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«They say things are happening at the border, but nobody knows which border» (Mark Strand)

Overview of property protection in Brazil (in the light of the World Bank's Doing Business Report)

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Abstract: The present article has the purpose to delineate a brief overview of the property right in Brazil and descant on the level of protection granted to such right, as well as the possibility of access thereto. Doing Business Report (2018) of the World Bank I hereby reviewed with the purpose of mapping the weaknesses and strengths of the protection granted to the property right in the Brazilian law in the light of the perception of the international community. This review is essentially descriptive of the results submitted by the report, with no propositional intention. This relevant issue causes direct repercussion in the foreign investments in the country and in the Brazilian people's welfare, once the level of legal certainty ensured by the institutions is considered one of the main standards of the Democratic Rule-of Law State.

Summary: 1. Property protection in the Rule-of-Law State. 2. Doing Business Report 2018: an introduction. 2.1. The performance of Latin America in the global context. 2.2. Chapter "*Registering the Property*". 2.3. Registry of property in Brazil. – 3. Conclusions – 4. References.

1. The definition of Rule-of-Law State encompasses the recognition of property rights for individuals and requires that property owners be given effective protection mechanisms both *vis-à-vis* the State and individuals that harm or threaten the free exercise of such rights. Respect for property rights is required minimally from all countries that are under a democratic regime. For this reason, it is considered that the existence of a democratic regime in a given State is an issue that concerns not only its citizens, but also the entire international community.

Democracy is an international cause that goes beyond the events and internal situations of a particular state and has a decisive impact on the global order (LIPSET, 1994, p.16). On the other hand, if democracy is an international issue, respect to property is the law of democracy, that is, one of the main rules of the game to be guaranteed in a democratic state, because it represents a fundamental problem of a constitutional and private order. It is a matter related to human interaction, which essentially concerns the choices made in the distribution and coordination of individuals by the State (SINGER, 2014, p.1289).

Although property is correctly considered a natural right, the level of effectiveness that is guaranteed to it is necessarily linked to the form of recognition and the mechanisms of protection that the State itself offers to the owners. Thus, if a given State only abstractly recognizes the right to private property without assuring the holder the legal means and instruments necessary to assert the right and protect it from the interventions of others, it can be said that democratic values are not fully realized. There is a structural deficit in the protection of a fundamental right (PEÑALVER, 2012, p. 20).

The issue becomes even more relevant before the emergence of new democracies in contexts characterized by political and economic fragility and often marked by institutional instability and fundamental rights violations. The third wave of democracy, represented by democratic transitions from the 1970s onwards^[1], reinforced the concern to establish and ensure a minimum international standard of respect for democratic values in the international context (HUNTINGTON, 1991, p. 12).

It should also be noted that a number of international bodies, including the European Union, NATO, IMF and the World Bank, have regarded democracy as a precondition for States wishing to be members of such bodies or receiving financial assistance (LIPSET, 1994, p. .16). The so-called "Global Minimum Standard" or "International Minimum Standard of Treatment" can be applied to the most varied spheres of law, covering several institutes, including constitutional guarantees, democratic elections, foreign investment protection, among others (SPRANKLING, 2014, p.355).

In this regard, the Venice Commission for Democracy through Law, an advisory body to the Council of Europe^[2] on constitutional issues, has the task of promoting studies and research on democracy and its articulation with the Rule-of-Law State. Based on the European constitutional tradition, expressed in documents such as the European Convention on Human Rights and the Statute of the Council of Europe, three pillars of European democracies are defined: the Rule of Law, the democracy and the human rights (VENICE COMMISSION, 2011, page 06). From such premises, the Commission intends to consolidate the establishment of democratic minimum standards in various thematic areas.

Within this perspective, the recognition and protection of property rights by States is considered a requirement for the full realization of democracy. Such a position is based on international principles and international declarations that recognize ownership as a fundamental right, including the Universal Declaration of Human Rights and the European Convention on Human Rights.

Property protection covers the legal and bureaucratic aspects of protection, among them, the material and procedural norms, the administration of justice and its effectiveness, as well as the costs related to access (PEÑALVER, 2012, p.23). Still in Europe, within the perspective of relevance of the protection of property in the international context, a Draft Common Frame of Reference (DCFR) is conceived, in order to define principles, definitions and model rules of the European Private Law, and covers issues relating to the protection of property and the possession of movable property.

Regarding the right of private property, the objective is to standardize the protection of property that must be minimally guaranteed in democracies, which includes protection against arbitrariness and against expropriation. Such standard obliges each State to ensure a uniform minimum level of protection for the core aspects of property rights – applicable to both nationals and foreigners –, which encompasses the recognition of private property and the guarantee against expropriation (PAPARINSKIS. 2013, p. 217).

In Latin America, this is a sensitive issue. The democratic expansion that took place on the continent in the 1980s gave rise to new democracies, still under construction, which are taking the first steps towards a real democracy. On the continent, the political process of democratization often took place at a time when countries were suffering a long and severe economic crisis, which resulted in the reinforcement of social exclusion and poverty. This is the case of the Federative Republic of Brazil, described in its Constitution as *“a Democratic Rule-of-Law State, aimed at ensuring the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as supreme values”*[3].

It is important to consider that Brazil became a democracy in 1988, when a new Constitution was enacted after an authoritarian regime that began in 1964. The new text sought to reconcile various ideological tendencies and ensure broad protection of fundamental rights. The right of property was recognized as a fundamental right by art. 5 of the Constitution and, shortly thereafter, it was granted a social function (item XXIII of article 5), a concept endowed with open content and no precise doctrinal definition (FOSTER; WALSH; BONILLA, 2011, p. 112). In addition, the Constitution of the Federative Republic of Brazil treats urban property[4] and rural property differently, each assigning various functions and objectives[5].

Considering that the present Constitution was enacted after a long dictatorial period and in a context of economic crisis, and considering that Brazil is a recent democracy and, as such, presents the great majority of the problems regarding democracies that are under construction, the analysis of the international documents describing the systematic treatment of property law in the country is of utmost importance for the improvement of democratic institutions, with the consequent strengthening of an environment of transparency and stability for citizens and foreign investors.

2. The “Doing Business” (Comparing Business Regulation for Domestic Firms) is a World Bank report that looks at the business environment and legislation on business activity in one hundred and ninety (190) economies of the world. Each year, laws and regulations that facilitate or hinder business activity in each economy are examined to map economic outcomes and identify the necessary reforms in regulating business activity to promote a competitive and transparent environment for conducting business.

This is one of the most important international reports on the protection of property and investments in general, which maps the regulation of economic activity in the various countries, through 11 quantitative indicators: 1) start a business; 2) permission to build; 3) installation of electricity; 4) registration of property; 5) granting credit; 6) protection of minority investors; 7) taxes; 8) cross-border trade; 9) compliance with contracts; 10) resolution of insolvency; 11) labor legislation.

