

# Land acquisition and land lease by foreigners in Brazil

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**Historical and comparative analysis with bill 2,963/2019**

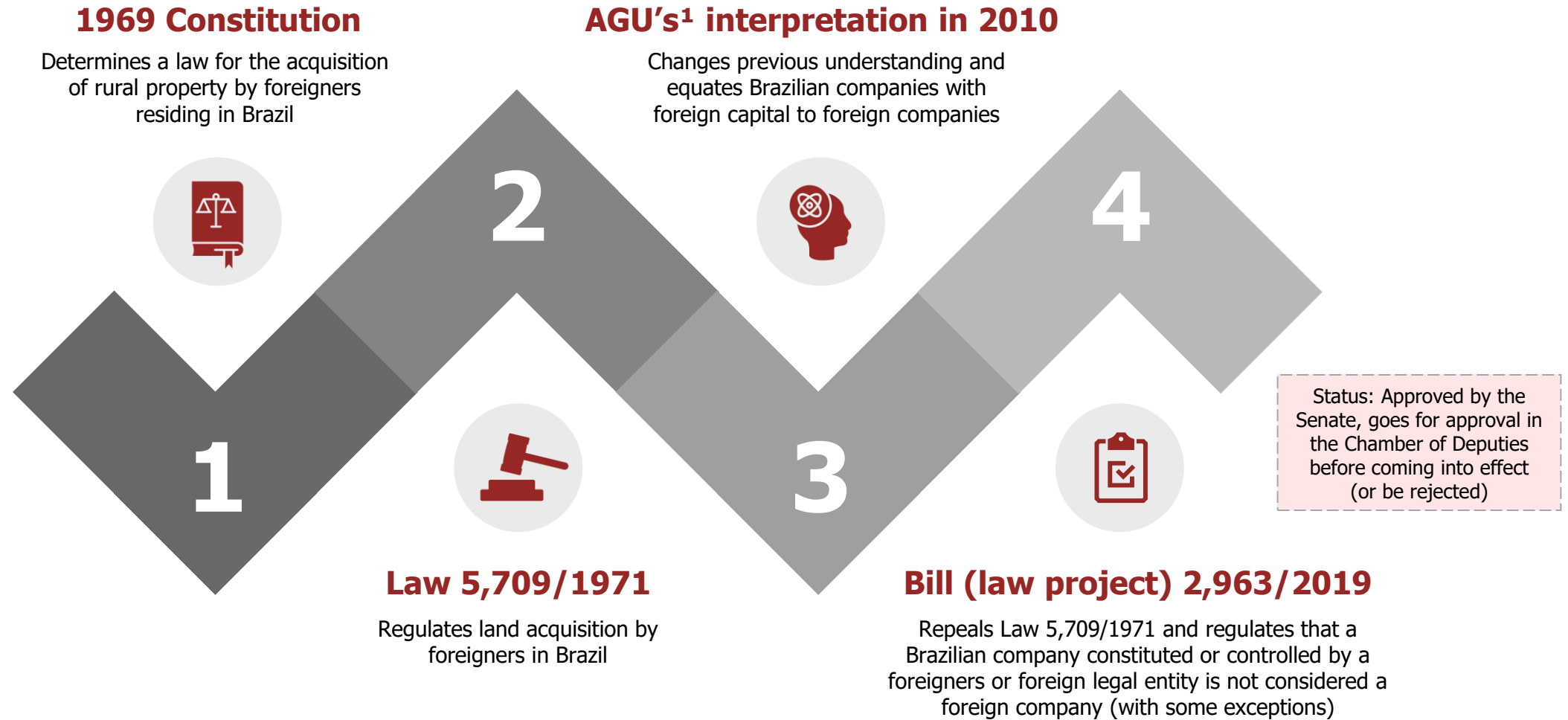




## Land acquisition and land lease by foreigners in Brazil

The ESG Tech Consulting

# The acquisition or lease of rural property by foreigners is a complex legal issue in Brazil and has undergone different interpretation variations over the years



1 - The Opinion of the General Advocacy of the Union (AGU) does not have the power of law, nevertheless, changes the legal interpretation of Law 5,709/1971

# In the legislation for land acquisition or lease by foreigners in Brazil the concept of foreign company is the main change concerning the current legislation (Law 5,709/1971) and the bill 2,963/2019

## Current legislation

(Law 5,709/1971 )

## Bill 2,963/2019



Definition of foreign company

- Foreigner, residing in Brazil
- Foreigner legal entity authorized to operate in Brazil
- Brazilian legal entity in which participate foreigners or foreign legal entities that have the majority of their shares, and reside or are headquartered abroad

- Foreigners or foreign legal entities, which are those constituted or established outside the Brazilian territory



