



**BUYING A PROPERTY IN BRAZIL
SOME LEGAL ASPECTS**

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Brazil- Overview

Covering an area of eight and a half million square kilometers, Brazil is the fifth largest country in the world and is currently set to rank amongst the highest economic performers.

Advantages

- Good potential for profits);
- Favourable currency exchange rate;
- Low Inflation per year (3.2% in 2007);
- Great natural beauty with fantastic landscape;
- Low international risk of war or terrorism;
- Price appreciation is due to accelerate in 2009 when major infrastructure and tourism industry advances have been completed.

General Overview

- Brazil is a civil law jurisdiction – therefore our primary concern is with what the written law states or reasonably implies rather than judicial decisions
- Civil Code – Law 10406/02 which came into effect on 11 January 2003

Legal Requirements

The acquisition of a real estate property situated in Brazil is primarily governed by the Brazilian Civil Code. Basic requirements are:

- the parties must be of legal age (18 years old) and be mentally healthy;
- legal entities must be duly incorporated and regularly represented pursuant to the provisions of their respective corporate documents.

Others requirements:

- Individuals – CPF (*individual Brazilian Taxpayer Registry*)
- Companies- CNPJ (*company Brazilian Taxpayer's registry*)

Promise to Buy and Sell Agreement

Down payment of an amount equivalent to 10-20% of the agreed price

Payment of the rest upon completion of the final deed of sale and purchase

Execution via an attorney-in-fact if foreign person not present

Documents executed abroad - formalities

Promise to Buy and Sell Agreement- cont.

To be sure that the property will be delivered to the buyer free of any onus, claims, debts, litigation, attachments and mortgages of any nature, the Seller must present documents that prove his ownership of the property **and** absence of encumbrances to the proposed transaction. Normally those documents must be presented within thirty days after the signature of the Commitment to the Purchase and Sale.

Remittance of Foreign money

- Contract of purchase and sale or another document equivalent indicating the conditions, total value of the transaction and the complete address of the property;
- Copy of the Certificate of ownership of the property; and
- Power-of-Attorney, when the operation of exchange and/or the commercial transaction will be lead by an attorney resident in Brazil.

Bank Account –for foreigners who are residents in Brazil

Necessary documents to open it:

- RNE - *Registro Nacional de Estrangeiros* (an Identity card for foreigners residing in Brazil);
- Valid RNE approval form or a RNE which is awaiting to publication in the Federal Official Gazette (DOU);
- Valid identification card issued by the Ministry of Foreign Relations to diplomats;
- CPF number (tax number for individuals);
- Proof of residence;
- Proof of income in Brazil.

Non-residents

- Remittances directly to sellers' account
- Brazilian banks will require evidence of the transaction
- Registration of Promise to Buy and Sell Agreement at the Land Register
- Utilising a Brazilian company

Transfer of Title

- a) execution of a public deed of purchase and sale before a Notary Public (*Tabelião de Notas*); and
- b) registration of such public deed with the Land Register with jurisdiction over the property.

Only after these two steps have been taken, will the Buyer have legally acquired the ownership of the property.

Costs

- Registration of the public deed with the Land Register (progressive table);
- Tax of transmission (ITBI)- is 2% of the value of the real estate – the Buyer pays;
- Fees of notary's office for real estate registration (pre determinate progressive table) – the Buyer pays;
- Costs of brokerage and certificates in general (6%) – the contracting party pays.

Consumer Defence

The sale and purchase agreement is considered as a consumer contract. Once the buyer has executed the contract, he is a “consumer” and considered as the disadvantageous party in the relationship. Accordingly he is protected by the Brazilian Consumers Code.

E.g. In case of rescission of the contract by the Buyer the Seller must refund 90% of the amount paid by a single payment, even if the Buyer has been paying in installments

Further Protection - Latent Defects

All new real estate is guaranteed by the Seller for five years counting from the signature of the agreement.

Buyer has 180 days to notify the Seller of the defect, as from date the defect has been verified
(Article 618 of the Brazilian Civil Code)

Purchase of Real Estate by Foreigners

Foreigners are permitted to buy, own and rent Real Estate in Brazil. According to Brazilian law, Brazilians and foreigners are on an almost equal footing when it comes to property ownership and tenant rights.

Farm or Country Real Estate

The acquisition of rural estate by foreigners is regulated by Article 190 of the Brazilian Constitution and by Law n. 5709/71. A few restrictions apply:

For example, foreigners will only be able to acquire a rural property limited to 150 hectares.

Coast / Boundary Real Estate

In the case of urban properties, the only restriction for the foreigner is established by the Decree 9.760/46 that regulates the so-called “assets of the Union”.

