

THE REAL ESTATE  
LAW REVIEW

TENTH EDITION

Editor  
John Nevin

THE LAWREVIEWS

# THE REAL ESTATE LAW REVIEW

TENTH EDITION

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# PREFACE

Just as the ninth edition of *The Real Estate Law Review* was being published, the world was thrown into total confusion by the rapid spread of a deadly new disease. Covid-19 has affected the global economy like nothing this generation has experienced, with every major jurisdiction forced into a series of lockdowns. However, it must not be forgotten that the pandemic is primarily a human tragedy with more than 93 million cases globally and 2 million deaths. As we begin to see light at the end of the tunnel, the global health crisis will undoubtedly complete its transition into an economic one, with significant global debt and widespread unemployment. Covid-19 will leave its mark on all aspects of how we live and work, including each and every sector of the global real estate market.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This tenth edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. Covid-19 has served as a stark reminder that it is no longer possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 27 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

In the year that the UK finally left the EU and Joe Biden became president of the United States, the significance of Brexit and American politics have been put into perspective by the covid-19 pandemic. Covid-19 is a truly global issue affecting every jurisdiction and, of course, its real estate market. In the background, and almost forgotten, Brexit and the associated economic and political fallout has continued to be a concern for the UK economy and its real estate markets. Although investment volumes fell off a cliff in the first half of the year, we have started to see interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. The world's cache of investment capital is likely to prompt a surge in investment activity once some degree of confidence returns. The UK, and London in particular, seem certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly

be challenging as we begin the road to recovery, but opportunities will arise, and real estate will remain a key part of investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this tenth edition of *The Real Estate Law Review*. I would also like to thank the members of the Law Review team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2021 and beyond.

**John Nevin**

Slaughter and May

London

February 2021

# BRAZIL

*Franco Grotti and Guilherme de Toledo Piza*<sup>1</sup>

## I INTRODUCTION TO THE LEGAL FRAMEWORK

In Brazil, the right to own property is assured by Article 5, XXII of the Federal Constitution. According to the Brazilian Civil Code (Law No. 10,406 of 2002), the owner has the right to use, enjoy and dispose of his or her property, as well as to defend it from whoever may unlawfully hold it. Under Brazilian law, there is mainly one kind of official real estate ownership.<sup>2</sup>

Under Brazilian legislation, real property ownership is usually transferred by means of a transfer deed, which must be drawn up by a notary public and registered with the competent real estate registry in the respective property record to be effective. The same applies to creation of *in rem* rights or guarantees, by means of execution of the respective instruments and registration with the appropriate real estate registry.

According to the Brazilian Civil Code, ownership is only transferred upon due registration of the acquisition title. Thus, should one fail to register the transfer deed with the appropriate real estate registry, the property will remain recorded under the name of the former owner and, as such, subject to its credit risk, being subject to seizures, attachments or other liens.

In addition to that, the Brazilian Civil Code provides for certain subordinated *in rem* rights, or *in rem* rights over third parties, by means of which one may be granted rights over certain real property, without, however, acquiring ownership over it. The subordinated *in rem* rights are defined in a restrictive list contained in Article 1,225 of the Brazilian Civil Code, and the parties are not allowed to create *in rem* rights further to those described thereunder. When it comes to real estate, the most common subordinated *in rem* rights are the surface rights and the usufruct, as well as *in rem* guarantees.

In sum, surface rights can be defined as the granting, by the owner of the *in rem* right to the grantee, of the right to use the soil of a real property. By means of creation of the surface right over certain property, the ownership is subdivided, in a manner that the surface right itself is assigned to the grantee, and the owner remains with the 'bare ownership' of the land. The grantee becomes, upon perfection of the surface right, entitled to build, plant or use the property for other purposes that may be further adjusted between the parties, for a fixed

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1 Franco Grotti is a partner and Guilherme de Toledo Piza is an associate at Pinheiro Neto Advogados.

2 Since 2018, the Brazilian civil code also provides for a kind of time-sharing ownership. However, in theory, this does not differ from 'classical' ownership. The 'multi-property' works much like the conventional condominium, but represents an interest in time instead of a partial right to the whole property.

term. Surface rights can be granted either as an onerous act or free of charge, and there is no maximum term for granting of this right. Surface rights can also be sold, assigned, or even granted as collateral (i.e., mortgage or fiduciary sale).

