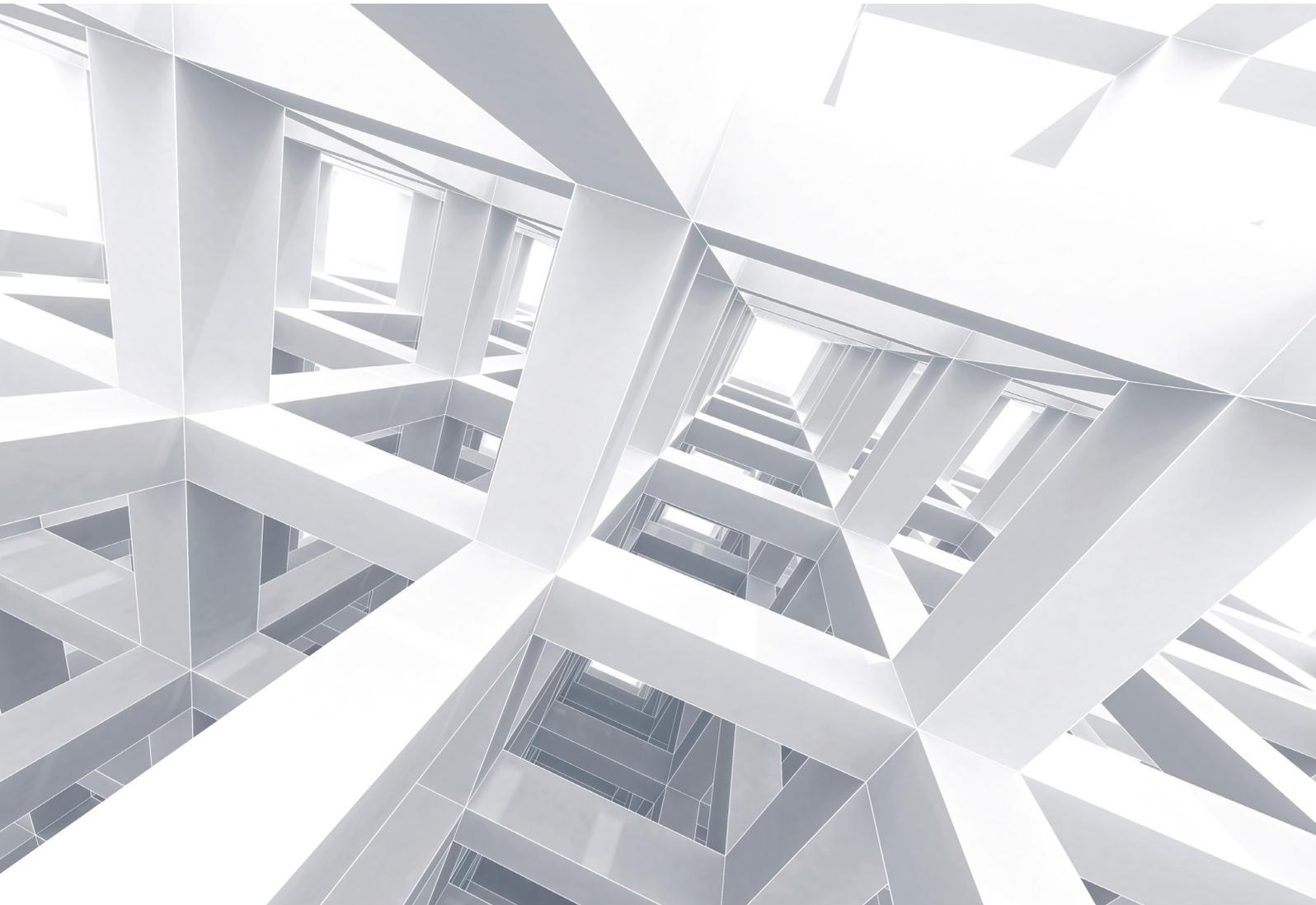




RICS professional standards and guidance, Brazil

**RICS Valuation – Global
Standards 2017 jurisdiction
guide: Brazil**

1st edition, May 2019



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RICS jurisdiction guide

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RICS jurisdiction guides

Since its first publication in 1976, the *RICS Valuation – Global Standards 2017*, generally known as the ‘Red Book’, has set standards for property valuation that are designed to ensure consistency, objectivity and transparency in the valuation process. The primary aim of these standards has always been to sustain public confidence and trust in a valuation undertaken by an RICS member or a valuer working for an RICS-regulated firm.

Over the past 40 years the Red Book has become global in its application, reflecting the growing internationalisation of the property market and its clients’ requirement for worldwide consistency of standards. A Red Book-compliant valuation is consistent with the International Valuation Standards (IVS) and it is augmented in a growing number of markets by national supplements, which provide guidance designed to ensure that a Red Book-compliant valuation also meets local legal requirements, regulations and practice.

The global Red Book and, where they apply, the national supplements are written primarily for valuers. By contrast, jurisdiction guides will be of use especially to property owners and professionals who are involved in the valuation process, either by commissioning a valuation or by providing advice in relation to its outcome. Owners and their advisers do not usually need to know the full detail of the valuation process and the regulations that govern it (which are set out in the Red Book), but their understanding of the outcome of the valuation is likely to benefit from a better understanding of the key factors that will influence a valuer, and thus the value of the property.

These factors include:

- legislation governing the holding and valuation of real estate
- ownership structures
- lease terms
- planning regulations and development control
- taxation affecting real estate and
- valuation regulations, standards and the application of the Red Book.

These factors will vary significantly between one country and another. Jurisdiction guides therefore aim to examine each factor in its local context and to highlight those that are likely to have a significant impact on the valuation of a property located in the country concerned.

It is important to emphasise that jurisdiction guides are designed to provide a short overview of what in many cases and countries is a complex situation. They have been prepared by RICS and based on information from a variety of sources. The content of this jurisdiction guide is for general guidance only, and the reader is advised not to act on it without consulting an appropriately qualified and experienced professional.

