. Holder’s adjusted tax basis (determined in United States dollars) in the Embraer common shares or ADSs. Such gain or loss will generally be capital gain or loss and will be long-term capital gain or loss if the Embraer common shares or ADSs have a holding period of more than one year. Certain U.S. Holders (including individuals) may be eligible for preferential rates of U.S. federal income tax in respect of long-term capital gains. The deductibility of capital losses is subject to limitations under the Code.

Any gain or loss recognized by a U.S. Holder from the sale, exchange or taxable disposition of Embraer common shares or ADSs generally will be gain or loss from U.S. sources for U.S. foreign tax credit purposes. Consequently, if a Brazilian withholding tax or capital gains tax is imposed pursuant to a sale of Embraer common shares or ADSs, U.S. Holders who do not have significant foreign source income might not be able to derive effective U.S. foreign tax credit benefit in respect of such Brazilian withholding tax or capital gains tax. The rules relating to foreign tax credits, including the amount of foreign income taxes that may be claimed as a credit in any given year, are complex and subject to limitations. You are urged to consult your own tax advisor regarding the application of the foreign tax credit rules to your particular circumstances.

#### *Passive Foreign Investment Company Rules*

If, during any taxable year of a non-U.S. corporation, 75% or more of the corporation’s gross income consists of certain types of “passive” income, or the average value during a taxable year of the “passive assets” of the corporation (generally assets that generate passive income) is 50% or more of the average value of all the corporation’s assets, the corporation will be treated as a PFIC under U.S. federal income tax law. If a corporation is treated as a PFIC, a U.S. Holder may be subject to increased tax liability upon the sale of its stock, or upon the receipt of certain dividends, unless such U.S. Holder makes an election to be taxed currently on its *pro rata* portion of the corporation’s income, whether or not such income is distributed in the form of dividends, or otherwise makes a “mark-to-market” election with respect to the corporation’s stock as permitted by the Code. In addition, as discussed above, a U.S. Holder would not be entitled to (if otherwise eligible for) the preferential reduced rate of tax payable on certain dividend income. As stated above, although no assurances can be given, based on Embraer’s operations, projections and business plans and the other items discussed above, Embraer does not believe that it (or its predecessor) was or currently is a PFIC, and does not expect to become a PFIC for its 2006 taxable year.

Any U.S. Holder who owns Embraer common shares or ADSs during any taxable year that Embraer is a PFIC would be required to file IRS Form 8621. U.S. Holders are urged to consult their own tax advisors regarding the potential application of the PFIC rules to the common shares or ADSs and the availability and advisability of making an election to avoid the adverse tax consequences of the PFIC rules should Embraer be considered a PFIC for any taxable year.

#### *Information Reporting and Backup Withholding*

In general, payments of dividends on Embraer common shares or ADSs, and payments of the proceeds of sale, exchange or other disposition of Embraer common shares or ADSs, paid within the United States or through certain United States-related financial intermediaries to a U.S. Holder may be subject to information reporting and backup withholding at a current maximum rate of 28% unless the U.S. Holder (i) is a corporation or other exempt recipient or (ii) in the case of backup withholding, provides an accurate taxpayer identification number and certifies that no loss of exemption from backup withholding has occurred. Backup withholding is not an additional tax. The amount of any backup withholding from a payment to a U.S. Holder will be allowed as a refund or a credit against the U.S. Holder’s U.S. federal income tax liability provided the required information is timely provided to the IRS.

**10F. Dividends and Paying Agents**

Not applicable.

**10G. Statements by Experts**

Not applicable.

**10H. Documents on Display**

We are subject to the periodic reporting and other informational requirements of the Exchange Act. Accordingly, we are required to file reports and other information with the U.S. Securities and Exchange Commission, or the SEC. You may inspect and obtain copies, at prescribed rates, of reports and other information filed by us with the SEC at its Public Reference Room maintained at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC in the United States at 1-800-SEC-0330. You may also inspect and copy this material at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

We file our annual report on Form 20-F, including our financial statements, and other reports, including our reports on Form 6-K, electronically with the SEC. These filings are available at [www.sec.gov](http://www.sec.gov). We also file financial statements and other periodic reports electronically with the CVM at their website, [www.cvm.gov.br](http://www.cvm.gov.br). Copies of our annual reports on Form 20-F and documents referred to in this annual report and our bylaws will be available for inspection upon request at our headquarters at Av. Brigadeiro Faria Lima, 2170, 12227-901 São José dos Campos, São Paulo, Brazil.

**10I. Subsidiary Information**

Not required.