



EXECUTIVE SUMMARY

WHERE DOES BRAZIL STAND WITH THE IMPLEMENTATION OF THE FOREST CODE?

A SNAPSHOT OF THE CAR AND PRA IN BRAZILIAN STATES

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The **Land Use Initiative (Iniciativa para o Uso da Terra - INPUT)** counts on a dedicated team of leading specialists who work at the forefront of how to increase environmental protection and food production. INPUT aims at analyzing and influencing the creation of a next generation of low-carbon economy policies in Brazil.

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EXECUTIVE SUMMARY

There is currently an important opportunity to align agricultural growth and natural resources protection in Brazil. According to estimates, Brazil can double its crop yields by taking advantage of areas that have already been cleared, without the need for additional deforestation.¹ The Native Vegetation Protection Law (No. 12,651/2012), also known as the Forest Code, is a crucial instrument to promoting Brazil's efforts in this direction. The law limits the expansion of production in Permanent Preservation Areas (*Áreas de Preservação Permanente* – APP) and Legal Forest Reserves, and creates incentives for rural producers to invest in technologies that modernize agriculture and in practices conducive to productivity gains.

Additionally, the 26th United Nations Conference on Climate Change (COP 26), held in Glasgow, in November 2021, makes room for a green recovery of the country's economy in post-pandemic times, by making the carbon market operational and by recognizing the critical role of nature-based solutions in controlling climate change. The Forest Code is just as essential in this sense, as it promotes forest conservation and restoration and, thus, induces green economic growth.

Implementing the law, however, remains a major challenge. On the eve of completing ten years of its enactment and despite the progress made, the Forest Code is far from being effectively implemented across all Brazilian states.

This publication by the Climate Policy Initiative/Pontifical Catholic University of Rio de Janeiro (CPI/PUC-Rio) is part of a project to permanently monitor the implementation of the Forest Code in Brazilian states, with contributions from environmental and agricultural bodies at the state level.

Drawing on a detailed analysis of state regulations, data and information collected from the states, and experiences exchanged between analysts and state managers in virtual and face-to-face meetings, this report provides an overview of the implementation of the Forest Code. This report uses indicators that highlight the advances made in the last year, identifies the strategies adopted by the most states that are currently farther ahead, as well as outlines key gaps, challenges, and opportunities to accelerate the implementation of the law.

By making this information publicly available, this report enables the ongoing monitoring of the status of regulation and implementation of the Forest Code in each of Brazilian state, serving as a guide to direct available resources and efforts. This document is the third edition of the report; the first version was published in 2019. The information is revised and updated annually.

¹ Antonaccio, Luiza, Juliano Assunção, Maína Celidonio, Joana Chiavari, Cristina L. Lopes, and Amanda Schutze. *Ensuring Greener Economic Growth for Brazil*. Rio de Janeiro: Climate Policy Initiative, 2018. bit.ly/3oZHgSY.

A SNAPSHOT OF 2021



The step of registering rural properties in the Rural Environmental Registry (*Cadastro Ambiental Rural – CAR*) is well underway in all states. There has been a constant increase in the number of registrations across the country – especially in the state of Roraima, which doubled the number of registrations in the last year. Despite the progress in registering traditional peoples and communities in the states of Amazonas, Bahia, Maranhão, Pará, Pernambuco, and Piauí, this group still requires specific actions and programs to advance.



The analysis of CAR data has advanced in most states, but only a small group really stands out. In the states of Acre, Amazonas, Pará, and Rondônia, around 20% of state-level registrations have started undergoing analysis; almost half the state data in Mato Grosso and approximately 72% of all registrations from Espírito Santo have completed this stage.






Despite advances, completing the analysis (with data validation) remains a major challenge – with the notable exception of Espírito Santo, which has already validated all the registrations under analysis. Frequent re-analyses of registrations and challenges in communicating with landowners and possessors stand in the way of completing the analyses. It may take ten or more analyses for a CAR to be validated, as is currently the case in Rondônia. In Pará, of the 47 thousand registrations that have already been analyzed, 45 thousand are pending a response from producers to the notifications sent by the competent authorities urging them to rectify or supplement the data in the CAR. The states of Acre, Amazonas, Mato Grosso, Paraná, and Rondônia are in a similar situation.