Document status defined

The following table shows the categories of RICS professional content and their definitions.

Publications status

Type of document	Definition
<i>RICS Rules of Conduct for Members and RICS Rules of Conduct for Firms</i>	These Rules set out the standards of professional conduct and practice expected of members and firms registered for regulation by RICS.
International standard	High-level standard developed in collaboration with other relevant bodies.
RICS professional statement [PS]	Mandatory requirements for RICS members and regulated firms.
RICS guidance note [GN]	A document that provides users with recommendations or an approach for accepted good practice as followed by competent and conscientious practitioners.
RICS code of practice [CoP]	A document developed in collaboration with other professional bodies and stakeholders that will have the status of a professional statement or guidance note.
RICS jurisdiction guide [JG]	This provides relevant local market information associated with an RICS international standard or RICS professional statement. This will include local legislation, associations and professional bodies, as well as any other useful information that will help a user understand the local requirements connected with the standard or statement. This is not guidance or best practice material, but rather information to support adoption and implementation of the standard or statement locally.

1 Background

Brazil's economy is the eighth largest in the world by nominal GDP and is the second-largest in the Americas, after the USA.

Despite the size of the country and its economy, the Brazilian property market is at a relatively early stage of development and does not feature in the **MSCI Real Estate Market Size 2017** survey of the top 32 world markets. The **JLL Global Real Estate Transparency Index 2018** rated Brazil's tier 1 and 2 cities as 'semi-transparent'.

2 Legislation

2.1 Principal laws governing real estate

The following laws govern real estate in Brazil:

- The Brazilian Civil Code (Federal Law 10.406/2002) covers ownership and transfer of real estate.
- The Lease Law (Federal Law 8.245/1991) regulates urban, commercial and residential lease agreements.
- Other relevant federal laws include the Real Estate Development Law, the Land Statute Law (which covers rural land), the Civil Statute Law (which deals with general urban land policies), the Parcelling of Real Estate Property Law (which covers urbanisation of individual plots of land) and the Public Registry Law (which oversees property registration).

