



Manzanares
INTERNATIONAL LAWYERS

YOUR
LEGAL GUIDE
TO BUYING A
PROPERTY IN

BRAZIL

UNITED KINGDOM-IRELAND-SPAIN-BULGARIA-BRAZIL-MOROCCO-ITALY

Preliminary clarification

With this guide, we do not intend to replace the need for the specialised and personalised attention you must demand from one of our qualified professionals you will contact if you wish to buy a property in Brazil. Our aim is to provide a general step-by-step idea of the basic questions you must keep in mind in this important and sometimes delicate process; in order to guarantee a safe transaction, with no unexpected surprises.



THE PROCESS OF BUYING A PROPERTY IN BRAZIL

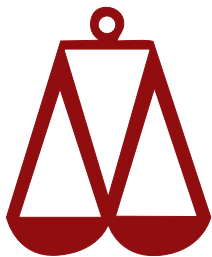
1.1. RESERVING YOUR PROPERTY (RESERVATION “OPTION” CONTRACT)

Once you have found a property you wish to buy, it is essential for you to sign a preliminary reservation agreement with the seller, and pay a reservation deposit of between 1.000 € and 6.000 €. This agreement is similar to the “option” contract in the U.K. and Ireland, and is proof that the property has been taken off the market, and you are in a position to buy it.

Searching process

Once the property has been reserved in your name with the preliminary reservation agreement, we usually have between 15 to 30 days to gather information on the property regarding the land register and legal issues. This is necessary in order to verify whether the title deeds for the property are satisfactory, and whether the person selling the property is authorised to transfer their ownership. We also carry out an exhaustive check in order to guarantee that the property is also free from any pending charges, mortgages or debts. If there are any pending charges on the property, we will take the appropriate measures to ensure that they are completely settled before the legal ownership of the property is transferred to the buyer.

If you are buying a plot of land, a survey of the land can be carried out in order to obtain its exact measurements and to identify its borders. This study will include details on whether the land has been classed as buildable, on its access points and on its surface area. Likewise, it will provide information on the different building possibilities and on the buildable area, including a detailed plan that will form part of your final title deed.





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If we are dealing with properties in a building phase, we will ensure that the developer meets all appropriate legal requirements: building licence (with a detailed check made in the architectural department of the adequate municipality) and a land survey (making sure that the work is taking place on regulated land).

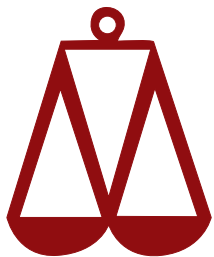
Should our checks unveil any legal obstacles which affect the buying process, our firm will advise you in writing not to continue with the process, and will ensure that the initial deposit you paid is returned in full by the selling party.

In all cases, and as part of our service, we will run checks on the reputation and solvency of the builders/developers, obtaining references that the property will be built and handed over in accordance to the terms and conditions stated.

1.2. CONTRATO DE COMPRA E VENDA (Exchange of Purchase Contracts)

Once the checks on the property have been made and we can guarantee that the legal situation of the property is sufficient for the sale to take place, you can sign the Purchase Contract, known as “contrato de compra e venda”.

The “contrato de compra e venda” is an important document containing information on the buyer and the seller, the description of the property, the price of the sale, the method of payment, the date the contract is formalised, the date you can take possession of the property, etc.





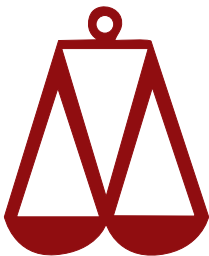
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Once both parties have signed the “contrato de compra e venda” and the deposit has been paid, the contract becomes a legally binding document. The amount payable as deposit at this stage and the structure of payments until completion varies, depending on the developer.

1.3. ESCRITURA (SIGNING THE TITLE DEED)

The property sale process is finalised before a Notary (Oficio de Notas or Cartorio), with the buyer and seller signing the Deed of Sale. The signature of the Tabelião (the Oficio de Notas’ Official). The Notary’s duty consists in identifying the buyer and the seller, and ensuring that all legal requirements have been met, and that the amount due to be paid has been settled.

If you are unavailable to be present for the signing of the deeds, we can take care of it by means of a power of attorney, which will permit us to carry out all necessary procedures in your name. In fact, and for our client’s peace of mind, it is common practice in our company to have a valid power of attorney at the beginning of all buying and/or selling operations.