The usufruct, in its turn, is the right to use and enjoy the property, without, however, being entitled to dispose of it. Also, when the usufruct is created, the owner retains bare ownership over the asset; this is the reason why it is said that these rights are subordinated if compared to full ownership. Usufruct cannot be sold, but the grantee may, as either an onerous or free act, assign its exercise to third parties.

There are basically two kinds of real estate guarantees provided under Brazilian law: mortgage and fiduciary sale.

Brazilian law provides that an asset will be regulated by the laws of the country where it is located. Most aspects concerning real estate are ruled by the Brazilian Civil Code and, with regard to registration, by the Law of Public Registries (Law No. 6,015 of 1973).

## **II OVERVIEW OF REAL ESTATE ACTIVITY**

After a period of downturns, at the end of 2019, Brazil's economy started to show good signs of recovery. This was strongly affected by the covid-19 pandemic, but its effects did not entirely harm real estate activity in the country. The low interest rates applicable in Brazil, and the unstable scenario created by the pandemic, made people seek investment alternatives that could provide a reliable income, and the solidity of the real estate market attracted lots of people to invest in real estate investment trusts (REITs). The logistics sector is popular, while corporate offices and malls appear to have suffered more from the effects of the pandemic.

Studies published by the civil construction trade union of São Paulo show that the number of new developments kept increasing throughout the year and showed only negative numbers in January, May and September. In general, the balance was positive.<sup>3</sup> Sales of new real estate units also performed well.<sup>4</sup>

Also in the REIT field, the number of registered persons that own quotas of such funds went from 645,000 in December 2019 to 1.1 million in October 2020. Within that period, 43 new vehicles started trading their quotas on the Brazilian stock exchange, totalling 496 available funds.<sup>5</sup>

The main effect of the pandemic on the real estate market was seen with regard to lease relationships. While the construction sector kept its course of business without significant impact, during several months shopping malls stayed closed for a time or had restrictions on operations, and firms let their employees work from home, which led to an increasing number of judicial and extrajudicial claims to reduce rents and, consequently, to a sensitive reduction of the REITs' revenues. Fortunately, landlords and tenants in several cases reached an agreement without judicial claims.

The expectation for 2021 is that, if the pandemic keeps fading away, the growing momentum verified in 2019 and somehow maintained in 2020 will regain full traction.

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3 Available at <http://indiceeconomicos.secovi.com.br/indicadormensal.php?idindicador=85>.

4 Available at <http://indiceeconomicos.secovi.com.br/indicadormensal.php?idindicador=90>.

5 Available at <https://valor.globo.com/publicacoes/suplementos/noticia/2020/11/27/fundos-imobiliarios-registram-forte-demanda.ghtml>.

### III FOREIGN INVESTMENT

As a general rule, foreigners may freely invest in real estate in Brazil. However, for acquisition of rural properties or properties located in the country's border area, some restrictions may apply.

Current rules and restrictions regarding foreign investments in Brazil provide that the acquisition or lease of rural properties by foreign entities and individuals and also by Brazilian companies, the majority of whose capital is held by foreign investors or controlled by foreigners, will depend on the prior approval by the Brazilian Institute of Agrarian Settlement and Reform (INCRA) or the Brazilian National Congress, depending on the size of the rural property, among other restrictions.

These rules also apply to corporate transactions that result in the direct or indirect transfer of rural properties, such as mergers and acquisitions, changes in corporate control and if a Brazilian company becomes a foreign company. In the event of violation of these restrictions, the purchase of the rural properties (or of a company that owns rural properties) without having complied with the required public approvals would be considered null and void for all legal purposes.<sup>6</sup>

Brazilian law also provides for restrictions on the acquisition or even possession of rural properties located in the country's border zone,<sup>7</sup> which depends also on the approval by the National Defence Counsel.

To avoid triggering these restrictions, a foreign investor that intends to invest in rural real estate should seek approval from the competent bodies or adopt other possible legal structures, which may include granting of *in rem* rights or entering into a joint venture with a Brazilian partner.

It is worth highlighting that from time to time the Brazilian government discusses the possibility of softening these restrictions. Currently, there is another bill of law that is being discussed by the National Congress, which, if approved, will ease the restrictions for foreign investors to invest in rural land in Brazil.<sup>8</sup> Recently, the Brazilian government enacted Law No. 13,986, which expressly allows foreigners to use fiduciary sales of rural properties as collateral to any kind of secured obligations. In addition, the Law allows foreign entities or persons to become owners of rural properties as a result of foreclosure of the aforementioned collateral. There are basically no restrictions for foreign investment in urban properties.