Some areas of law affecting real estate (for example taxation, registration, zoning and environmental law) are regulated at the state or municipal level and may therefore vary according to location.

All acquisitions by foreign legal entities require approval at federal level, and there are limits on the proportion of surface area of each municipality that may be owned by foreign interests.

2.2 Types of ownership

The principal types of Brazilian tenure are:

- **Absolute ownership (freehold equivalent):** this is the highest category of ownership, where the owner has full rights to possess and dispose of the property.
- **Surface right:** this is the right to build on or cultivate land, separating ownership of a building (or crop) from the ownership of the land for a fixed period of time.
- **Usufruct:** this allows a full right to use the property and the right to income generated by the property.
- **Real right of use:** this is a limited usufruct giving the right to use the property for a specific purpose.
- **Fiduciary ownership:** this is the provisional ownership of a property by a creditor as security.
- **Fideicommissary substitution:** this is a heritable form of ownership.
- **Aforamento right:** this is an occupation right over property held by federal government.

2.3 Registration

The Public Registry Law sets out general rules for registration, but individual states may issue local rules for registering land. All property rights (except for possession

rights) must be registered with the local land registry, although not all land is currently registered.

Public access to the land register is available, subject to payment of a fee. There is no state guarantee of title, but damages may be paid in the event of a provable loss arising from an error in registration.

2.4 Development control

Municipal authorities are responsible for local planning and zoning legislation and local building codes. They may also designate areas of historical value, where special regulations apply.

Applications for development or change of use are made to the municipal authorities. In some cases, approval at state level will also be required. A building permit is required and projects may be subject to environmental licensing. A certificate of conclusion of works must be issued before a new building can be occupied.

2.5 Commercial leases

Leases for urban property are subject to the general rules of the Brazilian Civil Code and the Lease Law. Leases are usually in writing but can also be verbally agreed. Because the Lease Law is comprehensive, leases tend to be in a fairly standardised format.

Typical terms are as follows:

- **Term:** one to ten years is common; five years is typical. Indefinite term leases may be granted.
- **Breaks:** the landlord or tenant have a statutory right to terminate the lease before expiry, but the landlord can only do this for specified reasons. The notice period may be subject to agreement between the parties, as is the penalty payable for early termination. In the event of there being no agreement, the statutory notice period is 30 days and a statutory basis of compensation exists, proportional to the remaining term. Leases with an indefinite term may be terminated with 30 days' prior written notice.
- **Rent:** this is usually payable monthly in arrears. Rent must be quoted in Brazilian reals.
- **Rent escalation:** this is usually annual indexation based on the local IGPM index (the general index of market prices), though other formulae may be used. In general, either party has the statutory right to require a review of the rent to market level every three years, though in shopping centres this can be revoked by mutual consent of the parties, and specific provisions cover purpose-built property.
- **Statutory rent control:** none, other than the right to a three-yearly review.
- **Payment for operating expenses, maintenance, etc.:** where incurred by the landlord, these costs can usually be recovered from the tenant by way of a service charge.
- **Assignment and subletting:** these are rarely found because of the statutory right to break the lease.
- **Termination and renewal:** office tenants with leases of five or more years have the right to renew their lease every time it expires. The same rights can be negotiated for

shorter leases. At least 180 days' notice is required from the tenant, and there are penalties for late service of notice.

2.6 Residential leases

Leases of residential property are subject to the same statutes as commercial leases.

Lease length is not subject to legislation. For leases granted for a term of 30 months or more, the landlord can refuse renewal without stating the reasons. However, if the tenant remains in occupation for more than 30 days after expiry of the term without being given notice to quit, the lease is automatically renewed for an indefinite period.

