

## Brazilian Supreme Court suspends opinion that was authorizing the acquisition of rural properties by Brazilian companies controlled by foreigners, in the State of São Paulo

In a decision dated September 1, 2016, the Supreme Court Justice Marco Aurélio granted an injunction to suspend the Opinion nº. 461-12-E issued by the Magistrate in charge of administrative matters in the State of São Paulo, that had been approved to authorize Brazilian entities controlled by foreigners to buy rural property without with the limitations of the Federal Law Nº 5.709/197 in the State of São Paulo

Such opinion differs from the Opinion of the Attorney General's Office issued in August 2010 (Opinion nº LA-01), which had the following syllabus:

*"RURAL PROPERTY - Acquisition by a Brazilian entity whose majority of shares are owned by foreigners residing outside Brazil or by legal entities headquartered abroad - Equivalence with foreign legal entity for the purpose of subjection to the regime established by Law 5709/1971 - § 1 of Article 1 of Law 5709/1971 – Not accepted by Federal Constitution of 1988 - Subjective enlargement of limiting private appropriation of rural property and unauthorized by Article 190 of Federal Constitution of 1988 - Original wording of Article 171 of the 1988 Constitution strengthens the revocation - The difference, there expressly provided, among Brazilian company and a Brazilian company with national equity was established with a view to the benefits and differential treatment, but not to the rights constraints – Article 171, in contemplating qualified legal reserve is incompatible with generic constraints - The reform introduced by Amendment No. 6/1995 confirms the non-reception - Limitation was in accordance with § 34 of article 153 of Federal Constitution of 1967, as amended by Amendment No. 1/1969, more restrictive regarding the treatment of the theme - Changing of understanding"*

The injunction was issued in the Civil Lawsuit nº. 2.463-D, filed by National Institute of Colonization and Land Reform (called "INCRA" in Brazil) and the Federal Government before the Supreme Court seeking to annul the Opinion nº. 461-12-E.

The State of Sao Paulo may still appeal the decision that granted the injunction. In case no appeal is filed, the effects of the injunction will remain in force until the judgment of the merits of the lawsuit by the Supreme Court and, in practical terms, the Real Estate Registry Offices of the State of São Paulo will be obliged to observe the restrictions imposed by Federal Law nº 5.709/71 in relation to acquisitions of rural property by Brazilian companies controlled by foreigners.

This does not prevent, however, individual challenges by companies against the application of the Federal Law nº. 5.709/71, either in court or through administrative proceedings, considering the existence of solid arguments that the law must

## Agribusiness

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not be applied to Brazilian companies, since its article 1st, paragraph 1st, is not compatible with the Brazilian Federal Constitution of 1988.

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