

Brazilian Boost to Security Options for Foreign Lenders to Infrastructure

22 April 2020

The Brazilian government just handed foreign lenders and secured investors a significant boost to their collateral package options for infrastructure projects. Upending decades of legal restrictions and administrative interpretation, foreign entities can now become title holders by means of taking or enforcing security interests in both rural lands and real property in the “Border Strip” (or *Faixa de Fronteira*, in Portuguese – defined as certain real estate within 150km of any border).

Background

Due to legal restrictions in place since the 1970s, direct purchases of and title to rural Brazilian lands¹ and real property of all types in the Border Strip were, as a matter of practice, almost entirely off-limits to foreign entities.² These restrictions complicated the financing of infrastructure projects by international banks, since for any project situated in rural or Border Strip areas, foreign lenders were prohibited from taking fiduciary liens (or *alienação fiduciária* in Portuguese – a security interest where title is transferred upon creation of the security interest) on the property where the projects were located. Further, a 2008 administrative interpretation restricted the passing of title to all rural lands and any real property in the Border Strip to Brazilian entities that were either directly or indirectly controlled by foreign entities.³ To finance such projects, foreign lenders had to rely on security options that were more vulnerable to challenges in bankruptcy, such as mortgages, and seek payoff from a limited pool of potential purchasers at enforcement auctions (i.e., Brazilian entities not either directly or indirectly controlled by foreign entities).

Brazilian Federal Law No. 13.986

A new Brazilian federal law published on [April 7, 2020, \(No. 13.986\)](#), however, creates exceptions to the decades-old restrictions on foreign ownership of rural lands and Border Strip real property and overrides the restrictive 2008 administrative interpretation limiting indirect foreign control and ownership in certain instances. Foreign entities and Brazilian entities with any level of direct or indirect foreign ownership may now take *in rem* security interests in rural lands and real property in the Border Strip, including by means of title-transferring fiduciary liens. The new law also permits any foreign entity or Brazilian entity with foreign ownership to purchase such real property at auction in connection with an enforcement process, greatly expanding the pool of buyers.

Looking Ahead

The new law is a positive development and removes a significant legal “financeability” issue for infrastructure projects in Brazil. While a general restriction on direct purchase of rural and border lands by foreign entities still applies, these new exceptions are intended to boost availability of financing for infrastructure projects on rural lands and in the Border Strip, including many hydroelectric plants, transmission assets and telecoms infrastructure, among others. In addition to financing of infrastructure projects, the measures will also likely support financing of the large agribusiness operations in Brazil.

This post was co-authored with Lior Pinsky of [Veirano Advogados](#).

1. Although Brazilian law has sometimes adopted different criteria when defining a land as rural, in practice, lands assessed by the rural land tax (“ITR”) rather than the urban land tax (“IPTU”) were treated as rural for purposes of legal restrictions on granting security to foreign lenders.↔

2. Exceptions could be made through application to and approval from the National Institute of Colonization and Agrarian Reform for rural lands, or the National Security Agency (for properties located in the Border Strip) but these were seldom exercised.↔

3. Prior to this administrative interpretation, the consensus was that Brazilian Constitution enacted in 1998 lifted the restrictions on foreign ownership of rural lands (but not real property in the Border Strip).↔

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