### IV STRUCTURING THE INVESTMENT

There are several structures that may be adopted for investing in real estate in Brazil, which may vary depending on the focus and strategy of the investor. These may include direct acquisition, equity investments, real estate investment funds (FIIs) and Brazilian private equity funds (FIPs).

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6 In transactions involving rural properties located in the border areas, violations to the restrictions may also lead to the application of a fine corresponding to 20 per cent of the transaction amount.

7 A strip 150km wide and 15,719km long.

8 As per the last version presented by the Senate, foreign governments and sovereign funds would remain subject to the restrictions.

## **i Direct investment**

According to Article 1,254 of the Brazilian Civil Code, transfer of real estate ownership, as well as creation or conveyance of other *in rem* rights over real properties depends on the registration of the title with the real estate registry with jurisdiction over the place where the relevant property is located. Additionally, as per Article 108 of the Civil Code, any real estate transactions whose value is at least three times the current minimum wage shall be performed by means of a public deed, to be drawn up by a notary public.

Notwithstanding that, it is very common in transactions involving direct acquisition of real estate for the parties to execute a commitment of purchase and sale agreement. The commitment of purchase and sale is a conditional agreement that can be entered into by private instrument, by means of which parties undertake to, upon satisfaction of certain covenants, execute the definitive deed of purchase and sale.

The agreement can be registered with the competent real estate registry to grant priority against third parties and, should either party refuse to comply with its obligations thereunder, allow compulsory conveyance through a specific performance proceeding.

The commitment is a very helpful tool in situations where the parties wish to be bound to each other but, either because of the need to regularise formal matters to allow conveyance of the property, or just because of business conditions, the parties do not want to actually transfer ownership at that moment.

It is worth mentioning that direct acquisition of real property is subject to payment of the real estate transfer tax (ITBI). Additionally, notary and registration fees will be due to the notary public and real estate registry when drawing up and registering the definitive deed. Taxes on capital gain if the property is sold may apply.

## **ii Equity investments**

Another common structure to invest in Brazilian real estate market is to acquire equity of specific purpose companies (SPEs). The SPE is a company that may be incorporated in the form of a limited liability partnership or of a Brazilian corporation, with the specific purpose of investing in certain real estate development.

Incorporation of an SPE involves certain steps, such as registration with the board of trade, enrolment with the federal revenue and election of managers, among others. Notwithstanding, it is quite common for real estate developers seeking for investment to have the SPEs already incorporated.

Alternatively, investors may also want to acquire stocks of real estate companies listed in the Brazilian stock exchange. Currently, there are around 20 real estate companies listed in the stock exchange,<sup>9</sup> and several of such companies have been raising funds through public offering of securities in the capital market.

An advantage of equity investments if compared to direct real estate investment is that the ITBI, as well as notary and registration fees, do not apply. However, when investing in real estate through equity investment, one should assess not only potential liabilities relating to the property itself, but also with respect to the SPE (e.g., tax, labour and other kinds of liabilities).

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<sup>9</sup> Available at [bvmf.bmfbovespa.com.br/cias-listadas/empresas-listadas/BuscaEmpresaListada.aspx?segmento=Incorpora%C3%A7%C3%B5es&idioma=pt-br](http://bvmf.bmfbovespa.com.br/cias-listadas/empresas-listadas/BuscaEmpresaListada.aspx?segmento=Incorpora%C3%A7%C3%B5es&idioma=pt-br), last accessed 16 December 2019.

### **iii Real estate investment funds**

Another good alternative to invest in real estate in Brazil is to acquire quotas of an FII. The FII was created by Law No. 8,668/1993, and the offering of FII quotas is ruled by Normative Ruling No. 472 of the Brazilian securities exchange commission (CVM).

The FIIs are investment funds specifically designated to invest in real estate projects, in a mechanism similar to the real estate investment trusts (REITs) in the United States. The FIIs are closed-end funds without corporate identity, and redemption of their quotas is not allowed. Hence, after the investment in a FII is consolidated, by means of subscription and payment of certain quotas, such quotas can only be negotiated in a secondary market, with low liquidity.

The FIIs can be for determinate or indeterminate term and, as a legal rule, there is no minimum investment (even though, in practice, the public offerings of FII quotas usually provide for minimum investment amounts).

As the intention of the creation of the FII was to foster real estate market development, there are certain tax benefits for the earnings of FII investments. For such reason, applicable laws have set forth some restrictions on permitted investments, namely:

- a* real property and rights;
- b* equity of real estate companies;
- c* SPEs with real estate purposes;
- d* other real estate funds; and
- e* real estate backed securities and other real estate-related securities.