Continuous analysis of economic data and its cataloging in a systematic way through desirable standards of economic freedom fosters competition and the diagnosis of problems that prevent better performance and foster entrepreneurship in economies. It also encourages debate between researchers in the private sector and civil society on overcoming barriers to economic development and the business-promoting environment in each economy.

The outcome is the work of several scholars and experts who collaborate with the World Bank in the analysis of data and in the creation of valuation methods within their respective areas of activity. The indicators seek to analyze the several aspects of the regulation of countries that discourage investment or prevent private economic initiative, from the creation of new companies, their operation and expansion, regulation of business activities and protection of property rights.

It should be noted that each chapter is prepared through a detailed methodology that bases the final annual conclusions of each report. These methodologies have remained constant over the years, with some changes being made, which also occurs in the event of changes in the available economic data. The indicators of each country are calculated based on the city scenario that is the largest commercial center of each of the economies analyzed. Data on the second largest business center of these economies were also collected in countries with more than 100 million people (Bangladesh, Brazil, India, Indonesia, Japan, Mexico, Nigeria, Pakistan, Russia and the United States of America).

It is important to note that in 2003, when the first edition of the report was published, there were not yet any compilations on the regulation of business activity in the world. The 2018 edition, which marks the 15th edition of the report, presents the data collected until June 1, 2017. In relation to the 2017 edition, it presents a new chapter on labor legislation in the countries (DOING BUSINESS, 2018, p.11). In addition, there was a clear expansion of the content and comprehensiveness of the report: the first version of the document had five indicators and covered 133 (one hundred and thirty-three) Economies; the 2018 version, as already pointed out, presents 11 chapters and analyzes 190 (one hundred and ninety) Economies.

Over the years, the report has become a source of secure consultation for policymakers in shaping public and economic policies throughout the world. In the last decade, more than 60 (sixty) Economies reported that Doing Business indicators were used as sources by committees to promote reforms in the regulation of economic activity in the States, which resulted in more than 3,180 regulatory reforms, of which 920 inspired directly by it (DOING BUSINESS, 2018, V).

In addition to the yearly report, which includes a comparison of all countries, specific country-specific reports are also produced in which indicators are treated and examined on a case-by-case basis. In this sense, it is presented the general position of each Economy in the global ranking, as well as the classification related to each of the 11 chapters covered by the regulation, besides its placement in the continent to which it belongs. The different economies of the world are divided by regions, classified by geographical proximity or by factors that approximate the economies: i) Europe and Central Asia; (ii) the Middle East and North Africa; (iii) Latin America and the Caribbean; iv) High-income Economies of the OECD (Organization for Economic Cooperation and Development); (v) South Asia; (vi) Sub-Saharan Africa; (vii) East Asia and the Pacific.

In addition to the overall report, national sub-reports are issued jointly to analyze each country's specific performance across all indicators, allowing for local perspective to be deepened, which is adequate for the concrete verification of the deficient aspects in the business environment of realized economies. These reports cover in detail various aspects of regulating the business environment in different cities and regions within a state and provide data on the ease of doing business, classify each location and recommend reforms to improve performance in each of the indicated areas[6].

In this way, a broad panorama of the performance of each Economy is set up, which allows comparative insertion at the global level and within the specific continental context of each country. Following this logic, the Latin American general report will be analyzed briefly in order to provide a broader picture of the region's performance, and then to detail the particular aspects of the Brazilian report, especially the regulation and registration of property in the country.

2.1. Initially, it should be established that the report analyzes the Economies from the so-called "distance measure to the border", which represents the best performance observed in each of the Doing Business sample indicators since 2005. The distance of an economy to the border is evaluated on a scale of 0 to 100, where 0 represents the lowest performance and 100 represents the boundary, i.e., the highest possible performance within the elaborated scale.

The ranking of 190 (one hundred and ninety) economies is determined by the classification of the distance added to the border scores, rounded to two decimals. The final score of each Economy corresponds to the weighted average of the scores attributed to each of the assessed items, from 0 to 100. The economies are evaluated globally and in each of the indexes presented; in addition, the report elaborates a ranking of the economies by continent, being possible to evaluate them in the global plan as in the continental plan. In the current report, the first twenty classified economies were as follows[Z]:

Economy	Ease of Doing Business Rank
New Zealand	1
Singapore	2
Denmark	3
Korea, Rep.	4
Hong Kong SAR, China	5
United States	6
United Kingdom	7
Norway	8
Georgia	9
Sweden	10
Macedonia, FYR	11
Estonia	12
Finland	13
Australia	14

Taiwan, China	15
Lithuania	16
Ireland	17
Canada	18
Latvia	19

In the Latin America and Caribbean region, 32 economies have been examined.[8]. Mexico is the best-ranked economy, ranking 49th overall, followed by Peru (in 58th place), Colombia (59th) and Costa Rica (61st). The economies with the worst ratings were Venezuela (188th), Haiti (181st) and Suriname (165th). Brazil is ranked 125th in the global ranking and in the 22nd in the continental ranking, with a score of 56.45 on a scale of 0 to 100, as shown in the table:

Economy	Ease of Doing Business Rank	Filtered Rank
Mexico	49	1
Peru	58	2
Colombia	59	3
Costa Rica	61	4
Puerto Rico (U.S.)	64	5
Jamaica	70	6
El Salvador	73	7
Panama	79	8
St. Lucia	91	9
Uruguay	94	10
Guatemala	97	11
Dominica	98	12
Dominican Republic	99	13
Trinidad and Tobago	102	14
Antigua and Barbuda	107	15
Paraguay	108	16
Honduras	115	17
Argentina	117	18
Ecuador	118	19
Bahamas, The	119	20
Belize	121	21
Brazil	125	22
Guyana	126	23
St. Vincent and the Grenadines	129	24
Nicaragua	131	25
Barbados	132	26
St. Kitts and Nevis	134	27
Grenada	142	28
Bolivia	152	29
Suriname	165	30
Haiti	181	31
Venezuela, RB	188	32

On the property register, the best overall position is occupied by Peru (44th position), followed by Costa Rica (49th position) and Colombia (60th position). In this regard, Brazil occupies the 131st position in the overall ranking (placement below that relative to all the questions, in which it occupies 125th position):

