

ACQUISITION OF RURAL REAL ESTATE IN BRAZIL: OBTAINING THE GEO-REFERENCING CERTIFICATION

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Acquisition of real estate in Brazil

The process of acquiring real estate usually involves the execution of a commitment for the purchase and sale if the parties have agreed to accomplish certain conditions prior to the actual sale of the real estate (e.g. delivery of documents, measurement of boundaries, installment payments, resolution of environmental issues), and upon the accomplishment of the relevant conditions, the execution of the definitive public deed for the purchase and sale. If no pre-conditions are agreed by the parties, a definitive public deed for the purchase and sale is normally executed right away.

The acquisition of title is only deemed effective with the registration of the definitive public deed for the purchase and sale at the competent Real Estate Registry Office (RERO).

The Brazilian land registration system is based on real estate record files which are controlled and maintained by REROs, and each RERO has jurisdiction over a certain region (either a parcel of a city or several cities, depending on the region). Such real estate record files contain all relevant information regarding the real estate such as ownership title, liens and encumbrances, built area, limits and boundaries of the real estate.

Rural real estate: the update of INCRA'S enrollment

As required by legislation approved in the last ten years, all owners of rural real estate must update the enrollment of such properties with INCRA, the Brazilian rural land registry, in order to confirm the measures and boundaries of the relevant rural real estate.

This procedure, known as geo-referencing, is a mandatory condition for any transfer of ownership. In addition, any detachment and unification of the real estate will not be registered, and, therefore, not be effective against third parties, until this procedure is performed. The obligation to confirm the measures and boundaries of rural properties was established on a gradual basis beginning in the year 2003 for portions of land with a total area larger than 5.000 hectares; currently, any portion of land with a total area larger than

500 hectares is subject to the geo-referencing requirement and, as from November 2011, all rural properties, including those with a total area smaller than 500 hectares, will be subject to this requirement.

According to the applicable law, the measures of the property's boundaries shall be indicated in a descriptive report prepared by an engineer, which shall contain the vertexes' coordinates that define the rural property limits, geo-referenced according to the Brazilian Geodesic System.

The geo-referencing proceeding is based on the Public Registry Law, Code of Waters, Forest Code and INCRA'S rules, among other legal and administrative regulations. The proceeding also includes the analysis of title to the property, inquiry with public authorities, topographic and geodesic studies, and consent from neighbors, among other requirements. It is a proceeding that involves over 20 stages and requires knowledge and involvement from different professionals.

Once the boundary measurements are effected according to the Brazilian Geodesic System and the other steps listed above are concluded, the files containing the results of all such steps shall be presented to INCRA for certification.

Why is the certification of the geo-referenced measures and borders by INCRA necessary for the acquisition of rural land in Brazil?

In the certification procedure, INCRA will confirm that the polygonal indicated in the descriptive report filed by the respective owner does not overlap the polygonal of any other real estate registered with INCRA'S geo-reference database and that the descriptive report complies with technical requirements, thus preventing fraud and/or falsity in relation to rural land.

The problem of overlapped parcels of land is still a concern in Brazil. Overlapped areas could be registered with the relevant RERO and one would only find out the situation when seeking to take possession of a land that only existed in a piece of paper. The certification of the geo-referenced areas was introduced in Brazil to avoid the continuation of the overlapping problem.

Is the geo-referencing procedure also needed for the creation of rights *in rem* over the real property, such as a mortgage?

The law only imposes the certification of geo-reference for the transfer of ownership, detachment and unification of the real estate.

The legislators aimed to prevent the owner from disposing of rural land without complying with the geo-referencing proceedings. If owner's intention is not to sell its property, it may postpone the geo-referencing of its real estate and enjoy the social-economic advantages of owning a real property as provided by the Federal Constitution of Brazil.

Therefore, the owner can create a mortgage over the real property or grant its usufruct to third parties without being subject to such requirement. In these cases, the public deed that will formalize the act can be registered at the real estate record file without the need of obtaining the certification of geo-reference. However, in case the mortgage is foreclosed, the new buyer may have to undertake the geo-referencing. Thus, the foreclosure price may be impacted by the cost of the geo-referencing of the property.

Acquisition of shares of a company that owns rural land versus the acquisition of rural land

In an acquisition of shares of a company that owns rural land, the object of the sale is not the real estate or any other specific asset owned by the company. Therefore, the certification of geo-reference of real estate owned by the company is not necessary as a condition for the transaction. But the buyer, in this case, will have to conduct the geo-reference of the properties as the new owner in case it wishes to transfer the properties in the future. However, if rural real estate is given by a shareholder as capital contribution to a company (including in preparation of a future sale of such company's shares), a transfer of title occurs, thus triggering the prior geo-referencing requirement.

Current status of the geo-referencing procedure of rural land in Brazil

Even though the geo-referencing requirement was initially established in 2001, the process has been gradually undertaken by rural land owners and there are still vast numbers of properties that still lack the geo-referencing. Additionally, INCRA has faced a large number of applications and requests in connection with geo-referencing procedures, and will probably have to increase its staff to cope with the amount of work required. Nevertheless, the geo-referencing requirement is a process that will bring rural land in Brazil to a more organized level, thus reducing real estate related risks.

Real properties that have their status duly regularized with INCRA and the relevant RERO are usually the object of higher valuations, thus driving the attention of potential buyers.

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