BMA ADVOGADOS

The Provisional Measure Law conversion n° 897 ("MP Agro") brings news with regard to restrictions for foreigners in rural properties

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In April 7, Law N° 13.986/2020 was published, which provides instruments for expanding the supply of private credit to the Brazilian rural productive sector. The Law comes from Provisional Measure N° 897, formulated by the Ministry of Economy as the "MP Agro" and presented to Congress in October 2019.

The main novelties brought by the Law are (a) the possibility of constituting a fiduciary alienation in guarantee of a rural property in favor of a foreign creditor, (b) the institution of the rural patrimony affected, and (c) the institution of a Rural Real Estate Certificate.

- Creation of real guarantees on rural property, payment in kind or other forms of settlement of transactions in favor of a foreign creditor: the new Law brought an important change to Law N° 5.709/1971, which originally restricts the acquisition and rental of rural properties by people (physical or legal) foreign, extended to Brazilian companies under foreign control, according to the current interpretation. In this regard, Paragraph 2 of Article 1 of Law N° 5.709/1971 was amended to make it clear that the restrictions do not apply:
    1. the hypotheses of constitution of a real guarantee, including the transfer of fiduciary property in favor of a legal entity, national or foreign; and
    2. cases of receipt of premises in liquidation of a transaction with a legal entity, national or foreign, or national legal entity in which, for any reason, foreign individuals or legal entities that have the majority of their share capital and that reside or are headquartered in abroad, through the realization of collateral, payment in kind or in any other way.

- Affected rural assets: Adapting the concept originally applicable only to real estate developments, the new Law creates an affective property on rural property, which will allow rural producers to segregate from their assets those properties intended to guarantee financing operations carried out through the Rural Real Estate Certificate (CIR) (Cédula Imobiliária Rural (CIR))or the Rural Credit Certificate (CPR) (Cédula de Produto Rural (CPR)).

- Rural Real Estate Certificate (CIR): the new Law also creates a new credit title, transferable and freely negotiable, representing a promise of payment in cash, resulting from a credit operation of any type, and the obligation to deliver to the creditor the rural property (or fraction of this property linked to the affected assets, as explained above) that serves as a guarantee for the operation. After the CIR has expired and the credit represented by it has not been paid, the creditor may immediately exercise the right to transfer, for his ownership, the registration of the property of the rural area that constitutes the affected rural patrimony, or of its fraction, linked to the CIR in the corresponding real estate registry office, applying where applicable the provisions of arts. 26 and 27 of Law 9514/97 dealing with the chattel mortgage of real estate. However, after the second auction, if there is still outstanding debt, the CIR holder may charge the difference as an unsecured creditor.

.▯ To see the full Bill, **click here** *(Portuguese only)*.

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