

BRAZIL

SAO PAULO— SALE OF PUBLIC LAND OR ASSIMILATED

LAND VALUE
CAPTURE

CEPAC - Certificado de Potencial Adicional de Construção

DESCRIPTION

Sale by auction of building rights within a determined area above a Floor Surface Index (FSI) of 1, and whose receipts are compulsorily used to finance a predetermined set of infrastructure works within the same area.

LEVEL OF GOVERNMENT INVOLVED

Municipal level

INSTITUTIONAL AND REGULATORY FRAMEWORK

The Municipality controls building rights, and is in charge of most of urban ("local") services. However, some key services such as urban rail transit, intermunicipal bus transit and water and sanitation are managed by State companies. Decentralization by the 1988 Constitution following return to democracy was not backed by proportional revenue transfers. São Paulo Municipality, as other Municipalities and federated States, massively funded infrastructure spending through unsustainable borrowing, leading to federal backing to avoid default in the late 1990s, with very strict associated financial management constraints.

TRACK RECORD OF THE USE OF THIS INSTRUMENT

The concept of created land (solo criado) was elaborated in the 1970s. In 1995, the pioneering Faria Lima urban operation was launched in consortium (OUC) in 1995, with building rights initially meant to be sold at administrative prices and revenues mainly aimed at financing the continuation of the central avenue of this coming new CBD for São Paulo. The mechanisms used were later institutionalized through the 2001 Law on the Statute of Cities. The Agua Espraiada OUC, located in the continuity of Faria Lima, was adopted in 2001, with a more extensive investment program including bridges and social housing for the favelas included in the area. The first auctions took place in 2004, and the last ones in 2012. After public protests on the absence of planned social housing in Faria Lima OUC, this component was included in the Agua Espraiada one, but in spite of huge excess of money, the first social housing complexes started to be built only by the end of 2010, after strong pressure from the civil society, paralleling a proposal of complementary works (underground highway and surface park) that would expropriate and remove more formal and informal inhabitants, while enhancing further the value of surrounding real estate. The modificative law that authorized the additional works stated that at least 10% of the project's revenues were to be earmarked for social housing. When the Mayor and State governor were politically aligned, between 2009 and 2012, part of the money was used to finance a portion of the new line 4 crossing the area, but it was discontinued after the Mayor changed in 2012.

EVOLUTIONS AND OUTCOMES

Around 1,8 billion euros were collected from 2004 to 2012, of which 950 million euros have been spent on roads and related infrastructures (drainage etc.), bridges (emblematic "ponte estaiada"), social housing and metro-related infrastructure. Almost 3,7 million sqm were built on a total 1.900 ha area (486 euros / sqm on average).

STAKEHOLDERS INVOLVED

Civil society has long supported the concept of solo criado as public property to be sold to finance socially useful action. The developers needed new land to be developed (with flexibility in terms of regulation) and adequate infrastructure to add value to this land, located in the continuity of existing high end business sectors. The Municipality wanted to maximize its investments (and this mechanism is supposed to have no cost for public coffers), and continuously supported the OUCs, in spite of repeated political shifts during the 1990s and 2000s. The inhabitants were afraid of change, especially those with no land title (favelas), but landowners (who mainly were not the developers initially) were interested by possible plus valia.

PUBLIC MANAGEMENT AND ACCOUNTABILITY

The OUC are Municipal laws, adopted by the Municipal Council after public hearings. They are managed by a separate entity/public corporation within the Municipality (Emurb, and subsequently SP-Urbanismo). Its board is composed of representatives of diverse Municipal departments and companies and representatives of the civil society (real estate and construction sector, universities, architects, lawyers, representatives of the inhabitants and housing rights). All information regarding each OUC is easily accessible online.

ANALYSIS AND ASSESSMENT OF THE TOOL

- The tool served mainly to finance key infrastructure and to exploit the full potential of real estate development (higher density, land pooling eased, use change) and of a high end CBD. It brought economic activity (construction and posterior office/commercial activities), employment and revenues to paulista companies and citizens, as well as fiscal revenues for the Municipality (property tax and sales tax) and other government bodies, provided that this economic activity wasn't only moved from another part of the city.
- If the urban structure of the area dramatically changed (verticalization), it is to be discussed whether this area really needed urban renewal, as it was not really abandoned. Regarding the infrastructures produced, after social issues being neglected in Faria Lima, they were included in the Agua Espraiada scheme (slum inhabitants were supposed to be offered social housing on site), but their concrete implementation was postponed (probably for fear of its potential negative impact on the site valorization) until public pressure imposed effective beginning.
- Some other valuable on-site investments, such as metro infrastructure, were not (or almost not) financed through the project because of a lack of political alignment and division of competences. Although it was a very successful operation moneywise, in a context of finance scarcity, the use of the revenues was restricted by resistance of some stakeholders to investments that could lower the site valorization, by inadequate division of competences and by the obligation to spend all the money on-site (not considering for instance the impact of the project on off-site infrastructure). This led to billionnary surplus still waiting to be spent.