



BRAZIL:

2024 MINING GUIDE

BRAZILIAN LAW OVERVIEW,
TRENDS, PERSPECTIVES
AND OPPORTUNITIES

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INTRODUCTION



Brazil is widely known as a major player in the global mining and metals industry, with an incredible range of natural resources and geo-diversity. From grassroots mineral exploration to world-class mineral deposits, foreign investors can find several interesting investment opportunities in Brazil that, combined with a strong domestic market, extremely qualified mining professionals and suppliers, abundant water and clean energy, makes Brazil one of the most attractive jurisdictions in the world to invest in for the global mining and metals industry.

In fact, according to World Mining Data 2023¹, Brazil is the only Latin American country to rank within the top 10 largest producers of mineral fuels, iron, ferrous and non-ferrous metals, precious metals and industrial minerals. It is the 9th largest producer in the world, coming in between Canada and Iran. Brazil is constantly improving its business and regulatory environment to further attract foreign investments in this industry which is so important to the Brazilian economy.

¹ World Mining Data 2022. Federal Ministry of Agriculture, Regions and Tourism of Austria, 2022. <https://www.world-mining-data.info/wmd/downloads/PDF/WMD2022.pdf>

Total Minerals Production 2021, by Country (by Production in metr. t)²

COUNTRY	TOTAL (INCL. BAUXITE)	IRON, FERRO-ALLOYS	NON-FERROUS METALS	PRECIOUS METALS	INDUSTRIAL MINERALS	MINERAL FUELS
CHINA	4 639 063 663	259 466 140	46 919 355	3 845	174 314 400	4 089 959 923
UNITED STATES	2 216 667 393	30 260 150	3 177 483	1 225	91 339 426	2 091 889 109
RUSSIA	1 676 162 754	59 782 705	5 388 230	1 700	37 565 412	1 566 859 707
AUSTRALIA	1 309 620 617	575 173 171	4 302 853	1 637	19 445 978	607 430 574
INDIA	1 124 985 677	159 168 500	5 048 520	648	56 400 057	881 874 005
INDONESIA	683 946 744	4 515 300	987 618	369	3 535 830	649 126 440
SAUDI ARABIA	635 880 724	288 700	1 096 805	19	16 741 000	612 266 200
CANADA	525 557 425	35 657 088	4 060 598	570	33 369 582	452 469 587
BRAZIL	504 344 435	274 447 385	1 295 508	174	16 526 806	176 124 962
IRAN	440 056 520	35 170 570	1 128 487	57	25 595 366	377 278 090

² World Mining Data 2022. Federal Ministry of Agriculture, Regions and Tourism of Austria, 2022. <https://www.world-min- ing-data.info/wmd/downloads/PDF/WMD2022.pdf>