The dynamic analysis² was put into practice by the Brazilian Forest Service (*Serviço Florestal Brasileiro - SFB*) in Amapá, Amazonas, Federal District, Paraná, and Rio de Janeiro, but it is still in its incipient and the expected results remain unknown. In Amapá - the first state to implement the dynamic analysis - around 2,000 registrations have gone through the tool; this represents 25% of all the state's registrations, of which around 1,800 had information automatically corrected by the system and are awaiting sign-off by the owners.

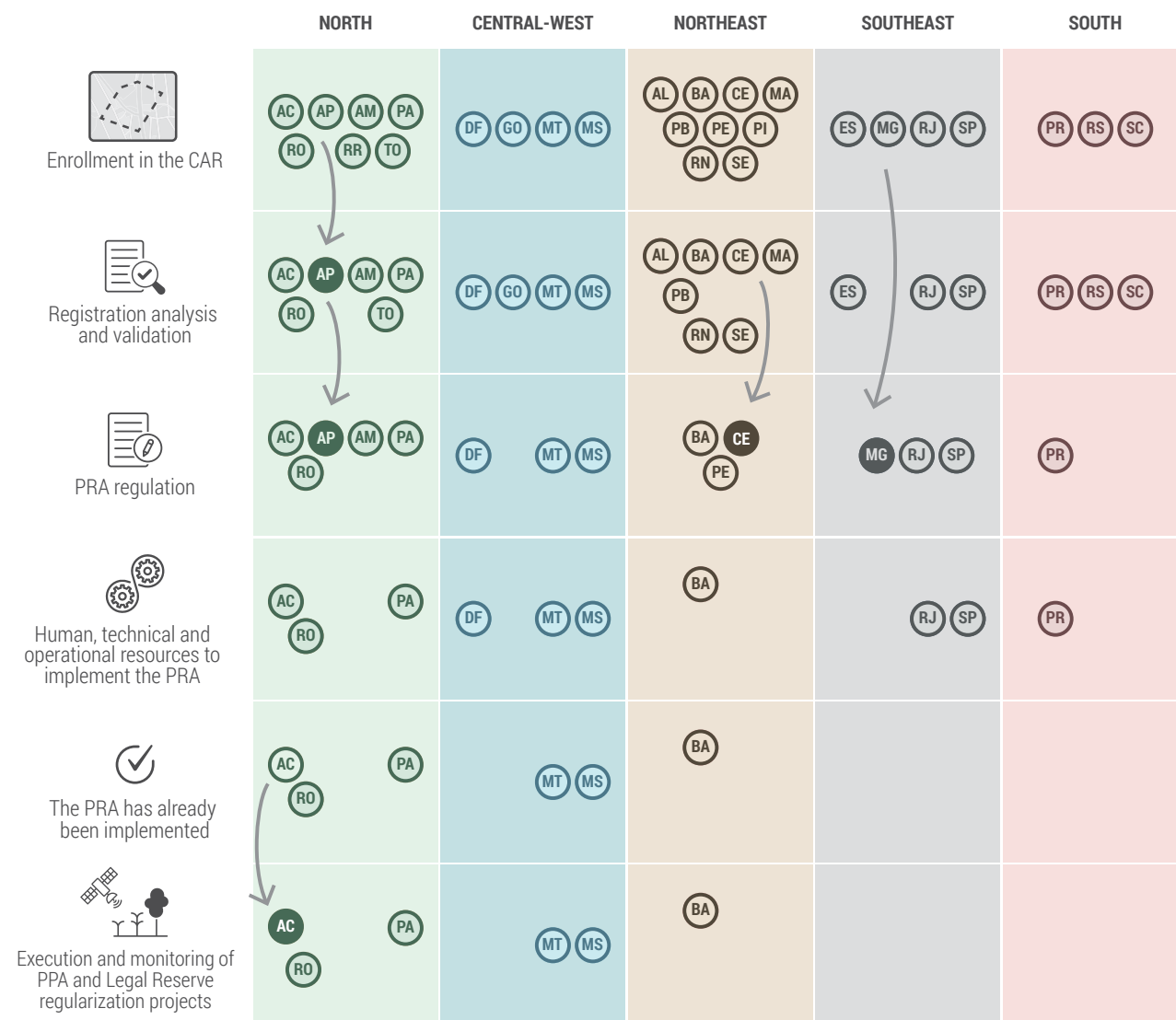
² The system checks the data automatically, identifies inconsistencies and automatically proposes corrections to the registrations.