The law does not apply to

- Legitimate succession, unless in an area considered essential to national security which require approval by the National Security Council

- Legitimate succession
- Brazilian legal entity constituted or controlled by a foreigners or foreign legal entities. Except: NGOs; sovereign wealth funds (> 10% participation by foreign states or state-owned companies); private foundation with headquarters abroad; properties in the Amazon Biome with an obligation for a Legal Reserve<sup>2</sup> greater than or equal to 80% of the total area, which require approval by the National Defense Council

1 – The Law 5,709/1971 underwent different legal interpretations after the 1988's Constitution and the opinion of the Attorney General's Office (AGU) in 2010

2 – Legal Reserve is a Brazilian legal instrument for the protection of natural spaces in a percentage of each rural property, this percentage depends on the location and biome where the property is

# The new bill does not regulate the maximum area of land tenure; however, it prohibits any type of indefinite tenure. The limit by nationality in each municipality has not been altered in relation to the current legislation

## Current legislation

(Law 5,709/1971 )

## Bill 2,963/2019



### Tenure area limit and contract length limit

- Maximum area: 50 modules<sup>1</sup> in continuous or discontinuous area
  - The President of the Republic, having heard the National Security Council, can authorize the acquisition or lease beyond the area limits
- In properties with an area not exceeding 3 modules<sup>1</sup>, the acquisition is allowed, regardless of any authorization or license

- Maximum area: not regulated
- In properties with an area not exceeding 15 modules<sup>1</sup> the acquisition is allowed, regardless of any authorization or license, if the buyer or owner does not own another rural property
- Prohibits any form of indefinite tenure, except public service concession, permission or use authorization



### Tenure limit by municipality

- Foreigners are prohibited to acquire or lease an area greater than 25% of the total area of each municipality
- Foreigners from the same country are prohibited to hold more than 10% of the total area of each municipality (or 40% of the limit above)

- Foreigners are prohibited to acquire or lease an area greater than 25% of the total area of each municipality
- Foreigners from the same country are prohibited to hold more than 10% of the total area of each municipality (or 40% of the limit above)

1 – The area limit is defined in indefinite exploitation modules or fiscal modules, which size varies from 5 to 110 hectares, depending on the municipality where the rural property is located

# Criteria for acquisition or tenure in areas considered essential to national security were virtually unchanged, and the government's assessment requirement for of agribusiness, colonization or industrial projects has been excluded

## Current legislation (Law 5,709/1971 )

## Bill 2,963/2019



Tenure in areas considered essential to national security<sup>1</sup>

- Require approval by the National Security Council

- Require approval by the National Defense Council



Project implementation and land statute

- Foreign legal entities may only acquire rural properties intended for the implementation of agricultural, livestock, industrial, or colonization projects, linked to their statutory objectives
  - Agricultural, livestock or colonization projects require approval by the Ministry of Agriculture
  - Industrial projects require approval by the Ministry of Industry and Trade
- Require to obey the principles of the social function of the property<sup>2</sup>

- Require to obey the principles of the social function of the property<sup>2</sup>
  - Rational and appropriate land use; proper use of natural resources; environmental preservation; observance of labor relations requirements; use that favors the well-being of owners and workers (Law 4,504/1964 and 1988's Constitution, article 186)

1 – Areas considered essential to national security are properties in the border area (internal band 150 km wide, parallel to the border of the national territory), according to Law 6,634/1979

2 – The social function of the property is regulated by Law 4,504/1964 and 1988's Constitution, article 186

## Additional considerations regarding the new bill

- The bill sanctions acquisitions and leases of rural properties registered by a Brazilian natural or legal entity, even if constituted or controlled by a foreigner or foreign legal entity, during the term of Law 5,709/1971
- The property registry must be online and contain, among other data, information regarding the shareholders structure in Brazil and abroad
- Landowners or tenants must provide information on the shareholders structure and the nationality of the shareholders in the Rural Environmental Registry (CAR) and National Rural Registry System (SNCR) annually and whenever there is a change in corporate control, transformation of the corporate legal definition and celebration of any type of contract
- The acquisition or land lease by foreigners require approval by the National Defense Council (CDN) in the following cases:
  - Brazilian companies constituted or controlled by foreigners, with rural property in the Amazon Biome with an obligation for a Legal Reserve<sup>1</sup> greater than or equal to 80% of the total area
  - Sovereign funds created with resources from foreign countries or foreign state companies that controls more than 10% of participation, directly or indirectly, in any Brazilian company
  - The cases described above do not apply to the execution or exploitation of a public service concession, permission or use authorization
- Prohibits forestry concession of sustainable production, unless Brazilian legal entity controlled by foreign individual or legal entity

1 – Legal Reserve is a Brazilian legal instrument for the protection of natural spaces in a percentage of each rural property, this percentage depends on the location and biome where the property is