Economy	Ease of Doing Business Rank	Registering Property
Mexico	49	99
Peru	58	44
Colombia	59	60
Costa Rica	61	49
Puerto Rico (U.S.)	64	153
Jamaica	70	128
El Salvador	73	69
Panama	79	83
St. Lucia	91	105
Uruguay	94	112
Guatemala	97	85
Dominica	98	164
Dominican Republic	99	79
Trinidad and Tobago	102	151
Antigua and Barbuda	107	118
Paraguay	108	75
Honduras	115	91
Argentina	117	117
Ecuador	118	74
Bahamas, The	119	167
Belize	121	132
Brazil	125	131
Guyana	126	110
St. Vincent and the Grenadines	129	166
Nicaragua	131	133
Barbados	132	102
St. Kitts and Nevis	134	184
Grenada	142	141
Bolivia	152	144
Suriname	165	156
Haiti	181	180
Venezuela, RB	188	135

In the continental ranking, Brazil takes the 18th position:

Economy	Registering Property
Mexico	11
Peru	1
Colombia	3
Costa Rica	2
Puerto Rico (U.S.)	26
Jamaica	17

El Salvador	4
Panama	8
St. Lucia	12
Uruguay	14
Guatemala	9
Dominica	28
Dominican Republic	7
Trinidad and Tobago	25
Antigua and Barbuda	16
Paraguay	6
Honduras	10
Argentina	15
Ecuador	5
Bahamas, The	30
Belize	19
Brazil	18
Guyana	13
St. Vincent and the Grenadines	29
Nicaragua	24
Barbados	20
St. Kitts and Nevis	32
Grenada	22
Bolivia	23
Suriname	27
Haiti	31
Venezuela, RB	21

Latin America's performance, whose best globally ranked Economy ranks 49th, reveals the serious problems and structural obstacles that prevent continued economic growth in the region, which has been continually interrupted by political crises, fueled by the conflicts arising from the distribution of resources (FUKUYAMA, 2008, p. 70).

Equally worrisome is Brazil's placing within the continent: 22nd among the 32 economies analyzed, ranking lower than smaller economies like Guatemala, Uruguay and San Salvador. The classification reveals the chronic and historical difficulty that the country presents in the regulation and control of real estate. This is an important fact, which should provoke reflection on the institutional mechanisms that prevent an adequate classification of the economy of the country as to the ease of conducting business.

The existing bureaucratic apparatus often makes registration and recognition of private property costly in many areas of the national territory and makes it difficult to "formalize" the legal business executed. In fact, the parameters used to evaluate the registration of property in the Economies will be examined, with the subsequent examination of the results specifically presented in the report produced on the Brazilian economy.

2.2. As noted above, the Doing Business 2018 report covers eleven areas of business regulation.[9] This item evaluates a number of aspects related to property rights, including the costs and time of procedures for land registration and control, as well as the quality of information available and the ease of access to thereto. Indicators are prepared taking as basis the transparency required for the conduct of operations for the acquisition, transfer and registration of property.

The evaluation methodology analyzes the necessary steps, time and cost involved in the registration of property, from the pre-registration to the post-registration phase, the indicator traces the path that an interested company[10] to acquire real estate [11] from another must continue until the intended transaction is effected, with the consequent alteration of the registration and the definitive transfer of the asset in question from the assets of the seller/assignor to the assets of the buyer/assignee.

The topic emphasizes the importance of this *iter* so that the new owner has agility in its businesses, either through the possibility of expanding them through the production and the expansion of the offer of services, of the possibility of offering the good as guarantee for new loans or, if necessary, sell it to others.

Within the framework of the systematic proposal, the report establishes four categories to be analyzed: i) procedures necessary to transfer real estate; ii) time required to complete each step; iii) cost required for each procedure; iv) quality of land administration. The outcome is the weighted average of the scores of each of the subcategories, shown in the table below:

Table 1 – What do the indicators on the efficiency of transferring property measure[12]?

Procedures to legally transfer title on immovable property (number)
Preregistration procedures (for example, checking for liens, notarizing sales agreement, paying property transfer taxes)
Registration procedures in the economy's largest business city ^a
Postregistration procedures (for example, filling title with municipality)
Time required to complete each procedure
Does not include time spent gathering information
Each procedure starts on a separate day—though procedures that can be fully completed online are an exception to this rule
Procedure is considered completed once final document is received
No prior contact with officials
Cost required to complete each procedure (% of property value)
Official costs only (such as administrative fees, duties and taxes)
Value Added Tax, Capital Gains Tax and illicit payments are excluded
a. For 11 economies the data are also collected for the second largest business city.

The procedures are defined as the necessary interactions – between the buyer or seller (or its agents) with third parties outside the contract, government agencies, tax authorities, lawyers and notaries – to legally transfer the property. Within the aforementioned category are evaluated: a) pre-registration procedures, such as obtaining documents and payment of notary fees and charges; b) the registration procedures in the city that carries out the largest number of businesses in the country; c) post-registration procedures (for example, completion of subsequent registrations together with the municipalities). In short, all legal or customary procedures for registration of property are counted, although they may be avoided in special situations.

The assessment of the time required to comply with the necessary steps for registration is determined by the following guidelines, which do not include the time required to obtain information: a) each procedure is presumed to start on a separate day, therefore, the rule does not apply to procedures performed at once online; (b) each procedure is deemed accomplished when a final document is received, without prior contact with registration officials (DOING BUSINESS, 2018, p. 44).

The cost required to finalize each procedure is calculated based on the percentage of property value involved and includes only the official costs of ownership transfer (excluding value-added tax, capital gains and illicit payments). Finally, the quality of land management, the most complex of parameters, seeks to evaluate a series of vectors linked to the reliability and transparency of regulation.

Table 2 – What do the indicators on the quality of land administration measure[13]?

Reliability of infrastructure index (0–8)
Type of system for archiving information on land ownership
Availability of electronic database to check for encumbrances
Type of system for archiving maps
Availability of geographic information system
Link between property ownership registry and mapping system
Transparency of information index (0–6)
Accessibility of information on land ownership
Accessibility of maps of land plots
Publication of fee schedules, lists of registration documents, service standards
Availability of a specific and separate mechanism for complaints
Publication of statistics about the number of property transactions
Geographic coverage index (0–8)
Coverage of land registry at the level of the largest business city and the economy ^a
Coverage of mapping agency at the level of the largest business city and the economy ^a
Land dispute resolution index (0–8)
Legal framework for immovable property registration
Mechanisms to prevent and resolve land disputes
Equal access to property rights (–2–0)
Unequal ownership rights to property between unmarried men and women
Unequal ownership rights to property between married men and women
Quality of land administration index (0–30)
Sum of the reliability of infrastructure, transparency of information, geographic coverage, land dispute resolution indices and equal access to property rights

a. For 11 economies the data are also collected for the second largest business city.

