

NAVIGATING BRAZIL'S MINING SECTOR: ESSENTIAL LEGAL INSIGHTS FOR INVESTORS

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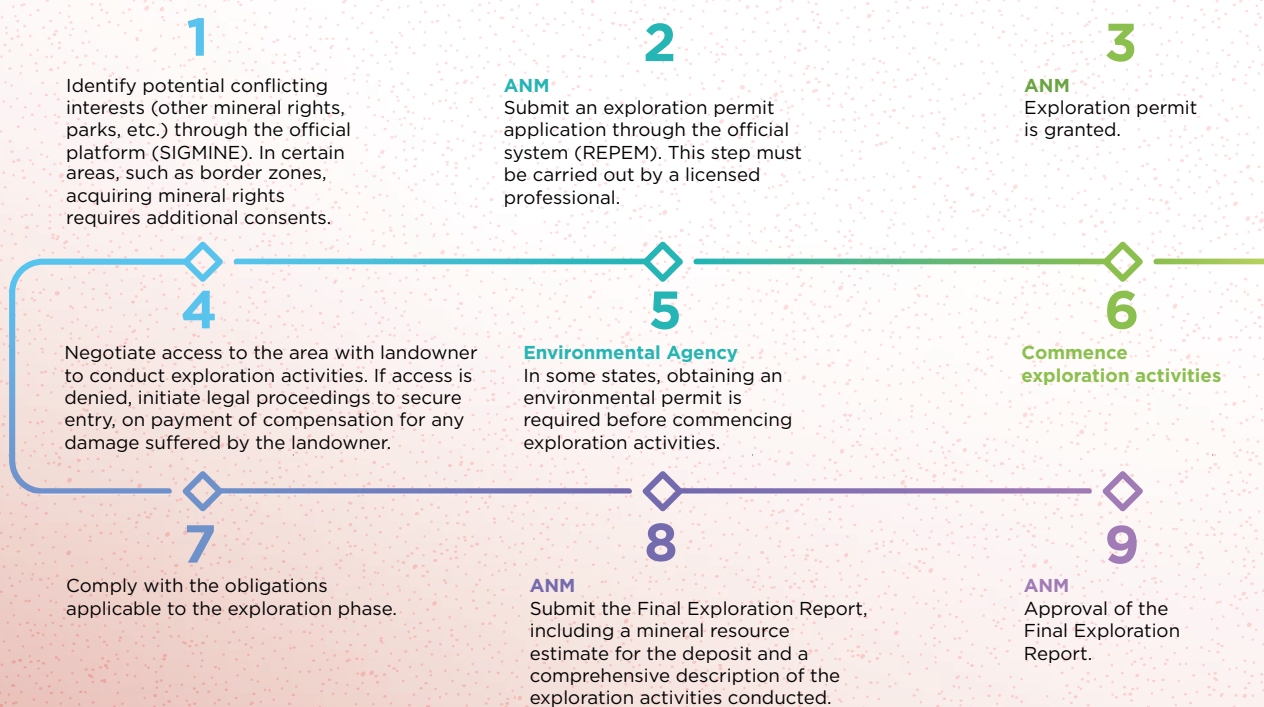


HOW TO BRING MINING INTO PRODUCTION IN BRAZIL

This flowchart outlines the key steps in the regulatory process over the lifecycle of a mine for all substances except radioactive elements. The mining sector in Brazil is primarily regulated by the National Mining Agency (ANM – *Agência Nacional de Mineração*). As in many other jurisdictions, mining in Brazil requires environmental permitting, which is included in the flowchart.