Land acquisition and land lease by foreigners in Brazil



## The ESG Tech Consulting



# ESG Tech Consulting undertake projects in the entire forest-based industry and agribusiness chain, analyzing trends to guide growth strategies

We believe that every project is inserted in a unique context. Therefore, we prepare our proposals for each project in a personalized way and according to the specific needs of the client

## Service portfolio

### Strategy

Strategic planning  
Expansion plans  
New investments

### Market studies

Market analysis and trends  
Entry into new markets  
New products

### Operational excellence

Times and movements studies  
Cost reduction  
Operational processes mapping

### M&A

Valuation of assets and companies  
Acquisition of assets  
Growth strategies  
Post merger integration

### Governance and management

Strategic team management  
Governance model structuring  
Succession plan

## Business segments



### Inputs

Pesticides  
Fertilizers  
Genetic material  
Animal health



### Production

Planted forest  
Coffee  
Sugar cane  
Grains  
Livestock



### Industries

Food  
Energy  
Wood panels  
Pulp and paper  
Grain processing

# Some recent cases

## Strategy

### Pulp industry

Forest planning to supply the industry, aiming to increase productivity. Captured results of ~ R\$ 690 million

### Food industry

Forestry and land assets investment strategy review and management process review. Captured results of ~ R\$ 180 million in the short term

## Market studies

### Investors

Eucalyptus wood market study in Mato Grosso do Sul (supply and demand, mapping of planted area and wood balance)

### Sawmill

Pine market study to support the growth strategy in Brazil's South Region

## Operational excellence

### Pulp industry

Times and movements study of silvicultural operations and elaboration of tariff cost model for own and third parties' operations. Captured results of ~ R\$ 250 million

### Steel industry

Times and movements study for Eucalyptus harvesting and charcoal production operations. Captured results of ~ R\$ 100 million concerning efficiency improvement and operational contracts renegotiation with third parties

## M&A

### Investors

Valuation of forest and land assets in different regions of Brazil

### Investors

Identification and selection of land assets for forestry and agricultural investment in Brazil and South America

## Governance and management

### Food industry

Mapping and implementing the forest management process

### Investors

Implementation of the forest management system and support in the operation

## Team ESG Tech Consulting

Since 2012, with a history of carrying out hundreds of consulting projects in several countries, ESG Tech Consulting is dedicated to understand the demands and trends of agribusiness to guide projects aimed at growth and capturing market opportunities. Our team has qualified and diverse professionals, both in knowledge, profile, soft and hard skills, having as a differential experience in management and business, in addition to technical expertise.

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Forest market

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**Os gastos com energia elétrica e com manejo de rejeitos estão entre os principais custos da suinocultura. Uso do biogás para geração de energia pode aumentar as margens do produtor**

**Custo de produção do suinocultor (integrado)\***  
[%]

Custo com Rejeitos **15%**

Energia elétrica **19%**

Mão-de-obra **63%**

**Geração de energia através do biogás**  
[conceitual]

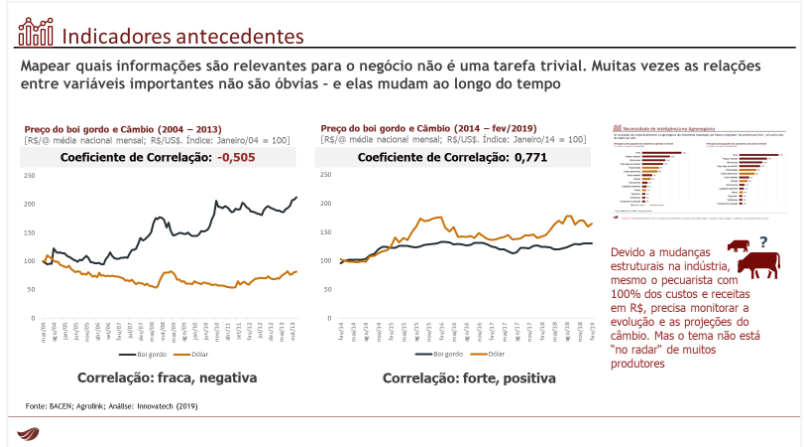
Necessária avaliação da viabilidade ambiental

Pastagem ou agricultura

**Pontos de atenção**

- Exemplos de aplicação: aquecimento de animais, uso industrial (aquecimento de água e higienização), secadores de grãos e caldeiras de fábrica de rações
- Viabilidade depende do tamanho do plantel e do custo da energia local
- Por ser de produção contínua e controlada, pode ser usada para o abastecimento direto da propriedade (sem passar pela rede)

Fonte: Innovatech (2019)  
\*Incluindo apenas os custos operacionais de um produtor em modelo de integração (o integrador fornece nutrição e sanidade)



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