

THE BRAZILIAN FOREST CODE FINALLY CAN BE IMPLEMENTED. WHAT'S NEXT?

NEXT STEPS FOR RURAL PRODUCERS' COMPLIANCE WITH THE LAW

TABLE

RESULTS OF THE SUPREME COURT DECISION AND PRACTICAL IMPLICATIONS

| Themes | Results of the Decision | Practical Implications |
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| <p>Creation of a special legal regime for those who deforested prior to July 2008</p> | <p>The Supreme Court declared the July 2008 temporal milestone constitutional, allowing the adoption of a special regime for landowners who illegally deforested prior to this date. These landowners benefit from more flexible regularization of Permanent Preservation Areas (APP) and Legal Forest Reserve. Environmental fines for these landowners will also be suspended until regularization is complete.</p> | <ul style="list-style-type: none"> Landowners who illegally deforested APP and Legal Forest Reserve prior to July 2008 are only entitled to benefits from the special regime's rules by enrolling in the Environmental Regularization Program (PRA) and signing a Commitment Agreement. These landowners benefit from: flexible requirements for the size of APP; option to offset Legal Forest Reserve; and ability to restore Legal Forest Reserve using up to 50% exotic species. Landowners who illegally deforested after July 2008 must immediately suspend agricultural or forestry activities in these areas and recover the whole area according to the Forest Code's stricter requirements. Fines and other sanctions will not be suspended for these landowners. |
| <p>Environmental Regularization Program (PRA)</p> | <p>The Supreme Court approved the PRA as a compliance instrument. After enrolling in the PRA and signing a Commitment Agreement, landowners can request suspension of their environmental fines until they fulfill their regularization obligations as outlined in the Agreement.</p> | <ul style="list-style-type: none"> Landowners who illegally deforested APP and Legal Forest Reserve prior to July 2008 can enroll in the PRA and have their environmental fines suspended. Landowners who deforested APP and Legal Forest Reserve after July 2008 must follow stricter requirements for these areas. They also need to follow different compliance procedures depending on their state regulations. |
| <p>Legal Forest Reserve in small properties</p> | <p>The Supreme Court upheld the exemption of small properties (up to four fiscal models) from restoring the Legal Forest Reserve deficits when these areas were deforested prior to July 2008.</p> | <p>Owners of small properties whose Legal Forest Reserve were deforested before July 2008 do not need to restore or compensate forest deficits.</p> |
| <p>Deforestation according to previous legislation</p> | <p>The Supreme Court upheld the exemption of Legal Forest Reserve recovery for cases in which deforestation occurred in compliance with the legislation in force at that time of its occurrence.</p> | <p>Landowners may maintain agricultural activities in Legal Forest Reserve areas as long as they show evidence that deforestation occurred in compliance with the legislation in force at that time.</p> |

| Legal Forest Reserve compensation | The Supreme Court upheld that landowners who deforested Legal Forest Reserve prior to July 2008 have the right to compensate these areas off-site. | <ul style="list-style-type: none"> Landowners may compensate in four different ways: purchase an Environmental Reserve Quota (CRA); establish a conservation easement agreement; donate an area located in a public Protected Area that is pending regularization to the government; or designate surplus areas in a different property belonging to the same owner. WHAT CHANGED? The Supreme Court decided that compensation for CRA cannot simply occur in areas within the same biome, but that they must share the same ecological identity. This new requirement creates uncertainty since there is no legally defined concept for <i>ecological identity</i>. |
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| Legal Forest Reserve recovery including exotic species in up to 50% of the area | The Supreme Court upheld the option to recover the Legal Forest Reserve with exotic (non-native) species in up to 50% of the area. | Landowners may use exotic species to recover up to 50% of their Legal Forest Reserve. However, PRA legislation in each state must be observed since each state has its own procedures (e.g., list of prohibited species, number of seedlings per area, management techniques, intercropping models, etc.). |
| Legal Forest Reserve percentage of 50% in properties located in forest areas within the <i>Amaznia Legal</i> | The Supreme Court upheld the possibility to reduce the Legal Forest Reserve requirement from 80% to 50% in the following situations: (i) in municipalities in which more than 50% of the territory is occupied by public Protected Areas and homologated Indigenous Lands; and (ii) in states with approved Ecological-Economic Zoning and more than 65% of their territories occupied by public Protected Areas and homologated Indigenous Lands. | The reduction of the Legal Forest Reserve from 80% to 50% depends on the decision of the public authority. Landowners do not have an immediate right to reduce their percentage to 50% in these areas. It is necessary to check with the state environmental agencies to see if the state already has a specific rule on this issue (e.g., <i>Zona Leste</i> , <i>Calha Norte</i> and <i>Zona Oeste</i> s Ecological-Economic Zoning of Par). |
| Including APP in the percentage calculation of the Legal Forest Reserve | The Supreme Court upheld the possibility to include APP in the calculation of the Legal Forest Reserve's percentage. | Landowners may add APP to the Legal Forest Reserve calculation if their properties are registered in the CAR and they do not deforest their native vegetation surplus. If landowners possess a surplus, they are allowed to offer it in the compensation market and, if applicable, the surplus should be in the process of recovery. |
| APP in intermittent water springs | WHAT CHANGED? The Supreme Court decided that intermittent water springs also constitute APP. | Landowners who have intermittent springs on their properties should rectify the CAR to declare these areas as APP. |

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