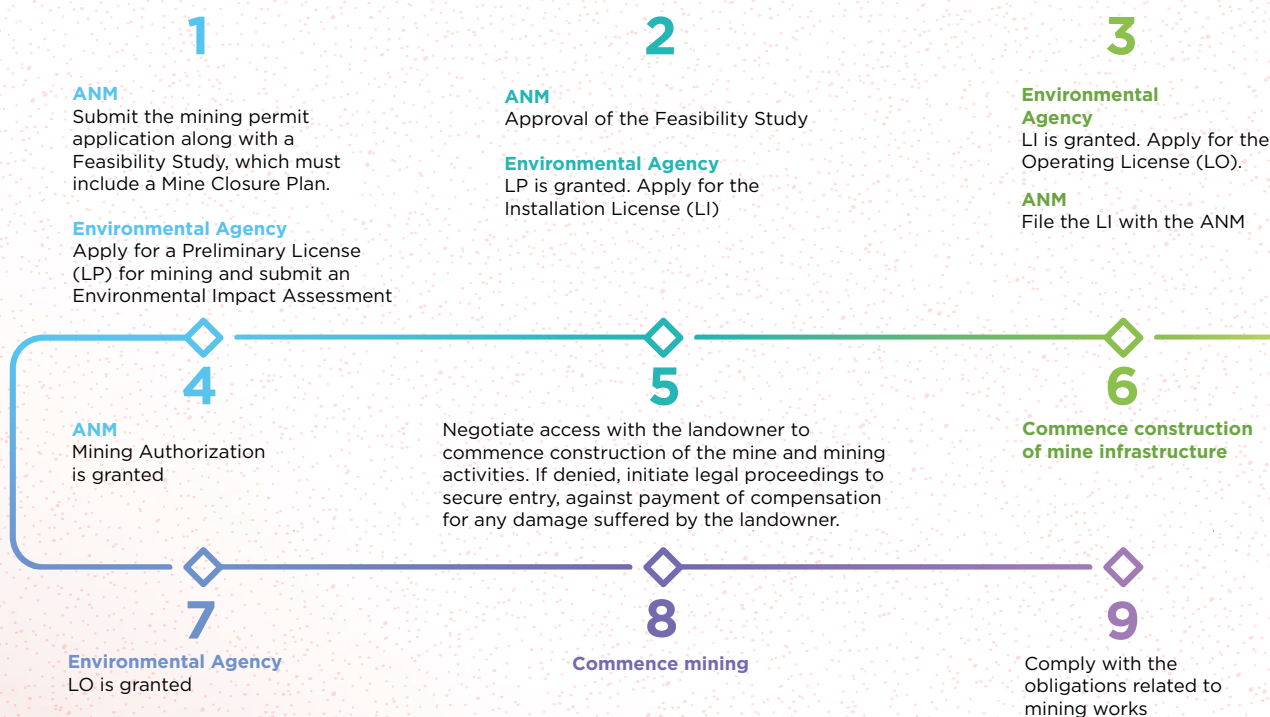


EXPLORATION

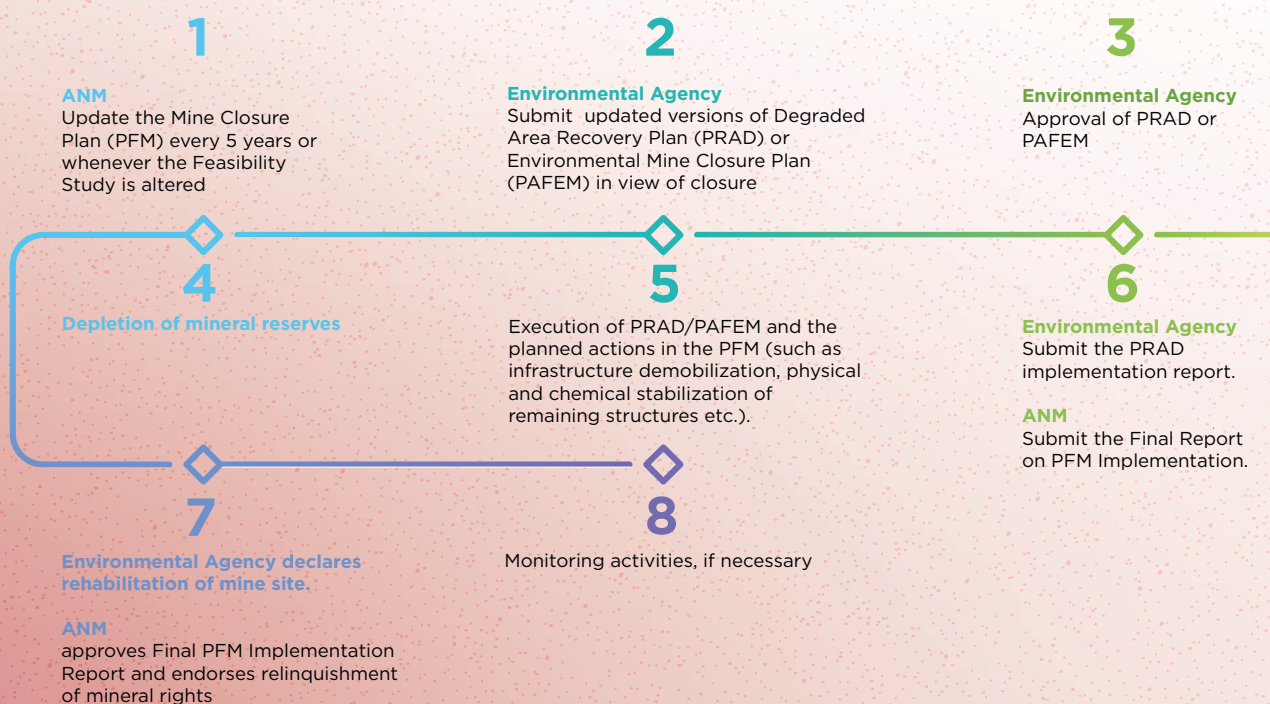




DEVELOPMENT AND OPERATION



CLOSURE





IMPORTANT INFORMATION

- The flowchart shows the regular scenario for environmental permitting. Some permits may be waived or issued simultaneously, depending on the scale of the project and local regulations.

- Depending on the project, apart from the permits shown in the flowchart, additional environmental authorizations and/or licenses may be required for exploration and mining activities (e.g. authorization for suppression of vegetation and fauna management, water grants, etc.).

- Companies must be incorporated in Brazil, under Brazilian Law, with headquarters and management in Brazil, to conduct mining activities in Brazil. There are no limitations on foreign shareholders, except where companies holding mineral rights in border zones.

- Exploration permits are valid for a period ranging from one to four years and may be renewed for the same term if legal requirements are met.

- Mineral rights holders are entitled to start mining activities during the exploration phase under certain conditions.

- There are no minimum drilling or investment requirements to maintain an exploration permit.

- Mining authorizations do not have fixed expiry dates, allowing the holder to mine until all reserves are depleted.

- If new substances are discovered on-site during mining activities, they may be added to the existing mining authorization, and lawfully extracted.

- Mineral rights may be encumbered, leased or assigned, subject to ANM's consent. Transactions involving mineral rights are commonplace.

- Brazilian law allows the processing and sale of tailings and waste products.

- Areas for which mineral rights have been granted in the past may only be acquired through a bidding process.

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FINANCING FOR MINING IN BRAZIL

Strategic Minerals Private Equity Fund – BNDES