The quality index of land administration comprises five vectors, each of them is given a score which makes up the total amount of the final index (ranging from 0 to 30), calculated by summing the same: i) infrastructure reliability index; (ii) transparency of information; (iii) geographical coverage; iv) resolution of land conflicts; v) equality in access to property. Each vector is analyzed by summing other vectors that integrate it, in a detailed check of all the factors that impact on the transparency of transactions (Doing Business, 2018, p. 44).

Note that the aforementioned evaluation criteria was not included in earlier versions of the report, and has only been included in the year 2016. The expansion of the indicator, which initially only evaluated the procedures, time and cost thereof was motivated by the data published in the Corruption Perceptions Index (CPI) by Transparency International[14], whose data showed that one amongst five users of property registration services in the world made the payment of bribes for obtaining services such as registration and up-to-date information on property rights. There have also been reports of fraud in the property registry, including duplicity of land registration.

In view of the data, it was necessary to improve the evaluation mechanisms of the registry of property to include other factors not previously analyzed and that are linked to the transparency in the management and the access to the information, since the corruption hinders the formalization of the property, stimulates informality and increases costs for doing business, as well as undermining private sector confidence in the economy[15].

A transparent land management system considerably reduces opportunities for corrupt practices. There is therefore a need to evaluate items such as: (i) the disclosure of information on property rights, including statistics on the transfer of property rights in the largest city of the country; ii) the accessibility of the property transfer process; iii) the existence of independent and specific instruments to respond to complaints from users of property registration services.

Regarding the property registry, Doing Business 2018 points out that of the one hundred and ninety (190) Economies analyzed, one hundred and fifty eight (158) publish tables with the amounts to be paid for the effective registration of property (DOING BUSINESS, 2018, pp. 51-55). On the other hand, in fifty-one (51) Economies analyzed, the only way to obtain information about the documentation required for the registration of property is through personal interaction with the public official responsible for registration.

In one hundred and thirty-one (131) economies, such information may be consulted from an electronic site specially designed for such advertising. Another important fact is that the availability of online platforms is more common in high-income economies than in low-income economies: 80% of the former publish the tables with transfer costs, while only one third of the latter do so (DOING BUSINESS, 2018, p.52).

The report points out that ownership tends to be transferred more efficiently in Economies where both the necessary documentation and the cost tables of the services are easily accessible and reinforces the need for online availability of such information, with the provision of registration information on the Internet and the preparation of electronic database for

encumbrances. It also recommends the establishment of fixed deadlines for each stage of registration, in order to streamline procedures and promote greater legal certainty and transparency in operations (DOING BUSINESS, 2018, page 53).

The absence of strict deadlines for the provision of services encourages the payment of bribes with the purpose of promoting certain facilitation or advances of deadlines and results. In general, the results indicate that service standards in registries and registered ones are a rare practice around the globe: in one hundred and twenty-two (122) economies, there are no specific deadlines or limits established by law for the provision of registration services (DOING BUSINESS, 2018, p. 52). As it will be mentioned, in Brazil, Law No. 6015/73 establishes a maximum period for the registration of the title in the Registry of Real Estate, but it is an inappropriate term.

In addition, the evaluation demonstrates that another globally deficient aspect of real estate registration refers to the lack of further control mechanisms for services that are specific and independent, leaving the Judiciary to control only the most complex issues. According to the report, only twenty-four (24) economies have such mechanisms, which would provide a threefold improvement in the quality of services provided: (i) to protect citizens from “sub-service”, i.e. services are properly provided; ii) increased trust through a system of governance, in which registry officers are held accountable for their acts; iii) improvement of existing structures as a result of the mapping of failures (DOING BUSINESS, 2018, p. 54).

2.3. The sub-report on the Brazilian Economy covers the cities of São Paulo and Rio de Janeiro, which are separately evaluated in each of the criteria brought by the chapter *registering property*.

The city of São Paulo received a score of 52.84/100 and the city of Rio de Janeiro totaled a score of 52.23/100, which demonstrates a uniformity in the regulation of property in both cities, as shown in the tables below:

The proximity of the city classifications is linked to the Brazilian federal structure [16], in which it is incumbent upon the central body (Federal Government) to legislate on public records [17]. Law No. 6.015/73, known as the Public Registration Law, provides the general rules for registration, which includes the General Registry of Real Estate. It should also be noted that the notary and registration services are exercised on a private basis, by delegation of the Public Power and supervised by the Judiciary of the federal states, through its General Justice Internal Affairs[18].

Despite the uniformity of the general rules on public registers, local aspects are the responsibility of each of the aforementioned General Justice Internal Affairs; therefore, there may be differences in the costs of the services and the fees to be paid for carrying out registration and registration procedures, since the tables with the costs of the services are annually published by the aforementioned General Justice Internal Affairs.

Another important aspect is the tax on the transmission of real estate (ITBI), incumbent on the Municipalities[19]; therefore, their rates may vary according to the locality in which the property to be acquired is situated. In fact, it is possible that there are differences between the costs of paying the transmission tax in the cities examined in the Brazilian report.

The report lists the necessary procedures for the transfer of ownership in the aforementioned city and analyzes the costs and time required to implement each one of them; also analyzes the quality of land administration services. In the city of São Paulo, 14 procedures were listed; in Rio de Janeiro were listed 13 procedures required for registration. These procedures will be analyzed in their general aspects, trying to establish the common points and the differences presented (DOING BUSINESS BRAZIL, 2018, pp. 44-66).

For purposes of synthesis, the procedures will be divided into groups in order to facilitate the understanding of the discipline of the subject in Brazil: i) the first group refers to the certificates to be obtained; ii) the second group deals with tax matters; iii) the third group deals with the costs of the actual transfer of ownership. In order for the transfer of ownership to take place, the buyer must submit numerous certificates, including those relating to the seller, labor debts and those related to the property.

As for the certificates, the first procedure listed refers to the obtaining of the certificates of the notary's office for protested notes. Such certificate is not required by law for the transfer of ownership, but in transactions carried out by more conservative companies, they are required as evidence of the assets and solvency of sellers. There are 10 notary's office for protested notes in São Paulo and certificates are required from each of them, which can be requested online, at a cost of R\$ 12.24 each, totaling R\$ 1,224.00 (one thousand two hundred and twenty-four *Reais*) (DOING BUSINESS BRAZIL, 2018, pp. 47). In Rio de Janeiro, there are 4 notary's office for protested notes, integrated in an online platform called “Rio Rápido”, in which the certificates may be requested, totaling R\$ 385.32 (three hundred and eighty-five *Reais* and thirty-two cents). Although there is the possibility of a virtual application, the certificates cannot be issued by such means; the interested party must take them personally, within three to five business days, counting from the application (DOING BUSINESS BRAZIL, 2018, pp. 58).