2.7 Property measurement

International Property Measurement Standards (IPMS) for Office Buildings, Residential Buildings and Industrial Buildings were published in 2014, 2016 and 2018 respectively. RICS members must adopt IPMS in line with the RICS professional statement **RICS property measurement** (2nd edition). RICS members are expected to advise their client or employer on the benefits of using IPMS, unless there is a significant reason for departure. It is accepted that in some circumstances IPMS may not be suitable. If IPMS are not to be used, RICS members must document the reasons for departure.

IPMS for other asset types will be published in due course. In the interim all RICS members must follow *RICS property measurement* (2nd edition) Section 1 *Application of the professional statement*. In some instances other measurement standards can be used, such as the RICS guidance note **Code of measuring practice** (6th edition), providing the reason for departure is stated.

RICS has been working with local firms and industry partners to gain support for the recognition of IPMS in Brazil. At present, property measurement standards lack consistency. For offices, landlords usually quote on a rentable area basis rather than usable (carpetable) area, but there is growing use of BOMA (Building Owners and Managers Association International) guidelines for the best class A+ accommodation. It is common practice to measure retail premises on a gross leasable area basis.

Floor areas are expressed in square metres.

3 Taxation

3.1 Value-added tax (VAT)

Transfers of real estate are not subject to VAT.

3.2 Real estate transfer tax

Real estate transfer tax (ITBI) is charged on the transfer of any interest in real estate, with the exception of collateral. It is based on a percentage of the transaction price or appraised value of the property. It is paid by the purchaser, unless agreed otherwise between the parties. The application of ITBI varies from state to state.

Inheritance and donations transfer tax (ITCMD) may also be payable by the grantee based on assessed value.

The seller will also be liable for corporate income tax (IRPL) or income tax and social contribution on net profit (CSLL).

3.3 Municipal tax

Tax is charged on the ownership of urban real estate (IPTU) and rural real estate (ITR) at a rate set by the local municipality, based on the appraised value. For leased property the landlord is liable, but the lease may transfer liability to the tenant.

4 Regulation and standards

4.1 Regulation of valuation professionals

Most valuers in Brazil are from the engineering or architectural professions. More recently, real estate brokers registered with the Regulatory Body of Estate Agents (CRECI) who have completed a CRECI valuation course may also undertake valuations.

The main valuation standard in Brazil is set by the Association of Brazilian Technical Standards (ABNT). This is legally binding for all architects and engineers undertaking real estate appraisals.

Enforcement of ABNT is overseen by the Federal Council of Engineering and Agronomy (CONFEA) and implemented by its regional councils (CREA), the Brazilian Council of Architecture and Urbanism (CAU/BR) and CRECI.

4.2 Membership organisations

Valuers undertaking valuation instructions in accordance with ABNT must be members of CAU/BR, CRECI or their regional CREA. CREA applicants must hold a bachelor's degree in engineering.

The Brazilian Institute of Engineering and Expert Reviews (IBAPE) is a national organisation with branches in individual states. Practising valuers are usually members of IBAPE, although this is not required by law. Most architects and engineers have received post-qualification training from IBAPE.

4.3 National valuation standards

Brazil's principal valuation standard, NBR 14653, is set by ABNT and is enforced under consumer law. It has been in existence for more than 60 years. Valuation reports will only constitute legal documents if they comply with this standard, which is in seven parts:

- Part 1 – general procedures
- Part 2 – appraisal of urban real estate
- Part 3 – appraisal of rural real estate
- Part 4 – enterprises, including shopping centres, hotels, let office buildings, etc.
- Part 5 – appraisal of machinery, equipment and other industrial assets
- Part 6 – valuation of natural and environmental resources
- Part 7 – assets embodying historic and artistic heritage.

In addition, a voluntary standard is produced by IBAPE. Though adherence to the IBAPE standard is not mandatory, it is regarded as complementary to ABNT. Valuers who are IBAPE members must abide by its standards as well as those of ABNT.