### **iv Brazilian private equity funds**

FIPs are funds intended to invest in securities representing equity, such as shares or quotas; debentures; subscription bonds; or other securities that can be converted in or exchanged for shared. The FIPs are ruled by CVM Normative Ruling No. 578.

Even though the FIP is not properly intended for real estate investment, it is quite common to have foreign investors incorporating FIPs to hold its equity in SPEs which, in their turn, are the direct owners of certain real properties or real estate developments.

This is mainly because Brazilian law provides income tax exemptions and incentives for foreign investors who comply with certain requirements.

## **V REAL ESTATE OWNERSHIP**

### **i Planning**

According to Law No. 10,257/2001, each municipality has jurisdiction to create its guidelines with regard to land use and parcelling, construction parameters, space occupation, among others. The urbanistic directives of certain municipality are ruled upon by the directive plan. All municipalities must have their own directive plans, which shall be reviewed and updated, at least every 10 years.

Under the provisions of the directive plan, each municipality shall also create its rules on subdivision, use and occupation of the land (LPUOS), which governs the parameters for land parcelling, construction, as well as zoning directives of the municipality, in addition to the works and buildings regulation (COE), that sets forth the rules for constructions in the city.

In this sense, any constructions to be developed in a certain municipality must be approved by the City Hall in accordance with the LPUOS and with the COE and, once concluded, the use and operation of such property is also subject to the provisions of the LPUOS.

## **ii Environment**

Environmental liability of individuals and legal entities for actions that damage the environment is set forth in Article 225, Paragraph 3, of the Brazilian Federal Constitution. Non-compliance with environmental rules or an environmental accident may subject the violator to three different levels of environmental liability:

- a* administrative liability, arising out of the breach of an environmental protection rule, which consists of the imposition of warnings, fines and interdiction, as well as other administrative sanctions provided for in applicable law, by oversight and monitoring bodies;
- b* criminal liability, which consists of the imposition of sanctions that include loss of liberty and restriction of rights; and
- c* civil liability, which consists of an obligation to repair or remedy damage to the environment, or to compensate for the damage, in the event that the reparation or remediation is not possible.

Administrative, civil and criminal liabilities are independent and cumulative.

It is also worth mentioning that civil environmental liability does not require evidencing fault; it suffices to evidence the chain of cause and effect between the activity and the damage, irrespective of wrongfulness. Such liability applies not only to environmental damage, but also to any injury caused to third parties affected by the environmental damage, such as employees, service providers, neighbours etc., who may sue the liable party for recovery of health injuries or property damage.

## **iii Tax**

Urban properties are subject to the payment of the urban building and land tax, which is assessed and charged by the city hall of the respective municipality on an annual basis. Rural properties, in their turn, are subject to the payment of the rural land tax, which is assessed and charged by the Federal Revenue Office, also on an annual basis.

In addition, onerous acquisition of real estate is subject to the payment, by purchaser, of the ITBI. In the case of donation, the recipient shall pay the gift tax. Finally, it is also worth mentioning that acquisition of real estate is subject to payment of notary and registration fees.

## **iv Finance and security**

There are basically two kinds of securities granted over real estate admitted under Brazilian Law: the mortgage and the fiduciary sale.

The mortgage is ruled by the Brazilian Civil Code, and consists of a lien that can be created over certain property by means of execution of a public deed before a notary public and its registration with the appropriate real estate registry. Brazilian law allows for the creation of any number of mortgages over the same property, provided that such liens will have different priority depending on the order of registration in such property's record. The



mortgage can only be foreclosed by means of a judicial procedure, which involves sale of the mortgaged property in public auction and, in case the amounts resulting from such sale are not enough to cover the debt, the debtor shall remain personally liable before the creditor.

The fiduciary sale, in its turn, consists of actual transfer of ownership over a relevant property, in a fiduciary manner, for the purposes of securing certain obligations. Fiduciary sale can be created either by means of private or public instrument, and its foreclosure follows an extrajudicial procedure, much faster when compared to the procedure applicable for the mortgage. On the other hand, the biggest downside when it comes to the fiduciary sale is that if in the public auction there are no bids at least equal to the debt amount, property will be definitively conveyed to the creditor, and there is a risk of the debtor being fully released from the debt, depending on the nature of the secured obligation.