State certificates should also be issued stating that the seller has no debts related to civil actions (Civil Distributor Certificates), commercial (Bankruptcy and Financial Restructuring Certificates) and tax (Certificate of Tax Enforcement) in progress. Such certificates must be requested from the state Judicial Branch. In São Paulo, each one costs R\$ 19.40 (nineteen *Reais* and forty cents). They can be requested online – in which case they are delivered in one day, if the result is negative – or in person, in which case they are issued immediately. In Rio de Janeiro, they can be requested online by “Rio Rápido” platform, with a term of three to five days, with no possibility of virtual issuance. It should be stressed that equivalent certificates must also be issued

by the Federal Court of first degree. The Certificate of Lawsuits Distribution, Civil, Tax, Criminal and Special Courts Enforcement can be requested and issued free of charge through the Internet in both São Paulo and Rio de Janeiro (DOING BUSINESS BRAZIL, 2018, p.50).

Another important aspect is the issuance of the certificate related to tax debts to tax credits and to the active debt of the Union, issued at no cost through the Ministry of Finance website. The contents of the certificate include the information on the existence of fiscal debts and delinquent debts of the Federal Government, as well as the debts related to social security contributions. The certificate is free and issued online through the Federal Revenue Service website, an agency of the Brazilian Ministry of Finance. As it is a federal certificate, the procedure is the same in both cities analyzed (DOING BUSINESS BRAZIL, 2018, pp. 49 and 60).

Regarding labor certifications, it should be pointed out that Brazilian legislation provides for two types of procedures: i) the Labor Lawsuits Certificate (Regional Labor Courts), which has the purpose of verifying whether the person or company investigated has labor lawsuits in progress; ii) the Negative Certificate of Labor Debt (CNDT), obtained from the Superior Labor Court, which indicates the existence of labor debts. There is also the FGTS' Regularity of Status Certificate, which certifies that the company is current with the monthly deposits, corresponding to a percentage of 8% of the employees' salary, which is an obligation of the employer to deposit into a bank account in the name of the employee, which must be opened at Caixa Econômica Federal Bank, a financial institution in the form of a federal public company. Such certificates are not legally required for the transfer of ownership, but are commonly requested in the negotiating practice (DOING BUSINESS BRAZIL, 2018, pp. 49-60).

The first certificate can be requested and obtained online in the city of São Paulo, free of charge. In Rio de Janeiro, the issuance term is three days and each sheet costs R\$ 5.53 (five *Reais* and fifty-three cents). The CNDT, created by Law 12.440/11, which came into force in January 2012[20], can be requested and issued online and free of charge, through the National Bank of Labor Debtors. Finally, the FGTS certificate can be obtained free of charge from the Caixa Econômica Federal website (DOING BUSINESS BRASIL, 2018, pp. 47-60).

There are also certificates and taxes which refer to the property in question and which, in general, are mandatory for the transfer, as provided for in Decree No. 93,240 of September 9, 1986[21]. The certificate of registration data of the real estate is obtained from the municipalities, it informs the calculation basis of the IPTU (urban territorial property tax) of the property (real value) and determines if there are debts that are due on the property. Its submission may be waived by the acquirer who, in this case, will be liable, under the terms of the law, for the payment of existing tax debts. In São Paulo, the issue is online and free of charge (DOING BUSINESS BRASIL, 2018, pp. 48); in Rio de Janeiro, the online certificate is free and the one issued in person costs R\$ 11.85 (eleven *Reais* and eighty-five cents) (DOING BUSINESS BRASIL, 2018, pp. 59).

The second necessary procedure refers to the obtaining of a twenty-year certificate obtained before the Real Estate Registry Office according to the location thereof. Such certificate is mandatory for attesting the chain of acquisition of the property, as well as proprietary ownership, allowing to verify if the seller is the real owner of the property registration, in addition to describing the real burden pending on the property. In São Paulo, the certificate can be applied and issued online, through a digital certificate that produces the same legal effects of a printed certificate (DOING BUSINESS BRASIL, 2018, page 48). The procedure lasts less than one day and costs R\$ 49.94 (forty-nine *Reais* and ninety-four cents). In Rio de Janeiro, only a few registry offices allow the online application for the certificate, but there is no possibility of online issuance (DOING BUSINESS BRASIL, 2018, page 58).

With regard to expenses with the actual transfer of ownership, costs must be included with the drafting of the public deed and with its registration in the Real Estate Registry Office, in addition to the payment of real estate transfer tax (ITBI). It is important to clarify that in the Brazilian legal system the contract of purchase and sale produces only binding effects. This means that the contract does not automatically transfer the property, only creates the obligation to transfer it through another act, which is the title registration in the Real Estate General Registry (RGI)[22]. In addition, proof of payment of taxes is essential for the notary to draw up the public instrument.

It should also be noted that the public form is essential to the validity of legal transactions aimed at the constitution, transfer, modification or waiver of security interests over real estate worth more than thirty times the highest minimum wage in force in the country[23]. In addition, a procedure must be carried out for the drafting of the deed by the notary of each State of the Federation, in which it analyzes all documents submitted and verifies their regularity and then prepares the public instrument for the accomplishment of said transaction.

The value of the procedure is provided by the Notary Colleges of the respective States and varies according to the value of the property. The report shows a weighted average of R\$ 3,110.93 (three thousand, one hundred and ten *Reais* and ninety-three cents) in Rio de Janeiro (DOING BUSINESS BRASIL, 2018, page 62) and R\$ 4,757.00 (four thousand seven hundred and fifty-seven *Reais*) in São Paulo, with an average time of 3 days for completion (DOING BUSINESS BRASIL, 2018, page 50). As for the registration of the public deed, the value is also provided and variable according to the value of the property. Law No. 6.015/73 establishes that the maximum term for the registration is 30 days; however in São Paulo, the procedure lasts 15 days. In São Paulo, for real estate with a value between R\$ 250,700.01 (two hundred and fifty thousand, seven hundred *Reais* and one cent) up to R\$ 501,400.00 (five hundred and one thousand, four hundred *Reais*), the cost is R\$ 2,080.58 (two thousand, eighty *Reais*

and fifty-eight cents) (DOING BUSINESS BRASIL, 2018, page 50). In Rio de Janeiro, for real estate with values above R\$ 200,000.01 (two hundred thousand *Reais* and one cent), up to R\$ 400,000.00 (four hundred thousand *Reais*) is charged the value of R\$ 1,600.95 (one thousand six hundred *Reais* and ninety-five cents) (DOING BUSINESS BRASIL, 2018, page 62).

In order for the public deed to be drawn up, it is imperative that proof be presented of payment of the property transfer tax, due to the Municipality. The buyer must make the payment of the tax before the writing of the public deed; however, such incumbency can be ascribed to the notary, who can pay the tax in the name of the buyer, because he is responsible for the control of said payment. In Rio de Janeiro, the rate corresponds to 2% of the value of the property (DOING BUSINESS BRASIL, 2018, page 61) and in São Paulo 3% of the registered value of the property within the city hall (DB BRASIL, 2018, page 50).

