

The acquisition of real estate in Brazil by foreigners

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In recent years emerging economies have been experiencing pretty high levels of growth, these countries are also more and more involved in international political scene. To mark this change in international geopolitics, there was the rise of the acronym BRICS denomination that designates the group of countries consisting of Brazil, Russia, India, China and South Africa. Unfortunately, though, in recent years, Brazilian economic growth seems not to have fulfilled the international expectations, due to changes in key economic indicators, such as the decrease in domestic consumption, with rising inflation, the high level of indebtedness of the population, and the low investment capacity of the Brazilian state.

However, at medium and long terms there are strong reasons to believe that the Brazilian economy is, among the BRICS, the best option for international investors. And this finding is based on solid economic, political and especially legal grounds that Brazil can offer. Moreover, when comparing to other emerging economies, the Brazilian case the difficulties arising from cultural and political aspects are mostly not present, at the same time they are common of some of the other emerging economies, fact that distances these countries in some essential points of the main Western models. The advantages of the Brazilian case may represent a safe bet of big gains for investors, even if we analyze this aspect in a global perspective, in which the effects of the European crisis are still there, and the uncertainties of the American model, which has been testing its ability not to transfer to the economic field its political differences.

Regarding real estate, it is necessary to highlight that it is usually in the preference list of investors of different profiles, from small, passing by medium and arriving at big investment funds dedicated to major real estate projects. The advantage of the Brazilian economy lies in the security that its legal system offers to international investors, with due respect to contracts. It is true that Brazil has a complex legislation, result of the historical experience of a country formed from a legal system that favors the encoding (Civil Law).

It is interesting to note the development of alternative forms of conflict resolution in the country, which are widely used in the Brazilian system, as the Arbitration Law (Law No. 9307 OF 23 SEPTEMBER 1996), which allows entrepreneurs and investors the resolution of conflicts outside the judicial system, as happens commonly in developed countries. Moreover, the very contractual instruments, if well designed and with proper knowledge of domestic law, serve to regulate the investment, ensuring the certainty of due respect and deference to agreements.

The property right is protected and grounded in the Brazilian Constitution of 1988, which represents the main vector of political stability that Brazilian society living in recent years. The acquisition of real state property in Brazil demands serious research and preferably guided by experts in the Brazilian legal system.

Brazilian law imposes some restrictions on the acquisition of rural land by foreigners. These restrictions were created in the previous political regime, through Law no . 5.709/71, a strand of nationalism and protection of assets and national interests. In spite of the origin of this legislation, the interpretation given to it does not prevent the real estate acquisition by foreigners, it only generates the need for higher qualifications in submitting documents.

So there is the need for authorization given by INCRA¹ to acquire piece of land with an area of not less than three (3) indefinite exploration modules or for the acquisition of more than one real state property by an individual. Furthermore, it is impossible for a foreigner to acquire pieces of land with more than fifty (50) indefinite operating exploitation, unless authorized by the President of the Republic.

The sum of the rural areas belonging to foreigners, people or companies, shall not exceed one quarter of the surface of the municipalities in which they are situated, recorded by a certificate of Registration of Real Estate, and people from the same nationality cannot be proprietary, in each municipality, of more than 40 % (forty percent) of this limit, excluding tracts of land smaller than three (3) rural modules².

There is the need for approval of the Council of National Defense for the acquisition of ownership or possession of property in the Frontier Strip, or even to participate, in any capacity, of foreign natural or legal person, in legal entity that holds the right on rural property³.

Brazil adopts a system that privileges real estate registration, which provides greater certainty for investors, by a control system of the acquisitions of properties it is possible to know exactly who is the current owner of the property and if on the real estate weighs some burden. In addition, there is an extensive network of agencies empowered to conduct the transfer and payment of taxes on the transaction on the operation.

¹ Federal Autarchy responsible for the management of rural questions in Brazil.

² The undefined exploitation module is a measure that varies per municipality depending on economic, demographic criteria, among others, according to the INCRA regulations.

³ The Frontier Strip, as mentioned at art. 1º Law n.º 6.634/79 is the internal strip of 150 km (one hundred and fifty kilometers) width, parallel to the terrestrial line dividing the national territory.

As Brazil adopts a federal system in three levels, Municipalities, States and Union. The real estate purchase must obey some peculiarities, in the case of urban property, the rule is that there is no restrictions to acquisition by foreigners, whether the individual or legal entity resident or non- resident (domiciled) in the country.

For effecting the operation of buying and selling urban property by a foreign person it is sufficient that the foreigner buyer to have a CPF registration (Brazilian Registration of Persons) and in the case of a foreign legal entity, the CNPJ (National Register of Legal Entities), even if this company does not have a branch in Brazil.

Regarding urban properties jurisdiction to the taxes lies in the municipality, with the collection of property tax - property tax urban land - which is a kind of tax related to property maintenance. On the other hand, in the case of rural property, responsibility for the payment of the tax, with has the same justification as property maintenance, is through a federal tax, called ITR - rural property tax.

In the property transfers there are municipal and state jurisdiction, in the case of transfer by deed by living persons, the responsibility for acquiring the tax will be the city's through the ITBI (tax for the transmission of urban real state) at a rate of 2% (two percent) of the transaction amount. On the other hand, if the transfer of property is related to vesting hereditary or donation, the incidence of the tax will be of the state, called ITCMD - tax related to dead or donation.