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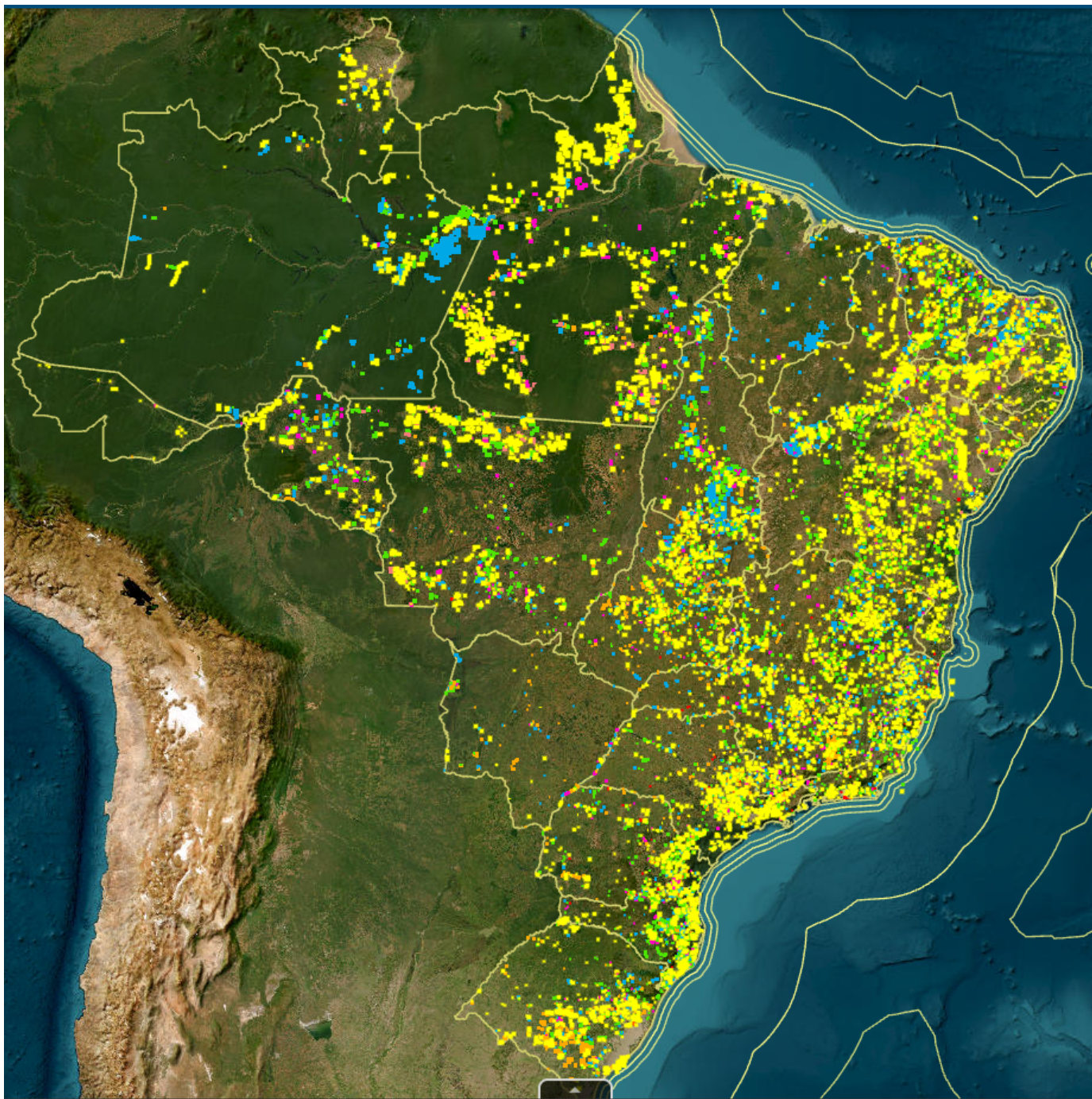
In 2017, the former Brazilian National Department of Mineral Production (“**DNPM**”) was transformed into a more politically independent National Mining Agency (“**ANM**”), which took over the responsibility for regulating, supervising, and promoting a mining investor-friendly environment in Brazil, by simplifying the regulations and improving transparency.

This transformation, along with an improvement in the regulator’s response time, also led to the offering of over 57,000 areas available at the agency’s portfolio. The ANM already carried out eight rounds of offering, collecting (only at the fifth round, an amount of US\$ 23 million).³ Until June 2024, ANM’s portfolio still had approximately 2.000 areas to be offered to mining players.⁴

3 Leilão de áreas para mineração arrecada R\$ 121 milhões. Agência Brasil, 2021. Available at <https://agenciabrasil.ebc.com.br/geral/noticia/2021-12/leilao-de-areas-para-mineracao-arrecada-r-121-milhoes>

4 Rodadas de Disponibilidade. Dashboard. Available at <https://geo.anm.gov.br/porta1/apps/opstdashboard/index.htm-1#/2706303fec9541bdafda-d76eb5c1da7f>

Stock of Areas for Availability (SOPLE)







Graphic subtitle

Stock of Areas
- Availability



Areas in Availability - Result

- | | |
|--|--|
|  Round 01 |  Round 02 |
|  Round 03 |  Round 04 |
|  Round 05 |  Round 06 |