When dealing with a legal business entered into between companies, the notary must also verify the Trade Board's certificate, which provides the basic information about the company, such as corporate name, national corporate taxpayers' registry (CNPJ), date of commencement of activity, economic activities, capital stock, shareholders and their respective interests in the capital stock and subsidiaries thereof. The procedure is free of charge and can be made through the electronic websites of the São Paulo Trade Board (JUCESP) and the Rio de Janeiro Trade Board (JUCERJA) (DOING BUSINESS BRASIL, 2018, pages 50 and 61).

Once the transfer of the property has been effected with the registration of the title, it is the responsibility of the buyer and new owner to update the ownership of the property with the City Hall, which can be done at no cost in both cities. In São Paulo, the update is after registration; in Rio de Janeiro, before the title is taken to registration, the Change of Ownership Communication Form must be completed and submitted to the Municipal Secretary of Finance (SMF). At the time of presentation of the title to the notary the number of the protocol generated at the completion of the submission must be informed. (DOING BUSINESS BRASIL, 2018, page 62).

Having seen the procedures, the evaluations regarding the quality of the land administration carried out by the Public Administration shall be briefly analyzed. The two Brazilian cities evaluated received similar scores in the general framework of the Doing Business 2018 "*registering property*" chapter, according to the following tables:

It should also be noted that the aforementioned score is slightly above the average of the region of Latin America and the Caribbean, in whose sample Brazil is inserted. Considering the country occupies the 131st overall position in the aforementioned item, position below its overall ranking, it is appropriate to examine the evaluation of the quality of the services rendered and to map the items that were negatively evaluated.

It should be emphasized that the quality of the land administration receives a score that varies from 0 to 30, formed by the weighted average of several other questions. The city of São Paulo scored 14.0 points on a scale of 30, while Rio de Janeiro scored 13.5 points. In both cases, the score fell short of half the total score set for the chapter. (DOING BUSINESS BRASIL, 2018, pp. 45-46). As mentioned above, the sub-chapter "*quality of land administration*" consists of the sum of several parameters, which are detailed and composed of other sub-items.

In spite of this, in the present study, a detailed analysis of all sub-items evaluated will not be done, which in fact would require another specific study. It was decided to present the score obtained by each of the cities in each of the five analyzed items and, within each question, emphasizes in a special way the topics considered problematic by the report. That said, it is not insignificant to recall the vectors in question: i) infrastructure trust (0-8 points), ii) information transparency (0-6 points); (iii) geographical coverage (0-8 points); iv) resolution of land conflicts (0-8 points); v) equality in access to property (-2 to 0 points). (DOING BUSINESS BRASIL, 2018, page 44).

The index of reliability of the infrastructure is assigned a score ranging from zero to eight. The item evaluates the existence of public agencies in charge of the registration of real estate, as well as the existence of databases and electronic registers to carry out the procedures, as well as the integration of the information between the supposed databases available. The city of São Paulo received 5.0 points (DOING BUSINESS BRASIL, 2018, p.52) and Rio de Janeiro 4.0 points (DOING BUSINESS BRASIL, 2018, p.64).

In São Paulo, two sub-vectors were negatively evaluated (with a score of 0.0). The first of these was the separation and lack of communication between the various databases, that is, the lack of a single platform in which all registered procedures could be carried out in a single and unified manner. The lack of integration between public agencies is evident in the absence of automatic updating of the registry of the property with the City Hall after the registration of the title in the Real Estate General Registry, which imposes on the new owner the burden of communicating with the city hall. Another point negatively evaluated (0.0 points) was the lack of a unique identification number of the property for all public agencies that participate in the acquisition chain (DOING BUSINESS BRASIL, 2018, p.52).

In Rio de Janeiro, in addition to the items discussed above, a score of 0.0 was attributed to the fact that there is no electronic database that allows the online obtainment of a certificate of real property liens. In a different way, the city of São Paulo allows the online version of such service through the electronic portal "*Cartório 24 horas*" (DOING BUSINESS BRASIL, 2018, page 64).

The second item – the transparency of the information – is the one in which the publicity of the information related to the documents necessary to carry out real estate deals, the easiness of access and the existence of mechanisms of improvement and receipt of complaints regarding the services rendered are evaluated. In this regard, Rio de Janeiro scored slightly higher (4.0/6.0) (DOING BUSINESS BRASIL, 2018, pp. 64-65) than that obtained by São Paulo (3.5/6.0) (DOING BUSINESS BRASIL, 2018, 54).

On the other hand, the two cities had their performance evaluated with the minimum score (0.0) in the same areas: i) the lack of a specific mechanism to allow complaints to be made as a result of the services rendered by the registrars (non-judicial); ii) the absence of official public statistics on the number of real estate transactions taken to register in the city; iii) the absence of a mapping or registration agency that publishes updated maps with the deadlines specifically required for each stage of the transaction; iv) lack of external and specific control mechanisms against such agencies (non-judicial).

The third item provides for the geographic coverage index, in which the mapping of the property registry and the verification of the formalization index of the transfer operations of the property are evaluated. The following items are evaluated: i) formal registration of privately owned land in the Economy; ii) formal registration of privately owned land in the largest city for business purposes; iii) the mapping of privately owned land (DOING BUSINESS BRASIL, 2018, page 54).

Both cities received very low scores, totaling 2.0/8.0 points, and in three of the four items evaluated they were assigned the minimum score (0.0). Note that in such a case both cities presented their worst evaluations among all the items evaluated in the “registering property” chapter (DOING BUSINESS BRASIL, 2018, page 64).

This is an important fact, revealing the informality of real estate transactions in Brazil, due to the high costs and disinformation of the population in general regarding the procedures for the transfer of real estate. As a result of the costs, private purchase and sale agreements are executed, which cannot be registered, since the public form is required by law. In addition, it is common for companies to enter into the transaction by public deed and postpone registration for lack of sufficient resources to complete the transaction stages.

In the fourth question – index of resolution of land conflicts or land disputes – cities also performed poorly, having obtained similar scores: 3.5/8.0. The item evaluates the management of conflicts arising from transactions related to the transfer of ownership and includes the extrajudicial and judicial mechanisms for the settlement of disputes (DOING BUSINESS BRASIL, 2018, p. 54).