## **VI LEASES OF BUSINESS PREMISES**

In Brazil, leases of urban properties are governed by Law No. 8,245/1991, which establishes the rules for residential and commercial property leases.<sup>10</sup> The lease term may be agreed by the parties and therefore specified in the lease agreement, and parties may also agree to enter into lease agreements for an indeterminate term.

As a general rule, landlords cannot terminate a lease agreement early without cause if it is valid for a determinate term. The tenant in its turn may unilaterally terminate certain lease agreements at any time, upon sending the landlord a prior notice, and paying the applicable fine, which shall be reduced proportionally to the time of the agreement.

If the lease period expires, and the tenant continues to occupy the leased property with the landlord's consent, the lease agreement will be deemed as extended for an indeterminate term and, on this occasion, may be terminated by either party upon 30 days' prior notice, without any penalty. Should the tenant continue on the property after this 30-day period, the landlord may file an eviction suit before the competent court to repossess the property.

Notwithstanding that, if the leased property is sold to third parties during the lease term, such purchaser has no obligation to observe the lease agreement, being entitled to unilaterally terminate it, unless the agreement expressly provides for the effectiveness of the lease in case of sale of the property, and is registered in the property's record with the appropriate real estate registry. Otherwise, such third-party buyer may terminate the agreement upon 90 days' prior notice, and request the property back.

The rent value may be freely agreed by the parties and must be stipulated in Brazilian currency (the real). Brazilian law does not allow for the stipulation of the rent in any foreign currency, including the dollar. The rent value may be subject to monetary correction every 12 months by an index that reflects Brazilian inflation, which is chosen by the parties. The adjustment by the exchange rate or within less than 12 months is currently not allowed. In addition to the rent, it is usual that, in lease agreements, the tenant remains responsible for the payment of the taxes, charges and other expenses related to the leased property.

The default rule is that the tenant may not sublease, assign or transfer the leased property without the landlord's prior consent. Failure to obtain the landlord's prior consent shall result in early termination and established penalties.

In urban leases, after a three-year lease period, and assuming that the monetary correction was incorporated into the value of the rent on an annual basis, either party is

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10 Leases of rural properties are governed by Law No. 4,504/1964.

entitled to claim update of the rent value to market standards. This means that the tenant could ask for a reduction in the rent value or the landlord could ask for an increase in this value, depending on market practices. This can be done either on a friendly basis or in court, by means of a specific judicial proceeding, named 'action for review'.

In addition, the tenant is entitled to compulsorily renew the lease agreements for business purposes by means of a specific judicial procedure (renewal action), provided that the following requirements are met:

- a* the agreement is entered into in written form and for a determinate term;
- b* the lease agreement to be renewed has a term of at least five consecutive years, extension of contractual terms being permitted; and
- c* the tenant carries out the same business activity in the property for a period of not less than three years.

If all requirements are met, the renewal action must be filed from 12 to six months before termination of the agreement. If the action is not filed within this time frame, the tenant will lose its right to compulsory lease renewal.

Furthermore, Brazilian law has specific provisions regarding build-to-suit (BTS) agreements. BTS agreements first appeared in Brazilian practice as atypical and complex agreements, under the influence of similar transactions in other countries.

Although Brazilian law did not contain any reference or specific provisions applicable to BTS, Brazilian legal practitioners and scholars gradually formatted the concept of BTS as a lease transaction in which:

- a* a relevant investment is made by the lessor, usually by means of purchasing a property;
- b* such property is designed or chosen to fit the needs of a particular lessee; and
- c* construction works are performed by the lessor for that purpose.

Hence, in 2012, Federal Law No. 12,744 modified the Lease Law to include Article 54-A, which created a legal definition of BTS (although not referring to the words 'built to suit')

Common contractual aspects of a BTS include:

- a* rules applicable to the development and acceptance of a lessee-supplied or directed building design and specifications;
- b* construction and handing over rules;
- c* regular lease rules; and
- d* the possibility of a lessor assigning the rent credits to third parties, such as for purposes of securitisation.

Because of their specific nature, in BTS agreements it is permitted for the parties to waive their right to review the rent, or to provide for heavier termination fines, which, however, cannot exceed the amount of the rents to be due until expiry of the lease term.

## VII DEVELOPMENTS IN PRACTICE

### i Advances in the agribusiness

In 2020, the federal government enacted Law No. 13,986, which is mainly intended to create incentives and foster the agricultural sector in Brazil. Among other developments, this law created a new security, which may be issued by the landowner, representing either certain credit, to be paid in currency, or the obligation to convey a rural property (the rural real estate bond).