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- Reaching the final stage of environmental regularization of rural properties remains a huge challenge. Due to a lack of interest by rural producers in **joining the Environmental Compliance Program (*Programa de Regularização Ambiental* - PRA)**, only a part of the validated registrations result in **signing commitment agreements** for the recovery of APPs and Legal Forest Reserves. In Acre, about 60% of the registrations validated with native vegetation deficits already have commitment agreements in place, while in Mato Grosso and Pará this number drops to 20%; in Rondônia, the situation is even worse: only 5% of the validated registrations not in compliance with the law have signed terms attached.
- 
- Fifteen states have already **regulated the PRA** and most states have adopted criteria and parameters for environmental compliance in APPs and Legal Forest Reserves. Nine states, however, still lag far behind in terms of building a legal framework for regularizing rural properties: Alagoas, Espírito Santo, Paraíba, Piauí, Rio Grande do Norte, Rio Grande do Sul, Roraima, Sergipe, and Tocantins.
- 
- There is a group of states that lag in terms of Forest Code implementation. They do not have legislation in place, have not advanced in the analysis stage, lack cartography databases for implementing dynamic analyses, and are not covered by technical and financial cooperation agreements. These states include states in the Northeast region (except Bahia, Ceará, and Maranhão), as well as Roraima and Rio Grande do Sul.



The environmental compliance process for properties involves several steps and requires action by multiple stakeholders. Registration, analysis, and validation of the Rural Environmental Registry (CAR) are just the first steps; the states also need to regulate and implement the Environmental Compliance Program (PRA). **Figure 1** (below) shows the status of the different states across the stages Forest Code implementation and highlights progress for four states, Amapá, Acre, Ceará and Minas Gerais, in 2021.

Figure 1. CAR and PRA Implementation Status by State, 2021



Note: Some states were reclassified compared to the 2020 edition after a methodological review by the authors and new information about the states.

Source: CPI/PUC-Rio, 2021

All states have already well advanced in the stage of registering properties in the CAR, though the database received new registrations in 2021 in all over the country. In some states, this advance came from the registration of smallholders, possessors, and traditional peoples and communities, such as in Amazonas, Bahia, Maranhão, Pará, Pernambuco, and Piauí. Pará developed its own application methodology that had the active participation of the communities. Despite this, the registration of this group still requires help from the authorities to advance further. **It should be noted that the deadline for producers to register their rural properties in the CAR, and to be entitled to join the PRA, expired on December 31, 2020.³**

The **registration analysis and validation stage** has already begun in most states, though it remains the primary bottleneck in implementing the Forest Code. **The big news in 2021 was the implementation, albeit incipiently, of the dynamic analysis in Amapá, Amazonas, Distrito Federal, Paraná, and Rio de Janeiro.** Although the tool is already available in all those states, it is operational only in a few pilot municipalities in Amapá and Paraná. The other states are still evaluating strategic areas or correcting thematic mappings. The dynamic analysis is expected to extend to 18 additional states by the end of 2022. **After implementation of the dynamic analysis, Amapá was able to advance from the registration stage to the analysis and validation stage of the CAR.**

Nearly all states have implemented the analysis, by the technical teams, of the data in the registrations. Although many states have already reached this stage, the situation between states varies significantly, and some are much farther along than others. **Among the states that already had an “active” routine in place for the analysis of registrations by their technical teams, only Acre, Amazonas, Maranhão, and Rondônia saw a significant increase in the number of CAR analyzed per month in 2021.** Mato Grosso and Pará, which had made substantial progress in the previous year, have managed keep up high rates of analyses this year as well.

