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## **Commission/Kommission II**

**Rapport national pour/National report/Landesbericht : Brazil  
(état/country/Land)**

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Veuillez commencer à la page 2 avec votre rapport.

Please start on page 2 with your report.

Beginnen Sie bitte auf Seite 2 mit Ihrem Bericht.

## **ACQUISITION OF RURAL PROPERTY BY FOREIGNERS IN BRAZIL**

Seen as a country with fertile land and favorable climate for agricultural activities, Brazil has attracted foreign capital for investment in the agribusiness because of its profitability. However, for the investment to be legally sound, one must know the law that regulates such operations, especially regarding the acquisition of rural property.

The Constitution of Brazil establishes in Article 190<sup>1</sup> that the Law should not only regulate, but also limit the purchase and the lease of rural property by foreigners in the country, which is set by Law 5709/71.

In its Article 1, the aforementioned Law provides for the legal persons that can acquire rural property in Brazil, namely the foreign resident and the foreign legal entity authorized to operate in the country.

By authorizing the foreign resident and the foreign legal entity authorized to operate in Brazil to acquire rural property in the country, this means that the direct acquisition of rural property in Brazil by foreigners non-resident or foreign legal entities not authorized to operate in the national territory is prohibited.

The emphasis placed on the “direct” acquisition of property has been done because foreigners non-resident in the country and foreign legal entities not authorized to operate in the national territory may

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<sup>1</sup> Article 190. The law shall regulate and limit the acquisition or lease of rural property by a foreign individual or legal entity, and shall establish the cases that shall depend on authorization by the National Congress.

“indirectly” acquire rural property in Brazil when they participate as members of a Brazilian corporate entity owning rural property.

After the caput of Article 1 of Law 5709/71 to authorize foreigners resident in the country and foreign legal entities authorized to operate in Brazil the acquisition rural property in the country, its sole paragraph shall limit the right of the Brazilian company, when the situations listed by it are present.

There are two situations that may result in a Brazilian company to have its right to acquire rural property in the country restricted or limited, and both have to do with the participation of foreigners in its corporate structure.

The first situation is when within the corporate structure of the Brazilian company there is the presence of a foreign person residing outside the country, holding the majority of the capital stock of such Brazilian company.

The second situation, is when within the corporate structure of the Brazilian company there is an foreign legal entity with headquarters abroad, dominating or holding the majority of the capital stock of such Brazilian company.

The central point in both cases is the absolute corporate control of the Brazilian company from abroad.

Now, turning the focus to the foreign legal entity authorized to operate in Brazil, Art. 5 of Law states that it shall only be able to acquire rural property in the country when it is for the implementation of agricultural,

livestock, industrial, or colonization projects, which shall be connected to their statutory objectives.

Depending on the nature of their respective projects, their analysis shall be conducted by the Ministry of Agriculture or the Ministry of Industry, for later application with INCRA to obtain the appropriate authorization.

The special statute goes on to deal with the possible extension of the area to be acquired by the duly authorized alien.

To understand the question, it is important to know that Brazil is politically and administratively divided into States, and States are subdivided into municipalities, and the latter shall be used as reference for the amount of rural area foreigners can acquire.

The Law, in its Art. 12, states that foreign individuals residing in the country and foreign legal entities authorized to operate in the country, may acquire rural properties whose combined areas do not exceed one fourth (25%) of the municipal area where the properties are located.

Despite being permitted to foreigners to acquire up to 25% of the municipal area, there is however, a further restriction when foreigners of the same nationality are involved, which in this case may acquire a maximum of 40% of the authorized area of the municipality, as determined by paragraph 1 of Art.12.

Concerning the formalization of the purchasing act of the property, the Law prescribes as a fit document the public deed (Art. 8) endowed with public faith (Art. 215 of the Civil Code).

As the Brazilian law provides that the real rights to property, constituted or transmitted by act between living persons, can only be acquired with the registration of such documents at the Real Estate Registry Office, the public deed becomes necessary.

The property purchase deed, when a foreign company authorized to operate in Brazil is involved, pursuant to Article. 9 of Law 5709/71, shall include, among other things, the act that authorized the acquisition.

Finally, it is worth noting that, to have systemic force, the Law establishes in Article 15 that the acquisition of rural property by foreigners living in the country contrary to its terms constitutes a legally **null and void** business.

The **nullity**, pursuant Art. 169 of the Civil Code, in addition to not producing any effect, it can not be rectified by the parties, nor be validated, or to become valid by the passage of time.

## **CONCLUSION**

The rigor of the Law concerning the business operations imposes on the foreign purchaser absolute compliance with its terms to result in a deal with legal support.

Once business has been conducted with the authorization of the State, and the formal legal requirements of the purchasing act have been met, the purchaser may rely on the support instruments to conduct the agricultural activity.

Food production is relevant to the country, and in the Federal Constitution it is stated that the State is responsible for its fostering (Art. 23, VIII)<sup>2</sup>.

The agricultural policy of the country, in turn, based on Art. 187<sup>3</sup> of the Federal Constitution, regulated by Law 8171/91, has several support instruments aimed at the primary production sector.

The rural credit, for example, is a special line of credit that is part of the agricultural policy placed within reach of the farmer to contribute to its development.

By legally acquiring rural property in Brazil the foreign person may have access to rural credit for investment in his property, taking into account the realization of their projects.

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<sup>2</sup> Article 23. The Union, the states, the Federal District and the municipalities, in common, have the power:

VIII – to promote agriculture and organize the supply of foodstuff;

<sup>3</sup> Article 187. The agricultural policy shall be planned and carried out as established by law, with the effective participation of the production sector, comprising producers and rural workers, as well as the marketing, storage and transportation sectors, with especial consideration for: I – the credit and fiscal mechanisms; II – prices compatible with production costs and the guarantee of marketing; III – research and technology incentives; IV – technical assistance and rural extension; V – agricultural insurance; VI – cooperative activity; VII – rural electricity and irrigation systems; miolo\_constitution\_versao\_camara.indd 132 17/6/2010 15:01:05 The Economic and Financial Order 133 VIII – housing for the rural workers. Paragraph 1. Agricultural planning includes agroindustrial, stock raising, fishing and forestry activities. Paragraph 2. Agricultural policy and agrarian reform actions shall be made compatible.