In this index, the following questions were asked: i) is the real estate registration system subject to some public or private guarantee, such as insurance?; (ii) is there any specific compensation mechanism covering losses suffered by the acquirer in good faith who carried out a real estate transaction on the basis of erroneous information certified by the real estate registry?; (iii) is there a national database to verify the authenticity of the documents?; (iv) are there statistics on the number of cases in the first instance of jurisdiction?; and, finally, (v) how long does it take to obtain a first-degree judicial decision in the cities? (02 to 03 years, not including the appeals).

Regarding the fifth item, regarding equal access in property rights, the item assesses whether there are legal restrictions that impede equal access between men and women, including those bound by marriage. The item includes the possibility of acquiring, controlling, administering and transferring the real estate property. Unlike other items, here the score ranges from -2 to 0 points, in which each constraint is punctuated with -1. Both cities obtained the maximum score, which in the mentioned item is 0.0 points, which means non-occurrence of restrictions.

3. Based on the analytical presentation on the private property overview in the light of the World Bank's Doing Business Report, it is important to reaffirm that in the overall ranking Brazil ranked 125th, showing that it is necessary an urgently review of the treatment of this matter in the light of the national reality. Even more serious is the ranking in chapter “registering property” according to which Brazil ranked 131st, below the country's overall score, which reinforces the urgent need for legislative, administrative and judicial reforms to facilitate the transfer of real estate.

There are some sensitive issues pointed out by the Brazilian sub-report, regarding the sub-themes of the lack of integration of the databases – notably in the public offices and Real Estate Registry Offices – of the low formalization of the property, as well as the duration of the demands, which generates an unreasonable length of the proceedings relating to ownership and possession.

The sub-items in which Brazil presented the worst performance were the geographic coverage and the dispute resolution chapters, which demonstrate two chronic Brazilian problems: the lack of registration of the purchase and sale contracts in most cases and the low effectiveness of the judicial protection and dispute prevention mechanisms.

The World Bank Report does not specifically determine what reforms should be implemented in Brazil regarding the private property landscape, but only points the data, which must be analyzed by each of the world's economies to carry out the reforms needed. It is symptomatic the commentary presented at the previous Doing Business Report (in 2013):

"Whatever the motivation for reforms, the social problem they address is clear: without the possibility of owning land, some people are denied opportunities given to others. This is not grounded on their ability or willingness to work, but on outdated and often perverse government policies. Reforms in property laws and registration requirements can do much to reduce inequality before economic opportunities. This is what many poor people in town and in the countryside need. Governments should take on the obligation to serve them."

This critical observation confirms the high level of informality of property in countries with the highest rates of poverty and utter misery in the population. The absence of formal recognition of the property of the most deprived people under the social and economic standpoint prevents such assets from becoming capital.

From this perspective, especially in the search for the reduction of social and economic inequalities, one must retake the idea of the association between property and democracy to establish that there is not a full democratic nation without reducing or abolishing the barriers that prevent the plot access to real estate. Most likely, the question of informality arising from the legalization costs of the operations related to the acquisition and transfer of real estate is placed as a central matter to exactly prevent the effectiveness of democratic values with respect to private property.

It is true that, in relation to the formation and development of public policies, its planning requires the prior realization of diagnoses without which it is not feasible to consider any use of instruments, including legal instruments. Obviously, the World Bank's Doing Business Report points to issues that are bound to require confirmation, but at least points to aspects that public authorities and Brazilian civil society cannot ignore.

Thus, it is fundamental that the Federative Republic of Brazil abandons the immobility and accommodation that still today mark the system of recognition and protection of real estate properties, and it is incumbent upon the three branches of the Republic to carry out their activities and missions in order to seek to render effectiveness to the legal protection of real estate property in the territory and in the Brazilian Law. Thus, it will be possible to move towards the realization of democratic values in Brazil with equal opportunity for Brazilians, regardless of their access to private real estate.

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[1] Samuel Huntington defends the existence of three waves of democratization. The first wave of democratization began in the United States in the 1920s, extending the suffrage to most men in the United States of America and continuing until 1926, with the creation of 29 democracies. With the taking of power by Mussolini in Italy in 1922, the first reverse wave began, which reduced the number of democracies to 12 in 1942. The triumph of the Allies in World War II marks the beginning of the second wave of democratization, followed by a second wave of reversals (1960-1975) that reduced the number of democracies to 30. Between 1974 and 1990, at least 30 countries made democratic transitions, increasing the number of democracies in the world, characterizing the third democratic wave. The noted movement began in southern Europe and expanded to Latin America and some African countries in the later decade and in the late 1980s and early 1990s reached Eastern Europe, the Soviet Union and parts of sub-Saharan Africa.

[2] The Council of Europe, an international body created in 1949, shortly after the end of World War II, emerges as a body promoting harmonization of individual guarantees in the European context.

[3] Preamble to the Constitution of the Federative Republic of Brazil: *"We, representatives of the Brazilian people, gathered in a National Constituent Assembly to establish a Democratic State, designed to ensure the exercise of social and individual rights, freedom, security, development, equality and justice as the supreme values of a fraternal, pluralist and unprejudiced society founded on social and committed harmony, in the internal and international order, with the peaceful solution of controversies, we enact, under the protection of God, the next CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL"*.

[4] Art. 182 of the CRFB: The urban development policy, implemented by the municipal government, according to general guidelines established by law, aims to order the full development of the social functions of the city and ensure the well-being of its inhabitants.

Paragraph 1. The master plan, approved by the City Council, mandatory for cities with more than twenty thousand inhabitants, is the basic instrument of the policy of development and urban expansion.

Paragraph 2. Urban property fulfills its social function when it meets the fundamental requirements of city ordinance expressed in the master plan.

[5] Art. 186 of the CRFB: The social function is fulfilled when rural property meets, simultaneously, according to criteria and degrees of exigency established by law, to the following requirements:

I – rational and adequate use;

II – adequate use of available natural resources and preservation of the environment;

III – compliance with the provisions governing labor relations;

IV – exploitation that favors the well-being of owners and workers.

[6] The report's indicators are used to analyze the results of the reforms carried out and to identify which reforms worked, where and why. With regard to the reforms implemented from the report, in the period between June 2, 2016 and June 1, 2017, 264 reforms were registered in the world economies, of which 119 (one hundred and nineteen) economies implemented at least one reform in the different areas measured by Doing Business, providing an improvement in the ease of doing business throughout the world. The region with the largest number of reforms in the period was sub-Saharan Africa, which recorded 83 reforms in all areas measured by Doing Business. The highest percentage of economies implementing at least one regulatory reform is in the Europe and Asia region (79%) maintaining a trend that began more than a decade ago. The report on the reforms carried out is available at: <http://english.doingbusiness.org/reforms>. Access on Dec. 1, 2017.

[7] The ranking is available at the following address: <http://www.doingbusiness.org/rankings>. Access on Dec. 1, 2017.