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a) Taking possession and handing over of keys

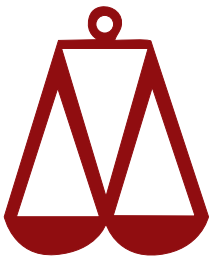
Immediately after the deeds have been signed, the buyer is handed the property keys, and can take possession of the property.

b) Final title deeds and property registration

The property registration procedure entails the payment of all the taxes applicable to the property and the obtaining of the final Register Stamp (Cartorio) for the Title Deeds, which guarantees the transfer of the property. This procedure is an important step, and takes place just after you have taken possession of your property.

c) Collecting documents

Once the Property Register (at the Cartorio) has returned the Title Deeds (Escritura), we will arrange the best time for you to collect them from our offices, together with the rest of the documents that you will need to keep.





BASIC NECESSARY FORMALITIES

There are various basic formalities you must take into account when completing your property purchase process in Brazil:

2.1. POWER OF ATTORNEY

To be your legal representative in Brazil it is essential that you sign a Power of Attorney on our behalf. Within this Power, we should be able to sign contracts, Deeds and all kinds of relevant documentation related to your purchase process. We will draft the Power of Attorney that can be signed, at your convenience, either in Brazil or through our London office. If you live in the U.K. or Ireland, our London / Dublin offices will make the necessary arrangements for you to obtain the Power at the closest Notary's office to your home. This Notary has to be registered with this Consulate-General. Our work will include the later validation by the Brazilian Consulate-General in London or Dublin with which the Power has to be stamped to be valid in Brazil. We will take care of everything.

2.2. CPF (*Cadastro de Pessoa Física, Tax code*)

This is an identification number for use in Brazil. If you have dealings within Brazil (even if you are not a permanent or tax resident) you are required to have a fiscal number. This number is a legal requirement for all foreigners purchasing property as it enables the foreign investor to be uniquely identified for taxation and title purposes.





ASIC NECESSARY FORMALITIES

We can apply for a CPF number, on your behalf, once we have the following documentation:

- Notarized copy of your passports.
- Power of Attorney

This has to be solicited from the local Tax Office (Receita Federal). It is compulsory to have the C.P.F. in place in order to pay your first instalment (exchanging the contract).

2.3. MONEY TRANSFER

All transfer of funds must be sent through the Central Bank of Brazil which will record your funds entering the country. It is important that this official route is used or you may have problems in the future when transferring funds out of Brazil at the time you come to sell your property. Today the registration of foreign investments is an electronically made declaration called RDE-IED (Electronic Registration Statement – Direct Foreign Investment). The investment will be registered in the currency of the country of origin.

2.4. VISA

Foreigners are allowed a three month visas or a maximum stay of 180 days per year. If you wish to apply for a permanent visa you must meet certain criteria and this is done through your nearest Embassy.





BASIC NECESSARY FORMALITIES

2.5. BRAZILIAN WILL

It is highly advisable that you bear in mind the Brazilian Inheritance Tax, which is the tax to be paid in “mortis causa” property ownership transfers, and to be aware of the ways of mitigating its effects.

We recommend that you make out a Will just for your new property in Brazil. The Will can be signed in the UK and be valid in Brazil. Our London and Dublin offices can assist you in this matter. We will be able to make the necessary arrangements for you to obtain the Will at the British or Irish Notary’s office closest to your home and we would then arrange for the subsequent stamp/validation by the Brazilian Consulate-General in London or Dublin for it to be valid in Brazil. We will be happy to take care of the whole process.





AXES IN BRAZIL



The purchase of a property in Brazil, as either a resident or a non resident, involves a series of fiscal obligations which must be met:

3.1. ITIV (*IMPOSTO SOBRE TRANSMISSÃO INTERVIVOS DE BENS IMÓVEIS*, Transfer tax)

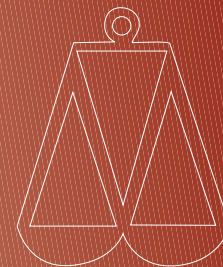
This is a Tax assessed by the municipalities which is due when real estate is transferred. The normal rate would be between 2% and 6% of the real value or the appraised value of the real estate whichever is higher. The average tax rate would be 3% but varies from one municipality to another. In Rio Grande do Norte and Natal the rate is 3%.

3.2 IPTU (*IMPOSTO PREDIAL E TERRITORIAL URBANA*, Urban Real Estate Tax)

This is an annual tax only on urban property charged by the municipalities. The IPTU tax must be paid every year, in one payment to be made between January and August of the following year. Failure to pay this tax may result in the initiation of sanction procedures. The tax rate will change for each different municipality and town council but normally this is a very small figure.