Territorial Structure

- | |
|---|
|  State network |
|  Exclusive Economic Zone |

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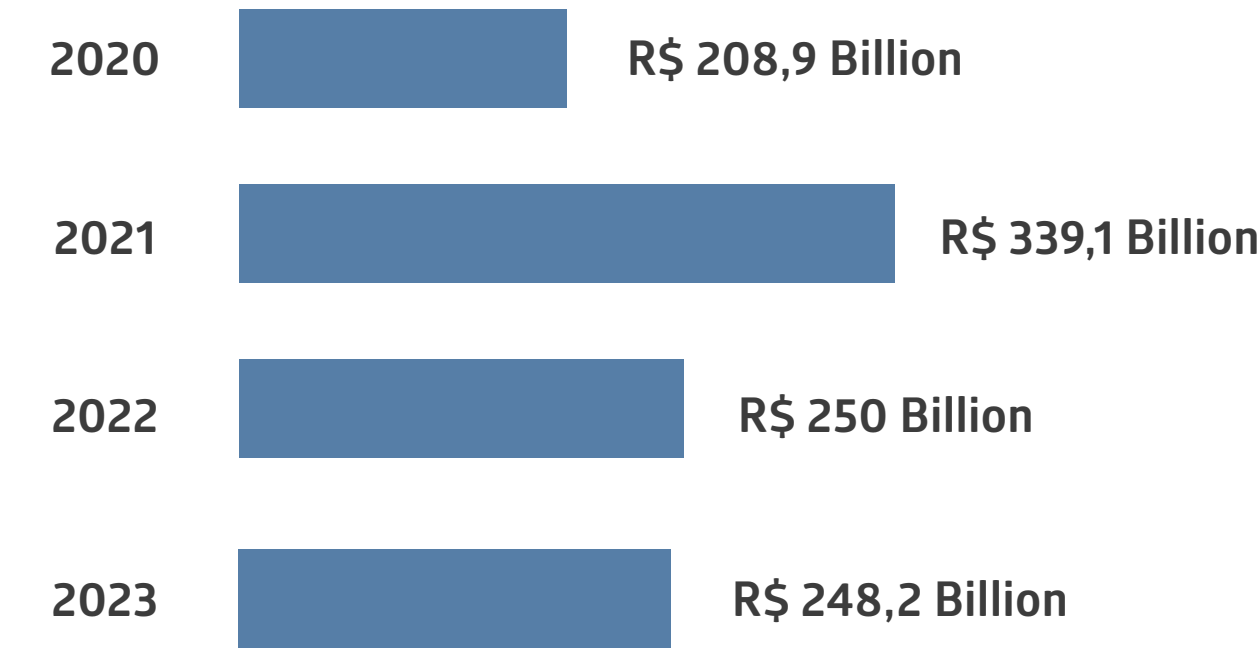
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Interest from mining players in these areas is noteworthy, growing from 33% in the first round to an average of around 50% over the next 3 rounds. ANM collected around US\$ 55 million with the first four rounds, showing that there are many opportunities to be seized.

According to the Secretary of Partnerships in Energy, Oil, Gas and Mining of the Special Secretariat of the Investment Partnerships Program, these data depicts the great interest of economic agents in new investment opportunities in mining. This will certainly result in an increase in Brazilian mineral resources and reserves and, therefore, in mineral production. In addition, it can be expected an increase in the offer of jobs and socioeconomic development for the country.

The recent changes in the Brazilian mining regulations, along with ANM’s enthusiasm for promoting a business-friendly environment with increasing legal certainty is helping to foster investments in the Brazilian mining industry.

The Brazilian Mining Institute (IBRAM)⁵ published the results of Brazilian mining production in recent years, clearly demonstrating the sector’s resilience.



The Brazilian mining and metals industry showed strong resilience, positive results and growth during the past few years. There are incredible investment opportunities available and a backlog of mining investments. For example, the Mineral Sector Bulletin of 2021⁶ reported that the known contained reser-

5 Mineral Sector 2023 – IBRAM. Available at: https://ibram.org.br/wp-content/uploads/2024/01/20240129_Press-Conference-Results-2023_.pdf. Accessed: June 3, 2024.

6 Mineral Sector Bulletin – 2021. Available at: https://www.gov.br/mme/pt-br/assuntos/secretarias/geologia-mineracao-e-transformacao-mineral/publicacoes-1/boletim-do-setor-mineral/boletim_sgm_dez2021_digi-

ves of copper add up to 11,212 ($\times 10^3$) t. When colliding this number with the gross production indicated in the 2020 mineral yearbook, which was slightly above 554 ($\times 10^3$) t, we reach the conclusion that known reserves of copper have a lifespan of just above 20 years. With an area of over 8.5 million km² and the granting of just 9,952 exploration permits⁷ in 2023, it is clear that Brazil has the geological potential to become an even greater player in the global mining and metals industry.