[8] Chile is excluded from the sample because it has been included in the list of the most developed economies by the OECD, a group that is analyzed separately by Doing Business.

[9] The methodology for the registration property index is available on the report's website: <http://www.doingbusiness.org/Methodology/Registering-Property>. Access on Dec. 1, 2017.

[10] On the parties (buyer and seller), the methodology is based on the following assumptions:

– They are limited liability companies (or equivalent in the local legal system).

– They are located in the working-class suburbs area of the largest commercial city in the economy. In 11 Economies the data is also obtained for the second largest trading city.

- They are 100% owned nationally and privately.
- They have 50 employees each, all of whom are nationals.
- Perform general commercial activities.

(Registering Property Methodology, Available at: <http://portugues.doingbusiness.org/Methodology/Registering-Property>. Access on Dec. 1, 2017).

[11] The report uses some assumptions regarding the property used as a standard for the indicator:

- It has a value equal to 50 times the *per capita* income of the economy. The sale price is equal to this value.
- It is entirely owned by the seller.
- It has no mortgages and it has been owned by same owner for 10 years.
- It is registered in the property registry or real estate register, or in both, and is not subject to litigation related to the ownership title.
- It is located in a working-class suburbs commercial zone and it is not necessary to provide a zoning of the area.
- It consists of the land and a building. The area of land is 557.4 square meters (6,000 square feet). On the ground there is a two story warehouse (or warehouse), covering an area of 929 square meters (10,000 square feet). The deposit was built 10 years ago, has no heating system, is in good condition and meets all safety standards, building codes and other legal requirements. The property, which consists of the land and building, will be fully transferred.
- It will not undergo renovations or additional construction after purchase.
- There are no trees, water sources, nature reserves or historical monuments of any kind.
- It will not be used for specific purposes and will not require special permits, such as for residential use, industrial facilities, garbage storage or certain types of agricultural activities.
- It has no occupants (legal or illegal) and no other party has legal interest in the property. (*Registering Property Methodology*. Available at: <http://portugues.doingbusiness.org/Methodology/Registering-Property>. Access on Dec. 1, 2017).

[12] *Registering Property Methodology*. Available at: <http://www.doingbusiness.org/Methodology/Registering-Property>. Access on Dec. 1, 2017.

[13] *Registering Property Methodology*. Available at: <http://www.doingbusiness.org/Methodology/Registering-Property>. Access on Dec. 1, 2017.

[14] *Corruption Perception Index 2013*. Available at: <https://www.transparency.org/cpi2013/results>. Access on Dec. 1, 2017.

[15] In April 201, a survey conducted by Transparency International warned of the risk of money laundering in São Paulo through the purchase of real estate. The survey points out that about 3,452 high-quality properties in the city, whose value totals around R\$ 8.6 billion, are linked to offshore companies or companies registered in jurisdictions that are not transparent. Available at: https://www.transparency.org/news/pressrelease/sao_paulo_r_8.6_bilhoes_em_imoveis_estao_ligados_a_empresas_offshore. Access on Dec. 1, 2017.

[16] BRAZIL, Federal Constitution, Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, is a Democratic Rule of Law State and is based on:

- I – sovereignty;
- II – citizenship;
- III – the dignity of the human person;
- IV – the social values of work and free enterprise;
- V – political pluralism.

[17] BRASIL, Federal Constitution, Art. 22. The Union is exclusively responsible for legislating on:

XXV – public records http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm;

[18] Article. 236 of the Brazilian Constitution provides:

“The notary and registration services are exercised in private, by delegation of the Public Power.

Paragraph 1 – Law shall regulate the activities, discipline the civil and criminal responsibility of notaries, registry officers and their representatives, and define the supervision of their acts by the Judiciary.

Paragraph 2 – Federal law shall establish general rules for the determination of emoluments related to the acts practiced by the notary and registration services.

Paragraph 3 – Admission to the notary and registration activity depends on the public competition for evidence and titles, and no service is allowed to remain vacant, without opening a competition for hiring or dismissal, for more than six months.

[19] Art. 156. It is incumbent upon the Municipalities to institute taxes on:

I – urban property and territorial property;

II – real estate “*inter vivos*” transfer tax, on any account, by an onerous act, of immovable property, by nature or physical access, and security interests over real estate, except for guarantee, as well as assignment of rights to their acquisition.

[20] The Doing Business 2013 report (DB 2013) points out that such legal change made it more difficult to conduct business in the country because it included more diligence within procedures. The DB 2016 report warns that the increase in the tax rate on the transmission of real estate in the city of São Paulo has made transferring of real estate more expensive. It is important to note that, during the period between DB 2008 and DB 2018, the two reforms mentioned were the only ones related to the registration property index, both making it more difficult to do business in Brazil. (*DOING BUSINESS BRAZIL*, 2018, p. 125).

[21] Decree n. 93,240, September 9, 1986.

Article 1. The following documents and certificates will be presented for the recording of notarial acts related to real estate:

I – the documents identifying the parties and other persons who appear in the public deed, when deemed necessary by the Notary;

II – proof of the payment of the Tax on the Transfer of Real Estate Property and Rights related thereto, when incident on the act, except for the cases in which the law authorizes the payment to take effect after it has been drawn up;

III – the tax certificates, understood as follows:

1. a) in relation to urban real estate, the certificates related to taxes on the property, subject to the provisions of paragraph 2 of this article;
2. b) in relation to rural properties, the Certificate of Enrollment issued by the National Institute of Colonization and Agrarian Reform – INCRA, with proof of discharge of the last Rural Territorial Tax issued or, when the deadline for payment has not yet expired, the slip of the Rural Territorial Tax corresponding to the previous year;

IV – the certificate of real and personal reipersecutory actions, relative to the real estate, and of real liens, issued by the competent Real Estate Registry, whose validity period, for this purpose, will be 30 (thirty) days;

V – other documents and certificates, whose presentation is required by law.

Paragraph 1 – The Notary shall consign in the public deed the presentation of the documents and certificates mentioned in items II, III, IV and V of this article.

Paragraph 2. The certificates referred to in letter a, item III, of this article, will only be required for the drafting of the public deeds that imply the transfer of ownership and their presentation may be waived by the acquirer who, in this case, will respond, in accordance with law, for the payment of existing tax debts.

[22] BRAZIL, Civil Code, art. 1.227: The security interest in real estate constituted, or transferred by acts between living people, are acquired only with the registration in the Registry of Real Estate of said titles (articles 1,245 to 1,247), except in the cases expressed in this Code.

[23] BRAZIL, Civil Code, Art. 108: In the absence of a law to the contrary, public deed is essential to the validity of legal transactions that aim at the constitution, transfer, modification or waiver of rights in real estate over thirty times the highest minimum wage in force in the country.

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