AXES IN BRAZIL



3.3 ITR (*IMPOSTO SOBRE A PROPIEDADE TERRITORIAL RURAL*, Rural Real Estate Tax)

This is an annual tax only on rural property charged by the federal government to discourage the maintaining of unproductive properties. The tax rate will change for each different municipality and town council.

3.4 IRPF (*IMPOSTO DE RENDA PESSOA FÍSICA*, Income Tax)

Non residents are subject to Brazilian income tax in regard to the income earned from Brazilian sources. Incomes obtained in Brazil by non residents are subject to a standard withholding tax of 25%. Once you have a CPF number (Brazilian Tax Code) in place, you are obliged to submit an Income Tax declaration at the Receita Federal, even if it is a negative declaration.

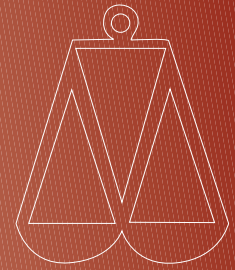
3.5 CAPITAL GAINS TAX

a) Individuals

Capital gains tax on the sale of a property by individuals will be subject to Brazilian tax at a rate of 15%. The tax is determined by the difference between the sales price and the acquisition cost duly reported on the annual income tax return. The tax is payable up to the last business day of the month following the month in which the gain occurred, since it is a definitive taxation (i.e. not subject to adjustments on the annual income tax return).



AXES IN BRAZIL



Gains derived from sales of real estate acquired by the seller before 1970 are tax exempt for Brazilian residents. Proceeds from the sales of real estate acquired by the seller between 1970 and 1988 have a progressive reduction on the capital gains levied on them.

b) Corporations

Corporate capital gains arising from the sale or exchange of fixed assets are treated as ordinary income and taxed at the regular rates. Due to the fact that Brazil no longer monetarily restates fixed assets for purposes of inflation, the amount of the capital gains will be determined as being equal to the positive difference between the sale price and the disposed asset's original investment value less the accumulated depreciation/amortisation.

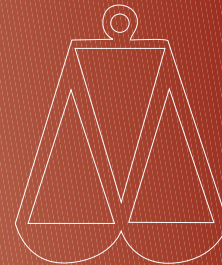
c) Non-residents

Brazilian non-residents are generally subject to withholding tax at a rate of 15% (unless payments are made as a result of an employment relationship or a service contract, in which case the rate is 25%) levied on the payment or credit of Brazilian-source income, except when tax relief is provided by treaties to avoid double taxation.

It should be noted that income paid, credited, remitted, etc., to a beneficiary domiciled in a tax haven country/territory will be subject to 25% withholding tax. For Brazilian tax purposes, a tax haven is considered to be a country that taxes income at a rate lower than 20%.



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Capital gains realised by non-residents are generally determined as being the difference between the sales price and the cost basis of the asset or right sold, which must be substantiated by the corresponding document usually issued when the acquisition takes place. If the cost cannot be substantiated in this manner, the acquisition amount will be determined, in some instances, based on the capital amount registered with the Brazilian Central Bank related to the purchase of the asset or right. In all other instances, the cost will be deemed to be zero.

3.6 ITCMD (*IMPOSTO SOBRE A TRANSMISSÃO "CAUSA MORTIS" E DOAGÃO DE BENS E DIREITO*, Inheritance and Donation Tax)

This is a tax levied by the state on the transmission of real estate by way of donation or inheritance. This tax may vary per state but an average rate would be 4% of the appraised value. (The maximum in the whole country is 8% of the appraised value).

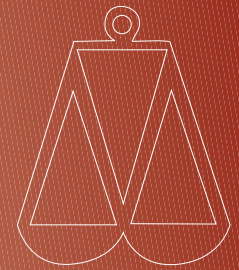
3.7 Comments on ICMS (*IMPOSTO SOBRE OPERAÇÕES RELATIVAS À CIRCULAÇÃO DE MERCADORIAS E SOBRE SERVIÇOS DE TRANSPORTE INTERESTADUAL E INTERMUNICIPAL E DE COMUNICAÇÃO*, Value Added Tax VAT)

This tax is levied by the state on the sale of products and the supply of services only, and NOT ON THE TRANSFER OF REAL ESTATE.

The ICMS tax rates vary from state to state and also depend on the type of operation.



AXES IN BRAZIL



3.8 INTERNATIONAL TREATIES ON TAX MATTERS

Brazil has many treaties to prevent dual taxation in international matters. To date Brazil has entered into treaties with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Slovakia, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Holland, Norway, Philippines, Portugal, Spain and Sweden.