ABNT and IBAPE standards have a technical focus and concentrate on methodology rather than wider principles and concepts. Detailed market diagnosis can be

compromised by a lack of reliable data from an opaque market, and this can have a significant effect on the accuracy of valuations in Brazil.

4.4 International standards

- **International Valuation Standards (IVS)** – published by the International Valuation Standards Council (IVSC), which comprises about 100 member organisations dedicated to setting generic global standards for valuation practice and valuation professionals. IBAPE is a member of IVSC.
- **RICS Valuation – Global Standards 2017 (the Red Book)** – the Red Book sets out global valuation standards for valuations undertaken by RICS members and regulated firms. It adopts and applies the IVS and imposes certain additional requirements with particular reference to ethics, competency, objectivity and disclosures.

All valuations in Brazil must comply with NBR 14653, and most international organisations will also require compliance with the Red Book. Some clients require compliance with other standards, including the US or Canadian Uniform Standards of Professional Appraisal Practice (USPAP or CUSPAP).

5 Application of the RICS Valuation – Global Standards 2017 in Brazil

5.1 User’s perspective

Global standards

- The Red Book is written to ensure that valuation assignments undertaken by RICS members and regulated firms (see PS 1 sections 1 and 2) are fully in accordance with International Valuation Standards (IVS).
- The Red Book complements the IVS by providing detailed guidance and specific requirements regarding the practical implementation of IVS.
- All valuations provided in writing by RICS members and regulated firms must comply with the requirements of the Red Book. Surveyors must be suitably trained and have appropriate qualifications and adequate experience for the task.
- Valuers must be independent, objective and transparent in their approach.
- Adoption of Red Book global standards ensures consistency of approach and aids understanding of the valuation process and the value reported.
- A Red Book-compliant valuation must provide clarity regarding terms of engagement, basis of value (including any assumptions or material considerations taken into account), and reporting.

National supplements

National supplements of the global Red Book are published by RICS in a growing number of countries to ensure compliance with local legal requirements, regulation and practice.

5.2 Red Book – implementation in Brazil

5.2.1 Red Book translation

A Portuguese translation of the *RICS Valuation – Global Standards 2017* is available from the **RICS website**.

5.2.2 Red Book application in the Brazilian context

The Red Book is written from an international perspective, in accordance with the IVS. It expressly recognises (in PS 1 section 4) that in individual jurisdictions, compliance with specific statutory, regulatory or other authoritative requirements is necessary, and doing so does not preclude a valuation from also being performed in accordance with the Red Book.

The Red Book does not define or prescribe in detail how valuation figures should be arrived at, including whether particular forms of calculation should be undertaken. This reflects the more knowledge-based approach adopted in many Western jurisdictions and the greater availability of market-based data across asset classes and geographical areas. A valuation in accordance with the Red Book will therefore adopt a somewhat

different approach to one undertaken in accordance with ABNT, which prescribes how the valuation should be undertaken technically. There are also clear differences in reporting requirements.

A valuation in accordance with ABNT may therefore result in a different figure from the one carried out in accordance with the requirements of the Red Book, although the ABNT definition of market value is similar to that in the Red Book.

ABNT standards are required for all valuations of property in Brazil, but the Red Book standards may additionally be requested, often for property owned by international investors or subject to loans from foreign banks. ABNT standards are currently under review, and RICS is liaising with ABNT with the ultimate aim of matching IVS standards with those of ABNT.

5.2.3 Brazil national standard

The Brazil national standard was published in March 2014 and is classified as an RICS valuation standard. Its requirements are therefore mandatory. Because it predates the 2017 edition of the Red Book, it is due to be updated to take account of changes in this edition

In summary, the standard outlines the Brazilian statutory requirements (ABNT) and summarises the additional obligations these impose on RICS members and RICS regulated firms when undertaking the valuation of property in Brazil.



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