

Law 13.986: Financing Brazilian agribusiness

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Published on April 7, 2020, Law 13.986 introduces new legal instruments to expand private financing for Brazil's agricultural sector. The Law originated in Provisional Measure 897, which was drafted by the Ministry of the Economy and submitted to Congress in October 2019.

The Law makes various changes, both in the market for securities used specifically in the agricultural sector and in the capital markets in general, but the main innovations under the Law are (a) the possibility of granting security interests in rural properties to foreign creditors, (b) the concept of segregated rural assets, and (c) the creation of Rural Land Notes.

Security interests in rural properties and transfer of ownership and other forms of settlement of debts owed to foreign creditors: Law 13.986/2020 makes an important change to Law 5709/1971, which imposes restrictions on sales and leases of rural properties to foreign individuals and entities, including Brazilian companies under foreign control, according to the prevailing interpretation of the legislation.

Law 13.986 amends §2 of article 1 of Law 5709 to make it clear that the restrictions do not apply:

- I. to grants of security interests, including defeasible transfers of ownership to national or foreign legal entities, or
- II. in cases where property is received in payment of transactions with national or foreign entities (or national entities controlled by foreign individuals or entities), through realization of security interests, giving in payment, or otherwise.

Segregated rural assets: Law 13.986 adapts a concept used in real estate development projects to allow rural assets – specifically land and all improvements to land (excluding crops, goods and equipment, and livestock) – to be segregated from the rest of a rural producer's assets so that they can serve as security for financing through Rural Property Notes (CIRs – Cédula Imobiliária Rural) or Rural Produce Notes (CPRs – Cédula de Produto Rural).

The rural assets are segregated at the owner's initiative, by registration of the segregation in against title to the affected parcel of land. Article 12 of the Law sets out the documents that must accompany the application for registration.

Once the assets are segregated, rights and obligations related to the assets remain entirely separate from the owner's other rights and obligations, and from any other assets the owner may segregate to serve as security for other financing.

Furthermore, no security interests may be granted in the segregated assets except by issuing CIRs or CPRs.

Law 13.986 also provides that while segregated, the owner may not sell, gift, subdivide or in any other way confer an ownership interest in the assets; likewise, the owner may not use the assets as security for any obligation other than the CIRs or CPRs to which they are linked.

The Law adds that segregated assets cannot be pledged or attached in legal proceedings, and are not affected by a decree of bankruptcy, judicial reorganization or civil insolvency of the segregated assets' owner. Segregated assets will not form part of the bankrupt estate except with respect to the owner's employment, tax, and social security obligations.

Rural Property Notes (CIRs): Law 13.986 creates a new security that can be freely traded, representing a promise to pay in money, arising out of a financing transaction of any kind, together with the obligation to deliver the rural property (or the part of it that has been segregated) that serves as security for the financing in the event of default. If the CIR is not settled when it falls due, the creditor can immediately enforce the security interest and cause the segregated asset to be registered in the creditor's name in the relevant immovable property registry, in the same way as other security interests based on defeasible transfer of ownership (articles 26 and 27, Law 9514/1997), and proceed to sell the segregated assets to pay the secured debt. If any amount of the secured debt remains outstanding after the segregated assets have been sold at public auction, the creditor will have an unsecured claim for the outstanding amount.

Legislative initiatives such as the Agribusiness Law are designed to give an additional boost to the Brazilian agricultural sector by expanding access to credit and providing greater legal certainty in agribusiness financing transactions.

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