Despite advances in the analysis of registrations in several states, the validation stage remains a huge challenge for all states that reach it. Only Acre, Ceará, Maranhão, Mato Grosso, Rondônia, and Pará made progress in the number of registrations validated in 2021, with special note to Maranhão for increasing its validation by 700%. In absolute terms, the number of registrations validated by the states varies significantly. In Alagoas, Distrito Federal, Goiás, and Santa Catarina this number is still very low, between one and 100 entries. The situation in Amazonas, Rio de Janeiro, São Paulo, Acre and Paraná is slightly better, but even so, these states have only validated 100 to 550 registrations. Other states have advanced a little more and have between 1,000 and 3,000 validated registrations, such as Ceará, Maranhão, Mato Grosso do Sul, Pará, and Rondônia. Mato Grosso has already validated around 6,000 registrations. **Despite progress in these states, Espírito Santo remains ahead in this stage, having validated around 73,000 state registrations (approximately 72% of the state’s registrations).**

Several challenges have emerged in the validation phase including the high volume and low quality of registrations, difficulties in communicating with landowners and possessors, and lack of cartographic databases as well as technical and human resources to conduct the validation. **Minas Gerais,**

³ Registrations after deadline cannot benefit from Forest Code's more flexible rules for consolidated areas in APP.

Pernambuco, Piauí, and Roraima are still in the registration phase and have not yet started the CAR review and validation.

Though an instrument of the Forest Code, the CAR has been used in other public policies as well, such as environmental licensing, access to rural credit, and land tenure regularization; as such, advancing the analysis and validation stages of the CAR must be a top priority for state governments. **The cancellation of more than a thousand registrations in Pará that overlapped with Indigenous Lands and Conservation Units underscores the importance of validating CAR information to ensure the accuracy and credibility of the registration database.**

The PRA has already been regulated by fifteen states, with Amapá, Ceará, and Minas Gerais doing so in the last year. Although they have not yet regulated the PRA, Goiás, Maranhão, Rio Grande do Norte, and Roraima are working on drafts to that end. The remaining eight states are still far behind and awaiting the implementation of the Environmental Regularization Module (*Módulo de Regularização Ambiental* - MRA) by the SFB before moving forward with the regulation of the PRA. This lack of regulation prevents the states from advancing to the next steps after analyzing the registrations.

In most states the **implementation of the PRA** is still a distant reality. **In only six states - Acre, Bahia, Mato Grosso, Mato Grosso do Sul, Rondônia, and Pará - is the program fully operational, with a fully functional system, signed commitment agreements, and projects underway (and under monitoring) to regularize APPs and Legal Forest Reserves.** None of the states that had not implemented the program by last year made any progress in 2021. Regarding the number of commitment agreements signed and under execution in the states, the numbers vary: Rondônia has approximately 140, Acre and Pará have between 280 and 300, and Mato Grosso has just over 450 signed commitment agreements. There has only been a slight increase in the signing of new commitment agreements in 2021, which shows the difficulty of seeing environmental regularization through to the end. Bahia and Mato Grosso do Sul have self-declared commitment agreements in place, but it is unknown how many of them are currently under execution.

PRA implementation also depends on the state's **regulation of environmental compliance of APPs and Legal Forest Reserves consolidated areas, in case there is liability.** Table 1 summarizes the status of all states regarding this legislation, defining methods and parameters for forest restoration in APPs and on Legal Forest Reserves.

Table 1. Legislation by States Related to Forest Restoration in APPs and on Legal Forest Reserves, 2021