In 2024, Brazil's economic and social development bank, BNDES, published a call for tenders for the management of a private equity fund (FIP – *Fundo de Investimento em Participações*) focused on exploration, development, implementation or operation of strategic mineral assets for the energy transition, decarbonization, and mineral fertilizers. Ore Investments and JGP BB Asset were selected to manage the Strategic Minerals FIP, in which BNDESPAR, one of BNDES's investment arm, and Brazilian mining giant Vale will each contribute a minimum of BRL 100 million and a maximum of BRL 250 million, depending on the projects selected by the fund.

The Strategic Minerals FIP is expected to mobilize up to BRL 1 billion, which will be invested in up to 20 small and medium-sized companies involved in strategic minerals exploration and development or new strategic minerals mines in Brazil. The fund will prioritize minerals required for energy transition and decarbonization: cobalt, copper, tin, graphite, lithium, manganese, rare earth ores, platinum group ores, molybdenum, niobium, nickel, silicon, tantalum, titanium, tungsten, uranium, vanadium and zinc. Phosphate, potash and remineralizers, which are fundamental for soil fertility, are also on the list of elements covered by the fund.¹

Brazil's federal government has announced that other banks wish to join the fund, with commitments to invest up to BRL 3 billion. According to the fund's management, the Strategic Minerals FIP will have a 10-year lifetime, with four years for investment and six for divestment.

Finep and BNDES to support strategic mineral processing projects

On January 7, 2024, Finep, the federal innovation financing agency, and BNDES issued a request for proposals, inviting candidates to submit business plans contributing to the development of a sustainable strategic minerals supply chain in Brazil, with an overall budget of BRL 5 billion. The financing available under the RFP includes lines of credit, equity investment, and non-reimbursable funding.