Brazil is a third of Latin America in whichever way, shape or form you slice and dice the numbers (population, territory, economy, etc.). More importantly, Brazil continues to be the largest Economy in Latin America.⁸ According to the International Monetary Fund – IMF⁹, the Brazilian gross domes-

tal_7-edicao.pdf/@@ download/file/Boletim_SGM_De2021_digital_7%20edi%C3%A7%C3%A3o.pdf

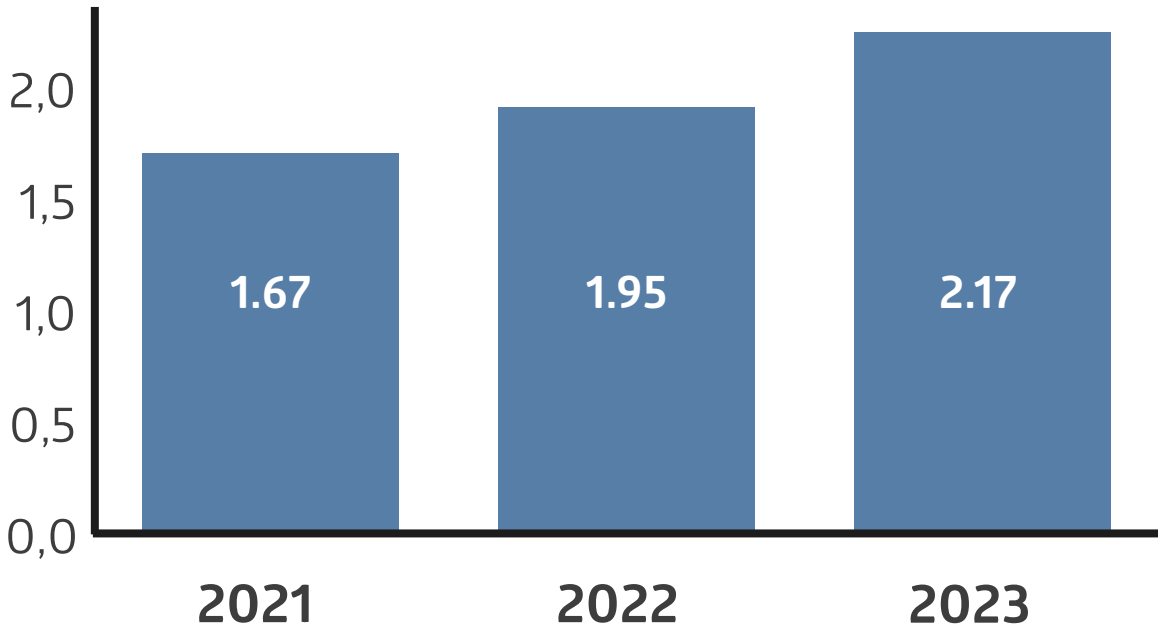
7 Mineração em Número. Agência Nacional de Mineração – ANM. Available at: https://www.gov.br/anm/pt-br/centrais-de-conteudo/mineracao-em-numeros/copy_of_estatisticas/atos-publicados/atos-publicados-no-dou_2023-mensal-ate-janeiro-de-2023.pdf.

8 The World Bank. GDP (current US\$) - Latin America & Caribbean, Colombia, Chile, Mexico, Peru. Available at: https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2020&locations=ZJ&most_recent_value_desc=true&start=1960&tt-start=2016&view=chart.

9 International Monetary Fund. Available at: <https://www.imf.org/en/Countries/BRA#countrydata>.

tic product (GDP – current prices) in the last three years demonstrated a continuous growth:

**Brazilian Gross Domestic Product (GDP)
(Trillion Dollars)**



Due to its abundant natural resources, Brazil’s economy is especially active in the agricultural, food, mining, steel, clean energy, and oil and gas industries, but it is also surging as a technology hub in the region and is commonly known as the pathway to Latin America for many companies around the globe.