		NORTH REGION							CENTRAL-WEST REGION				SOUTHEAST REGION				SOUTH REGION			NORTHEAST REGION								
		AC	AP	AM	PA	RO	RR	TO	DF	GO	MT	MS	ES	MG	RJ	SP	PR	RS	SC	AL	BA	CE	MA	PB	PE	PI	RN	SE
Restoration of APP consolidated areas	Set deadline for APP restoration	★	★	★	★	★	-	-	★	★	-	-	-	★	★	★	★	★	-	-	-	★	★	-	-	-	-	-
	Defines the possibility of economic use of parcels not covered by the APP restoration schedule	★	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	★	-	-	-	
	Establishes the methods and parameters for the restoration of APP consolidated areas	★	★	★	★	★	-	-	★	★	★	★	-	★	★	★	★	-	★	-	★	★	-	★	-	-	-	
	Establishes detailed rules for the design, execution and monitoring of APP restoration projects	-	★	★	★	★	-	-	★	-	★	-	-	★	★	★	★	★	-	-	-	-	★	★	-	-	-	
Restoration of Legal Forest Reserve consolidated areas	Set deadline for Legal Forest Reserve restoration	★	★	★	★	★	-	★	★	★	★	★	-	★	★	★	★	★	-	★	-	★	★	-	★	-	-	-
	Defines the possibility of economic use of parcels not covered by the Legal Forest Reserve restoration schedule	★	-	-	★	★	-	-	★	-	★	★	-	-	-	-	-	-	★	-	★	-	-	★	-	-	-	
	Establishes the methods and parameters for the restoration of Legal Forest Reserve consolidated areas	★	★	★	★	★	-	-	★	★	★	★	-	★	★	★	★	★	-	★	-	★	★	-	★	-	-	-
	Establishes detailed rules for the design, execution and monitoring of Legal Forest Reserve restoration projects	-	-	★	★	★	-	-	★	-	★	★	-	★	★	★	★	★	-	-	-	★	★	-	★	-	-	-
	Regulates the article 68 of the Forest Code	-	★	★	-	-	-	-	-	★	-	-	-	-	-	-	★	★	-	-	-	-	-	-	-	-	-	
	State has adopted agroecological zoning (applicable only to states in the Brazilian Legal Amazon)	★	-	★	★	★	-	★	n/a	n/a	★	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	★	n/a	n/a	n/a	n/a	n/a
Legal Forest Reserve offset	Regulates the Legal Forest Reserve offset	★	★	★	★	★	-	-	★	★	★	★	-	★	★	★	★	★	-	★	-	★	-	★	★	-	-	-
	State's procedure to offset Legal Forest Reserve through acquisition of private area in public Conservation Unit and then and donate it to the government	-	★	★	★	★	-	-	-	★	★	★	-	★	★	-	★	★	-	★	-	★	-	-	★	-	-	-
	State's procedure to offset Legal Forest Reserve through Environmental Reserve Quota (Cota de Reserva Ambiental - CRA)	★	★	★	★	★	-	-	★	-	★	-	-	★	★	-	-	★	-	★	-	★	-	-	-	-	-	-
	State's procedure to offset Legal Forest Reserve through registration of na equivalent surplus area in the same biome	★	★	★	★	-	-	-	-	★	★	★	-	-	★	-	-	-	★	-	★	-	-	-	-	-	-	-
	State's procedure to offset Legal Forest Reserve through registration of na equivalent surplus area in the same biome	-	★	★	-	★	-	-	-	-	-	-	-	-	-	-	-	★	-	-	-	★	-	-	-	-	-	-
	Set state's priority areas to offset Legal Forest Reserve liabilities from other states	-	-	-	-	-	-	-	-	-	-	-	-	-	-	★	★	-	-	-	-	-	-	-	-	-	-	-
Restoration of illegal deforestation after 2008	Defines the procedure to promote environmental compliance of illegal deforestation after 22nd July 2008	★	★	★	★	-	-	-	★	★	-	-	-	★	★	-	-	★	-	-	-	-	-	-	-	-	-	-
Status	Status of all states regarding the legislation that defines restoration of APP and Legal Forest Reserve areas	😊	😊	😊	😊	😊	😞	😞	😊	😊	😊	😊	😞	😊	😊	😊	😊	😊	😞	😊	😊	😊	😊	😞	😊	😞	😞	

Legend: ★ Yes
- No
n/a Not applicable

★ Normative framework edited in 2021

😊 Advanced Status - Sufficient normative framework

😞 Intermediate Status - Insufficient normative framework

😞 Beginner Status - No normative framework

Source: CPI/PUC-Rio, 2021

Most states have already established minimum rules for the restoration of APPs and Legal Forest Reserves. Of the states that had not issued rules for environmental compliance in 2020, only Amapá, Ceará, Maranhão, and Minas Gerais made progress in 2021. In general, state regulations follow the general rules of the Forest Code, but each state introduces its own innovations. Some states have instituted legal rules to establish guidelines and criteria for the preparation, execution, and monitoring of projects geared towards the restoration of native vegetation in degraded and altered areas, while others are addressing the matter by means of manuals and booklets.

Legal Forest Reserve compensation, via the donation of a private area within a public Conservation Unit (official protected area) to the state or federal government, has been a key focus area, with regulations in place in 14 states so far. São Paulo, for example, created the *Agro Legal* Program in 2020, expressly establishing Legal Forest Reserve compensation through donations of areas in Conservation Units as one of the program guidelines, which should be facilitated by the state.