The objective of Finep/BNDES initiative is to invest in mineral processing for the energy transition and decarbonization. Depending on the stage of the project and the technology involved, funding will be available for research, RD&I in industrial-scale processing plants, pilot and demonstration plants, and studies and research needed to develop new industrial capacities, both for supply chains for minerals such as lithium, rare earths, nickel, graphite and silicon, and the manufacturing of components such as battery cells, photovoltaic cells and permanent magnets. The RFP is still open and the deadlines for submission of projects are:²

1. Available at: <https://agenciadenoticias.bndes.gov.br/detalhe/noticia/BNDES-e-Vale-anunciam-vencedor-que-vai-gerir-o-fundo-de-minerais-estrategicos/>; <https://www.bndes.gov.br/wps/portal/site/home/mercado-de-capitais/fundos-de-investimentos/chamadas-publicas-para-selecao-de-fundos/chamada-investimento-em-participacoes-mineracao>, accessed February 17, 2025. Portuguese only.

2. Available at <http://www.finep.gov.br/noticias/todas-noticias/6897-com-r-5-bi-finep-e-bndes-apoiarao-projetos-para-transformacao-de-minerais-estrategicos>; [https://agenciadenoticias.bndes.gov.br/detalhe/noticia/Com-R\\$-5-bi-BNDES-e-Finep-apoiarao-projetos-para-transformacao-de-minerais-estrategicos/](https://agenciadenoticias.bndes.gov.br/detalhe/noticia/Com-R$-5-bi-BNDES-e-Finep-apoiarao-projetos-para-transformacao-de-minerais-estrategicos/), accessed February 17, 2025. Portuguese only.

Deadlines

- Request for Proposals Launched: January 7, 2025
- Start of Business Plan Submission Period (electronic form made available): January 13, 2025
- End of Business Plan Submission Period: April 30, 2025
- Results of Business Plan Selection Released: by June 12, 2025
- Structuring Support for Selected Business Plans: by July 25, 2025

BNDES Finem Direct Credit

BNDES offers financing for public or private investment projects that will generate or increase productive capacity in the various sectors of the economy, including mining – loans have been granted at combined interest rates starting at 1.5% p.a. plus a maximum participation rate of 80% of BNDES's Long-Term Reference Rate (TLP). Before submitting an application for financing, interested parties must first go through BNDES's qualification process, or, alternatively, contact an accredited financial institution of their choice. The terms and conditions of the financing depend on the size of the borrower's business under BNDES's classification system.

Tax-Advantaged Securities

On January 22, 2025, Brazil's Ministry of Mines and Energy announced Public Consultation 180 on proposed conditions and criteria for tax-advantaged debentures issued to finance production of substances used in the production of batteries and magnets for electric motors. Under the proposed rules, the following minerals are considered strategic to the energy transition: Cobalt, copper, lithium, nickel and rare earth elements, including oxides, chlorides, metals and alloys.³

Development Funds

The Amazon Development Fund (*Fundo de Desenvolvimento da Amazônia*), the Midwest Constitutional Fund (*Fundo Constitucional do Centro-Oeste*), and the state of Goiás's FUNMINERAL can all provide funding for new mining projects in their respective regions.⁴

BNDES Climate Fund

Although the BNDES Climate Fund does not expressly mention the mining sector, mining projects will have access to the fund's BRL 10.4 billion budget to support implementation of projects, acquisition of machinery and equipment, and technological development related to the reduction of greenhouse gas emissions and adaptation to climate change and its effects.

One mining company, Sigma Mineração, obtained BRL 486.7 million in financing under the program. The funds are earmarked for a new sustainable lithium processing plant, which will expand the company's production, and includes practices such as clean energy, water reuse and the elimination of tailings dams.⁵

3. Available at <https://www.gov.br/mme/pt-br/assuntos/noticias/mme-abre-consulta-publica-sobre-regulamentacao-de-debentures-com-incentivo-fiscal-para-o-setor-mineral>, accessed February 17, 2025. Portuguese only.

4. Available at <https://goias.gov.br/administracao/fundo-de-fomento-a-mineracao-funmineral/>, accessed February 17, 2025. Portuguese only.