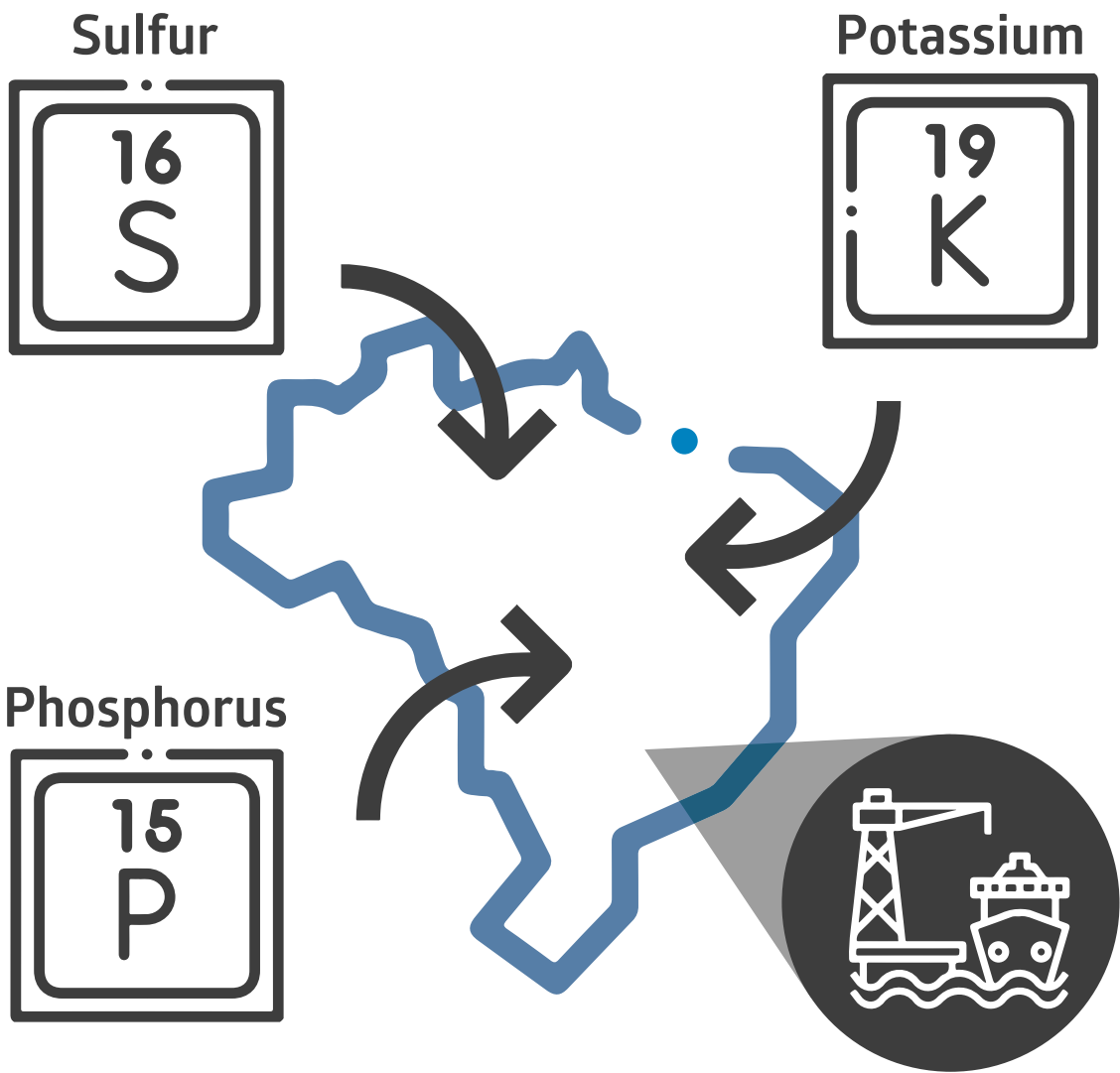
Recognizing this potential, the Brazilian government instituted the Policy to Support the Environmental Li-

censing for Strategic Minerals Projects “Pro Strategic Minerals”, through Decree no. 10.657/2021, aiming to create a supportive environment around those who seek to implement projects of strategic minerals for the development of the country. It organized strategic minerals into 3 groups:

-  (I) mineral goods in which the country highly depends on imports to supply vital sectors
-  (II) mineral goods that are important due to their application in high technology products and processes
-  (III) mineral goods with comparative advantages and that are essential for the economy due to surplus generation in the country’s trade balance

For that reason, Secretariat of Geology, Mining and Mineral Transformation of MME, published the Resolution no. 2/2021, that listed which minerals are those considered strategic for the country following the Policy criteria. Minerals with high dependence on imports, such as sulfur, phosphate and potassium stood out.

Minerals with high dependence on Imports



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As a result of the war on Ukraine, several countries have imposed economic restrictions on Russia, which affected Brazilian imports of fertilizers. Brazil is the fourth global consumer of those, rising to second place when it comes to potassium. Around 95% of the potassium used in the sector come from imports, being Russia responsible for providing 25% of this purchase.¹⁰ In due course, the government also released the National Fertilizer Plan, in partnership with the private sector, in order to reduce Brazil’s dependence on fertilizer imports, increasing national production.

Regarding potassium, a recent survey carried out by the Federal University of Minas Gerais¹¹ concluded that the country has potassium reserves with the potential to sustain agriculture until the year 2100. This highlights the high expectations of this mineral’s chain of value.

