# REAL ESTATE

## CLIENT ALERT

## JANUARY/2020

**PROVISIONAL MEASURE 915, 12.27.2019 - REAL ESTATE PRIVATIZATION**

The Provisional Measure no. 915 from 12.27.2019 ("PM 915") was published in the Official Gazette of 12.30.2019 aiming to improve the procedures for the management and alienation of the Federal Government's real estate.

PM 915's main focus is to amend the legislation that handles the Federal Government's assets, in particular Law No. 9636/98, with the aim to guide the Federal Government in its process of real estate privatization, lending it greater legal security and simplifying some of the steps of the procedure. It should be noted that some matters are yet to be better detailed in a specific regulation to be issued by the Secretariat for the Coordination and Governance of the Federal Government's Assets (SCGPU). PM 915 also amended the rules relating to payments in real estate of credits relating to the Federal Government's executable tax debts (*Dívida Ativa da União*) and the properties belonging to the Social Security General Regime Fund (*Fundo do Regime Geral de Previdência Social* - FRGPS).

Among the major changes established by the PM 915, the following are stressed:

**Appraisal of the properties:** The list of entities that may be hired directly, without a need for tender, to make the appraisal of the properties belonging to the Federal Government for the purposes of alienation by onerous title was made longer. Previously, the law allowed only for the hiring of Caixa Econômica Federal. The PM 915 allows, in a general way, that public banks or corporations may be hired to appraise Federal Government real estate, waiving the need for tender. This appraisal may also be performed by a private company that specializes in it, which shall be hired by means of a legal tender.

**PRACTICE AREA**
Real Estate

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**Appraisal by means of the City's assessed value:** As a rule, the appraisal of properties must take place by means of a report produced by a skilled and legally able professional. As an exception to the rule, PM 915 allows that the sale of land - in urban areas of up to 250m2 or in rural areas of up to 50ha - is performed using the value assessed by the SCGPU. Such values are obtained from the Municipalities/Federal District and the National Institute for Colonization and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária* - INCRA).

**Redemption of ownership:** The PM 915 simplifies the redemption of ownership of properties that are subject to emphyteusis, in particular when it allows that the redemption value be obtained by means of the City's assessed value of said property or when it waives the issuance of a specific ordinance by the SCGPU authorizing the redemption. However, this simplification applies only to properties whose redemption values are withing the limits to be established in future regulation issued by the Finance Ministry.

**Purchase Offers:** The PM 915 extended the possibility that SCGPU receive offers for the purchase of Federal Government properties to encompass properties that are not subject to the emphyteusis or the occupation regime. Any interested party may submit to SCGPU a purchase offer, being sure that: (i) it shall be up to the SCGPU to avail to the public on its website all offers received; (ii) the offer does not generate an obligation for the federal public administration to sell the property nor does it grant the subjective right to purchase the property unto the offeror; (iii) the SCGPU shall assess the convenience and the opportunity of such alienation; (iv) if the property is not appraised within the validity date, it shall be up to the offeror to provide such appraisal at its own expenses, pursuant to the legal provisions regarding this matter, and the appraisal must be approved by the SCGPU; and (v) it is up to the SCGPU to begin the alienation process, by means of public tender or auction.

**Right of First Refusal:** The interested party who paid for the appraisal may purchase the property, on equal terms with the winner of the tender, in the event that the right of first refusal is not exercised by the grantee of the real or personal right, lessee, tenant or regular occupier of the Federal Government's functional properties. If the interested party is not the final purchaser of the property, the purchaser shall compensate it for the costs borne for the appraisal of the property.

**Possibility of electronic tender/auction:** The PM 915 allows that the alienation of properties is performed by means of information technology resources, with the use of its own systems themselves or made available by third parties by means of an agreement or contract. In these cases, the SCGPU may hold public sessions with defined deadlines and apply successive discounts, up to the limit of 25%, on the current appraisal value.

**Bidless of Failed Tender/Auction:** The SCGPU may hold a second public tender or auction with a discount of 25% on the current appraisal value. If the competition/auction does not have any bids or fails two consecutive times, the properties shall automatically made available for direct sale, with the discount of 25% on the appraisal value.

**Brokerage:** The purchase of properties belonging to the Federal Government that have been made available for direct sale can be brokered by real estate brokers, and it is up to the buyer to pay for the brokerage fees.

**Sale per Lot:** The SCGPU may conduct the alienation per lot if this method involves, as demonstrated in a technical opinion, a greater appreciation of the assets, greater liquidity for the properties whose separate alienation is deemed as hard or not recommended or in other situations arising from normal market practices or in which more advantageous conditions for the public administration are observed, provided that they are duly substantiated.

**Alienation via Hired Third Parties:** The SCGPU may hire private companies, by means of a tender, or federal public banks or corporations, waiving the tender, and conclude agreements or cooperation arrangements with other federal, state or local bodies or public entities for the elaboration of alienation offers for individual assets or lots of assets of the Federal Government; implementation of measures for the registration, regularization, appraisal and alienation of the properties; and the implementation of the activities for the alienation of the assets listed, including conducting the tender procedure and representing the Federal Government on the signing of the legal instruments stated above. The remuneration of the contractors may be established by means of a percentage of the operation concluded, there shall still be the refund of the expenses incurred with subcontractors that are necessary for the implementation of the alienation processes.

**BNDES (National Bank for Economic and Social Development):** The SCGPU may hire the BNDES, waiving the tender, to perform studies and to implement a privatization plan of the real estate assets belonging to the Federal Government.

**FRGPS Properties:** The non-operational properties which constitute the estate of the from the bottom of the Social Security General Regime Fund (*Fundo do Regime Geral de Previdência Social* - FRGPS) shall be managed by the SCGPU, and it is up to the INSS (National Institute for Social Security) to publish a list of the operational and non-operational buildings which constitute the real estate of FRGPS and transfer the management of the non-operational properties to the SCGPU. The financial resources resulting from the alienation or onerous use of said properties shall be destined to FRGPS, being the SCGPU's charge to recover the fund by means of an exchange of properties with equivalent value if a property that belongs to the FRGPS is given a purpose that is not economic.

**Management Contract for the Occupation of Public Properties:** It is the provision, in one single contract, of property management and maintenance, including the supply of equipment, materials and other services necessary to the use of the property by the public administration per task or in ongoing fashion. The contract may have a duration of up to 25 years if it includes initial investments related to the execution of works and the supply of goods.

We are at your disposal if you have any questions or need additional information.

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