5. Available at [https://agenciadenoticias.bndes.gov.br/detalhe/noticia/BNDES-aprova-R\\$-4867-milhoes-para-Sigma-Lithium-beneficiar-litio-de-forma-sustentavel/](https://agenciadenoticias.bndes.gov.br/detalhe/noticia/BNDES-aprova-R$-4867-milhoes-para-Sigma-Lithium-beneficiar-litio-de-forma-sustentavel/), accessed February 17, 2025. Portuguese only.

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WHAT TO EXPECT FROM REGULATION OF CRITICAL MINERALS IN BRAZIL

The concept of critical minerals varies from jurisdiction to jurisdiction, depending on their availability for extraction and refining and their economic and strategic importance in production chains.

There is, however, a common denominator, present in most of the world's top mining countries: the elements used to manufacture high-tech products, such as batteries, solar panels and smartphones, including lithium, copper, nickel, niobium, and rare earth elements. These substances are essential for manufacturing national defense equipment, meeting decarbonization targets, and enabling research, among many other applications. Currently, there is not enough production to meet demand, which continues to grow rapidly.

Brazil is known for its abundance of these mineral resources. In their paper on Brazil's critical and strategic minerals, Nicholas Pope and Peter Smith note that the country has a significant share of global reserves of aluminum (8.71%), tin (9.13%), graphite (22.42%), nickel (16.00%), niobium (94.12%), rare earths (16.15%) and titanium (6.62%).⁶ However, they point out that although Brazil hosts a large part of these global reserves (along with other important ores), its share in the production of those minerals is still tiny, creating a unique opportunity for investors.⁷

Brazil has consistently shown itself to be one of the most attractive options in Latin America, even among countries with a mining tradition such as Chile and Peru, according to the indices published by the Fraser Institute.⁸ Brazilian authorities have invested in significant initiatives to make the country's critical minerals sector even more attractive.

Some of the current and upcoming initiatives to support critical mineral mining in Brazil are described below:

Government measures

Investment in the Geological Survey of Brazil

On August 11, 2023, the federal government announced a new Growth Acceleration Plan, with BRL 307 million allocated to the Geological Survey of Brazil (SGB – *Serviço Geológico do Brasil*). The SGB is a government entity created to study Brazil's geological potential, and has earned international recognition for its work.⁹ The funds will be used to conduct aerial surveys, geophysical and geochemical studies, and mapping.

The SGB will also receive BRL 271 million to build a state-of-the-art facility for mineral exploration, reinforcing Brazil's commitment to expanding geological knowledge of its territory, including its mineral resources, which is still in its initial stages in some regions.¹⁰

6. Available at <https://igarape.org.br/wp-content/uploads/2023/10/Critical-and-Strategic-Minerals.pdf>, accessed on February 17, 2025.

7. The Brazilian government has produced an investor guide, which can be accessed at <https://www.gov.br/mme/pt-br/assuntos/secretarias/geologia-mineracao-e-transformacao-mineral/guia-para-o-investidor-estrangeiro-em-minerais-estrategicos/guia-para-o-investidor-estrangeiro-em-minerais-criticos-para-a-transicao-energetica-no-brasil/view>, accessed February 17, 2025. In English and Portuguese.

8. Available at https://www.gbreports.com/files/pdf/_2024/Brazil_Mining_2024-Prerelease-web.pdf, accessed February 17, 2025.

9. Available at <https://www.gov.br/mme/pt-br/assuntos/noticias/novo-pac-preve-investimentos-de-mais-de-r-300-milhoes-em-pesquisa-mineral#:~:text=O%20novo%20Plano%20de%20Acelera%C3%A7%C3%A3o,%C3%A0%20minera%C3%A7%C3%A3o%20sustent%C3%A1vel%20e%20segura>, accessed on February 17, 2025. Portuguese only.

10. Available at <https://www.sgb.gov.br/w/investimentos-de-r-271-milhoes-impulsionam-pesquisa-e-inovacao-cientifica-do-servico-geologico-do-brasil>, accessed February 17, 2025. Portuguese only.

Geological Survey of Brazil launches a geological mapping platform

At PDAC 2024, the SGB introduced its updated geologically mapping platform, which includes geophysical and geochemical information.¹¹ The system compiled information from more than 50 years of research, separated by survey cycle.