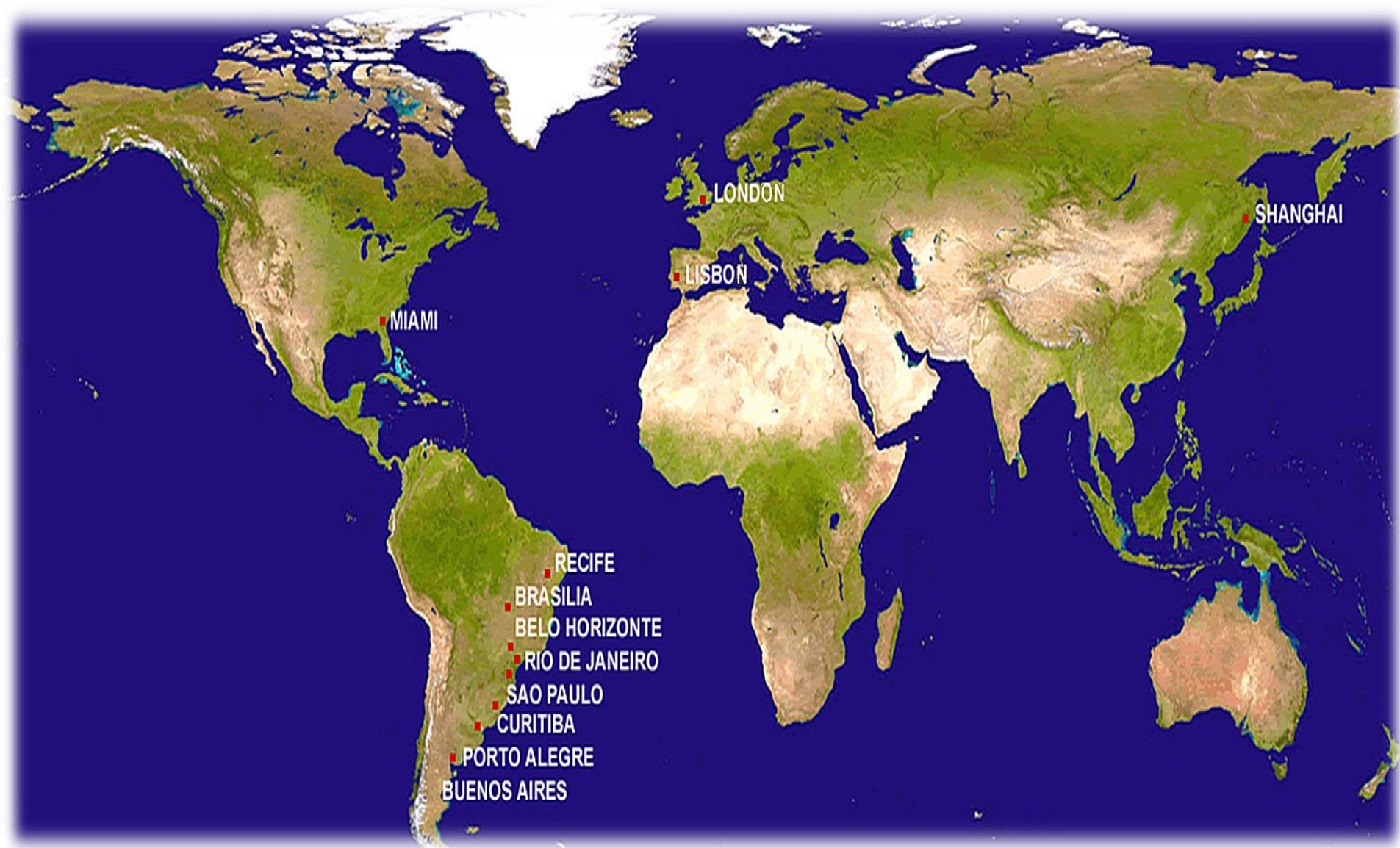
Article 205 of the Decree prohibits the acquisition of a property situated within 100 meters from and throughout the maritime coast, unless authorised by the President or by the Secretary of the Treasury.

This restriction, however, is not applied, in the case of acquisition of independent unit in a condominium, as regulated by Law 4.591/64.

Buying it via a Brazilian company

- Foreign investment is subject to registration at the Central Bank of Brazil, **but no preliminary official authorisation is required for the remittances of funds relating to investments in Brazil**
- Law 4131 of 1962 regulates foreign capital in Brazil: identical treatment and equal conditions as domestic capital which is also guaranteed by the Brazilian Constitution
- Advantageous in bigger transactions – payment issues

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