State-level regulation and implementation of Forest Code article 68, which allows for the application of the percentage of a Legal Forest Reserve according to the law in force when the vegetation was cleared, **remains complex and difficult to execute.** Only Amapá, Amazonas, Goiás, Paraná, and São Paulo have this mechanism regulated in state law; most states only refer to the federal law. São Paulo, for example, has passed a state law with a list of legal frameworks that must be considered in Legal Forest Reserves calculations at the state level. The provision was deemed constitutional by the São Paulo State Court of Justice in 2019, but the Public Prosecution Service (*Ministério Público*) filed an extraordinary appeal challenging the decision before the Supreme Federal Court. The Supreme Court's decision on this appeal will carry great weight, as it will ascertain the competence of the states and the criteria they will use when legislating and determining legal frameworks for enforcing article 68.

When regulating PRAs, most states only provide for the compliance procedures for APP and Legal Forest Reserves prior to 2008. **Only ten states have passed legislation on the compliance procedure for deforested areas after 2008.** Among them, Acre, Bahia, Pará, and the Federal District stipulate that deforested areas before and after 2008 will follow compliance under the PRA. Amapá, Rio de Janeiro, and Paraná have put different procedures in place. Although there is no express legal provision on the matter, some states (such as Rondônia) are resolving this issue directly in the CAR and PRA systems. This situation should improve with the implementation of the Environmental Regularization Module (MRA) by the SFB. The MRA can be used to recover liabilities incurred before and after 2008. Different rules for each situation will be built into the system, as deforested areas prior to 2008 follow a more flexible legal regime and are subject to lighter recovery parameters.

In addition to the advances made by the states this year, other noteworthy activities can impact the implementation of the Forest Code.

In order to stimulate progress in CAR validation, the National Monetary Council (*Conselho Monetário Nacional* - CMN) has included a provision in Brazil's Agriculture Plan (*Plano Safra*) 2020/21 to increase the credit limit by 10% for producers with validated CAR. In this initiative, producers with validated CAR gain special access to subsidized resources. This also encourages states to move forward in the validation process so their producers can enjoy the benefit as well. The Brazilian Central Bank

(*Banco Central* - BCB) has also announced a sustainability dimension to the BCB# Agenda, with detailed guidelines for allocating public funds with a focus on agribusiness sustainability. Last year, the BCB held three public consultations on the topic and issued Resolution no. 140/2021 to create a new section in the Rural Credit Manual, in addition to stating that access by companies to rural credit may be restricted due to legal or infra-legal provisions relating to social, environmental and climate-related issues. This process is still rather incipient, but it can be used to create other incentives for the implementation of the Forest Code.

The SFB has also played a relevant role as an information technology system and infrastructure developer in the implementation of the CAR and PRA modules. After a change in management in 2021, the SFB managed to implement the dynamic analysis in some states and plans to release the first version of the environmental regularization module by the end of the year. The SFB is also developing other modules that will help in such areas as: management of analyzed registrations, splitting and joining of rural properties, compensations for Legal Forest Reserves, and monitoring commitment agreements geared towards forest recovery.

Legal uncertainty has had a negative impact on the implementation of the Forest Code. There are lawsuits pending decisions by the Supreme Federal Court or the Superior Court of Justice on controversial issues such as the application of the Atlantic Forest Law (*Lei da Mata Atlântica*), which stands in the way of record validation in states located in the Atlantic Forest, the legality of the regulation of Article. 68 through legislation in São Paulo, and the possibility of reviewing commitment agreements signed before the Forest Code was passed into law.

Lastly, there has been no shortage of proposals to amend the Forest Code in National Congress, and this did not change in 2021. One such example is Legislative Bill (*Projeto de Lei* - PL) 36/2021, which proposes new deadlines for CAR registration while remaining entitled to the PRA. It is essential that no amendment to the Forest Code be proposed without a very careful assessment of the potential impacts such changes may have on the implementation of the law at the state level. Any legislative change that entails a significant revision of state rules would imply ignoring all the efforts and resources put in place by the states to regulate and implement such norms, in addition to delaying the implementation of the Code and the environmental compliance of rural properties.