Data coverage is 27% of the country at a scale of 1:100,000 and 49% at a scale of 1:250,000. The information in the system will be updated over the course of the Ten-Year Plan for Basic Geological Mapping, a government initiative to expand and improve geological mapping in Brazil.

Regulatory measures

Pro-Strategic Minerals facilitates environmental permitting of critical projects

Pro-Strategic Minerals, the Policy to Support Environmental Licensing of Investment Projects for the Production of Strategic Minerals, was created by Decree 10.657/2021. Mining projects that meet the criteria under Pro-Strategic Minerals are eligible for support from the federal government to fast track the environmental permitting process.

Even when permitting involves a state environmental authority rather than the federal agency, Pro-Strategic Minerals can help by monitoring the progress of the permitting process, facilitating dialogue between stakeholders, and even by providing guidance in preparing the required documents. Some projects have already benefited from Pro-Strategic Minerals support, including copper, rare earth and nickel mines.

Lithium export restrictions lifted

Historically, Brazilian law limited the quantity of lithium-based materials that could be exported. Now, however, restrictions on exports of lithium-based products have been lifted in accordance with the National Mineral Policy, opening up the Brazilian market to investments in the lithium supply chain.

Government allows tax-advantaged debentures for mining projects

In March 2024, the criteria and conditions that investment projects must meet to be considered priority infrastructure projects eligible for financing through the issuance of tax-advantaged “incentive debentures” and “infrastructure debentures” were published under Decree 11.964. The Decree broke with the long-standing tradition of excluding mining from funding mechanisms that enjoy tax incentives and advantages.

The Ministry of Mines and Energy is in the process of issuing further rules for the issuance of tax-advantaged debentures for mining projects, and has opened a public consultation for sector players to submit comment on the draft rules. Although it is not yet possible for the mining sector to issue tax-advantaged debentures, the Ministry is expected to publish its rules in the near future.

Brazil's New Minerals Policy highlights the importance of strategic minerals

One of the principles of Brazil's new Minerals Policy, created by Decree 11.108/2022, is attracting investment in mineral exploration and other segments of the mining sector, and increased national competitiveness in the international market, pointing to a clear interest in developing strategic minerals production. The mission of the National Mining Agency (ANM – *Agência Nacional de Mineração*) is to carry out the Brazilian Mineral Policy, so the direction taken by the policy is especially important.

11. Available at <https://sgb.gov.br/pdac/>, accessed February 17, 2025.



The existing National Mining Plan highlights the importance of substances such as rare earths, and positioning Brazil as a global supplier of these elements. The draft of the new version of the Plan explains the investment guidelines for the sector in more detail, with an entire section dedicated to energy transition minerals alone.

Upcoming measures

National Energy Transition Policy

Resolution 05/2024 by the National Energy Policy Council – CNPE established Brazil's National Energy Transition Policy, and the main instrument for implementing the policy will be the National Energy Transition Plan. Although planning will be focused on the energy sector, inevitably the plan will touch on supply chains for products needed to manufacture solar panels, batteries and wind turbines. The mining sector is expected to benefit from the National Energy Transition Policy, in order to meet growing demand for minerals essential to sustainable energy alternatives.

National Policy on Critical and Strategic Minerals

Bill 2.780/2024, which is now before Brazil's Chamber of Deputies, proposes a National Policy on Critical and Strategic Minerals. In addition to creating a committee to debate issues and monitor implementation of the guidelines established by the policy, the Bill establishes principles for promoting these minerals.

The mining sector has been advocating for such a policy for years, and has made available extensive material to support the need for specific legislation to enhance the critical and strategic minerals segment.¹²

Priority authorization for minerals of national interest

Bill 571/2022 proposes mining authorization for minerals of national interest on an emergency basis where supply is insufficient to meet demand in Brazil. Authorization would be granted by Presidential decree, and would be possible even on indigenous lands, while environmental permitting for the authorized project would have absolute priority. The Bill is being fast-tracked through Congress.

Government to consider tax breaks for critical mineral projects

Although it is still in its initial stages, Bill 58/2024 proposes the creation of tax incentives for companies involved in the development of projects or goods and services that enable the sustainable extraction and use of critical minerals. The incentives would take the form of a reduced rate of tax on profits earned from these activities, with a view to fostering national competitiveness in the international market.