In addition, and most importantly, as mentioned before, the new Law provided for the allowance of consolidation of ownership over rural land in favour of foreign creditors, within the context of the foreclosure of the fiduciary sale. The ruling also allowed foreign creditors to receive rural properties as payment in kind for solving debts.<sup>11</sup> This is an important move in the sense of enhancing credit protection and transaction costs in the Brazilian market.

### ii Restrictions on the acquisition of rural properties by foreigners

As described above, currently there are certain restrictions on the acquisition of rural properties by foreigners in Brazil. These rules also apply to corporate transactions that imply indirect acquisition of rural real estate by foreigners. These restrictions were created in 1971, when foreign investment was something new, and the transactions were less sophisticated, and the consequence for any and all violations thereto is the nullity of the transaction. Additionally, the proceeding for a foreign investor to seek for due authorisation by the competent bodies is quite bureaucratic and time-consuming.

For this reason, it is common for foreigners that intend to invest in rural properties in Brazil to end up having to adopt alternative structures, which may involve granting of *in rem* rights other than ownership (such as surface rights or usufruct), entering into rural partnership agreements (which, as opposed to rural leases, are not covered by the restrictions) or even entering into a joint-venture with a Brazilian partner.

This framework, however, may sometimes not be that attractive to foreign capital, and ends up causing Brazilian potential in the agricultural sector to be underappreciated. Because of that, from time to time, certain bills that intend to soften or alter the restrictions are processed in Brazilian congress; however, none of these has been approved so far.

Notwithstanding the above, the current Brazilian government has been clearly putting into action its campaign promise of fostering the agribusiness as a whole, as well as to try to attract foreign capital. Within this context, there is a bill of law that is under way before the Brazilian Senate, which is aimed at substantially softening the restrictions applicable to foreign investment in rural land (except for foreign governments and sovereign funds), which has been gaining force in the Congress. Approval of this bill could make the Brazilian market for rural land even more attractive to foreign investment.

### iii Electronic signatures

The covid-19 pandemic sped up technological development in all sectors. In the legal and, most specifically, in the real estate field, the main demonstration of this phenomenon was the evolution of the rules regarding electronic signatures and remote performance of other acts dealing with real estate. In 2020, the National Council of Justice enacted a ruling that

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11 Freitas, Gustavo S. Available at [www.pinheironeto.com.br/publicacoes/lei-139862020-autoriza-a-constituicao-de-propriedade-fiduciaria-de-imoveis-rurais-em-favor-de-estrangeiros](http://www.pinheironeto.com.br/publicacoes/lei-139862020-autoriza-a-constituicao-de-propriedade-fiduciaria-de-imoveis-rurais-em-favor-de-estrangeiros).

provides for the regulations applicable to the remote drawing-up of real estate deeds, as well as to the recording of electronically practised acts. Currently, one can sign and record a deed of purchase and sale or a lease agreement, as well as record it before the real estate registry, without leaving home.

#### **iv General legal framework**

The Brazilian government is constantly creating new laws and regulations aimed at fostering the economy. Among such initiatives, there are rumours that the government is working on important legal developments concerning the real estate sector. In addition to the rules on foreign investment in rural land, which is always a trend when it comes to real estate in Brazil, the envisaged improvements include the swift creation of a system of real estate registries; reformation of the real estate collateral system; and improving the reach of real estate finance and the real estate capital market.

In addition, owing to covid-19, the Congress created a special transitory regime for private law relationships (Law No. 14,010). In the real estate field, this law forbids the eviction of defaulting tenants for a certain period, suspending the term for prescriptive acquisition. In addition, as a general rule, all statutes of limitation have been suspended. Even though the most relevant effects of the regime ceased in October 2020, there is still the chance of its effects being felt in the future, mainly with regard to the suspension of statutes.

### **VIII OUTLOOK AND CONCLUSIONS**

Recently, the Brazilian economy and, along with it, the real estate market, have been showing solid signs of recovery. The growth in the number of new projects and releases is already visible and is likely to become higher. This momentum was somewhat impaired by the pandemic but, even so, did not entirely stop. In the legal field, the government is willing to create new tools and enhance the current ones in order to create a more favourable environment for investment, with important focus on the real estate sector.

The real estate sector in Brazil keeps growing year after year, and with the recovery of the economy such growing momentum will gain even more strength. This will certainly lead to fertile ground for investment in the Brazilian real estate market.

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