12. Available at https://ibram.org.br/wp-content/uploads/2024/07/Fundamentos_para_politicas_publicas_em_minerais_criticos_e_estrategicos.pdf, accessed February 17, 2025. Portuguese only.

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MINING AND THE NEW FRAMEWORK FOR BRAZILIAN CARBON EMISSIONS CONTROL

Critical minerals play a key role in the low-carbon economy. In Brazil, a law was enacted to regulate the carbon market, which will impact the mining sector.

On December 11, 2024, Law 15.042¹³ came into force, creating the Brazilian Greenhouse Gas Emissions Trading System (SBCE – *Sistema Brasileiro de Comércio de Emissões de Gases de Efeito Estufa*) and establishing the regulatory framework for control of GHG emissions in Brazil, under the cap-and-trade system.

The legislation affects large emitters (facilities and other sources of GHG emitting more than 10,000 tCO₂e per year), such as mining, transportation and logistics. A significant part of these industries has already included decarbonization goals in their production processes (Scope 1 and 2) and in their value chain (Scope 3) as part of their strategic planning.

Some highlights of the framework are:

The Brazilian Greenhouse Gas Emissions Trading System – SBCE

The SBCE is the regulated environment created to

- (i) limit GHG emissions by establishing environmental commitments and
- (ii) establish the rules for trading in assets representing GHG emissions allowances (CBE – Brazilian Emissions Quota¹⁴) or reductions in emissions or removal of GHG (Verified Reduction or Removal of Emissions – CRVE¹⁵).



13. Available at <https://www.in.gov.br/en/web/dou/-/lei-n-15.042-de-11-de-dezembro-de-2024-601124199>, accessed February 17, 2025. Portuguese only.

14. A tradeable asset representing the right to emit 1 tCO₂e granted by the SBCE management body, without charge or for value, to regulated facilities or emissions sources.

15. A tradeable asset representing the effective reduction or removal of 1 tCO₂e according to an accredited methodology, which is registered with the SBCE.

Obligations

Operators of facilities with emissions from 10,000 tCO₂e and 25,000 tCO₂e per year are required to:

- submit a monitoring plan to the SBCE's management body for review; and
- file an emissions and removals report.

Operators of facilities and sources with emissions over 25,000 tCO₂e per year are required to:

- comply with the emissions limit under the emissions quota (CBE); and
- file periodic emissions-carbon allowance reconciliation statements, showing the volume of emissions that had to be compensated by SCBE assets in order to meet the quota.

Interoperability between the SBCE and voluntary markets

Carbon credits issued in the voluntary market can be considered CRVEs and therefore part of the SBCE. Voluntary carbon credits must originate in methodologies accredited by the SBCE's management body and be registered in the SBCE's Central Registry.

The limit on purchases of carbon credits on the voluntary market will be fixed in the National Allocation Plan.

Tax breaks

SBCE assets and carbon credits have a number of tax advantages:

- the gross revenue taxes PIS/Cofins do not apply to the sale CBEs, CRVEs or carbon credits;
- expenses incurred to reduce or remove emissions, and administrative and financial expenses incurred to trade the assets (even if credits are later cancelled because they were used to compensate for GHG emissions), are deductible for corporate income tax (IRPJ/CSLL) purposes; and
- for individuals, the net gain on sales of securities on the stock market of up to BRL 20,000.00 per month is tax exempt.

Implementation of the SBCE

The SBCE will be phased in over six years. Monitoring obligations are expected to begin in the third year, in 2027, after the SBCE's governance structure is set up. Emissions limits should be in place by the fourth year, in 2029.

Regulations under Law 15.042/2024 are currently being drafted. Active participation by the private sector throughout the process of implementing the SBCE will be fundamental, through the SBCE's Permanent Technical Advisory Committee, which will include members of civil society, academia, and sector entities, and the Committee's Regulatory Matters Chamber.

ABOUT OUR MINING AND METALS PRACTICE

A holistic view of the industry, with a focus on regulatory complexities, market demands, and ESG concerns.

A pillar of the Brazilian economy, the mining and metals industry carries a significant degree of risk, stemming from the low conversion rate of exploration projects into mineral extraction operations, long return periods, substantial CAPEX investment requirements, and a variety of environmental and regulatory factors.

Beyond the risks inherent to the industry, the sector has undergone numerous transformations in recent years to align with ESG criteria, adding another layer of legal complexity.

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