10 International Monetary Fund. GDP, current prices. Available at: <https://www.imf.org/external/datamapper/NGDPD@WE0/OEMDC/ADVEC/WEOWORLD/USA/BRA>

11 Reservas nacionais podem garantir Potássio até 2100, diz pesquisa, Minera Brasil, 2022. Available at: https://csr.ufmg.br/csr/wp-content/uploads/2022/03/click-petroleo_brasil-possui-reservas-de-potassio-ate-2100.pdf

In a similar context, also aiming to better position itself in the market for strategic minerals for the energy transition, the Brazilian government enacted the Federal Decree No. 11,120 in 2022, which eased the export of lithium ores and their derivatives.

Given lithium’s status as a strategic mineral, this relaxation of international transactions is of great interest to the country as it promotes competitiveness in the global market, increases investment attractiveness for our mining industry, and brings other domestic benefits such as job creation, royalty collection, and the development of the battery sector.

The Ministry of Mines and Energy’s Communications Office forecasts that, by 2030, the Jequitinhonha Valley region, which contains the majority of the known mineral reserves of lithium, will receive investments exceeding R\$15 billion.¹²

12 Cescon Barrieu. 2022. Available at: <https://www.cesconbarrieu.com.br/cesconbarrieuinsights/decreto-permite-operacoes-de-comercio-exterior-de-minerais-e-minerios-de-litio>

LEGAL SYSTEM AND FOREIGN INVESTMENTS IN BRAZIL



Legal System. Brazil is a Federal Republic, formed by the indissoluble union of 26 states, the Federal District (Brasilia, founded in 1960), and 5,564 municipalities. Every state has the power to adopt its regulations and laws (mainly local tax and administrative law), although their legislative autonomy is limited by the principles and rules established by the Federal Constitution. Municipalities are also subject to restricted autonomy and their legislation must follow the dictates of the State and Federal Constitutions.

The laws governing mining activities are found in federal legislation, which include the Brazilian Mining Code and, from a foreign investment perspective, the Foreign Investment Rules and Regulations. Other federal, state and municipal legislation also applies with respect to taxation, environmental and administrative matters.

As a civil law jurisdiction, Brazil’s judiciary is organized into the federal and state branches. Court decisions are based on the application of the laws in force in Brazil, most of which are federal; where there are no specific legal provisions relating to a situation, the courts decide the case based on analogy, usage and custom, and general principles of law (judicial precedent has an important role in court decisions but does not have the same status as in common law jurisdictions).

The legal structure of a mining project in Brazil, like in many other countries, can take a variety of forms to achieve the needs of a particular project or investment. Except for the prospecting, mining, and reprocessing of nuclear ores, which is considered a monopoly under the Brazilian Government control, the exploitation of other mine-

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ral resources can only be carried out by private parties, provided that they are Brazilian nationals or entities incorporated in Brazil (which can be foreign controlled).¹³

The acquisition of mining rights is conducted through an administrative procedure, carried out by ANM. In Brazil, the adopted jurisdiction system includes the judicial review of administrative actions, according to which the Judiciary is the only one capable of producing definitive decisions. In other words, all administrative decisions can be subject to appeal, so that if the party does not agree with any decision, it may appeal until the exhaustion of administrative jurisdiction, and then, it may subject the matter to a legal court.

Generally, local and foreign investors are treated equally under Brazilian law. For instance, Brazil’s Federal Constitution treats local and foreign investors equally. There are no restrictions for companies controlled by foreign capital developing mining activities in Brazil, as long as they are incorporated under

¹³ Article 176 of the Brazilian Constitution.

Brazilian law and that the mining site is not located in border zones¹⁴. Furthermore, several tax benefits are available solely to foreign investors, such as tax exemptions or reduced rates for income taxes.¹⁵

Seeking to improve the regulatory framework and therefore the business environment, ANM issued its first regulatory agenda in compliance with the new Law of Agencies. The regulatory agenda is a tool to give predictability to the sector through the listing of the priority themes to be regulated for a given biennium. In addition, on August 17, 2020, the Brazilian government launched a national plan for economic recovery after the effects of covid-19 pandemic, aiming to foster foreign investment by increasing go-

¹⁴ Along with the fact that mining is considered a national policy matter, the Brazilian legislation provides special restrictions to mining activities within the so-called Brazilian border zones. It states that mining companies with operations within 150 km from the Brazilian border zone must have (i) at least 51% of its capital owned by Brazilians; (ii) at least 2/3 of employees as Brazilians and (iii) the management done mostly by Brazilians.

¹⁵ For example, we have portfolio investments under CVM Resolution 4,373 providing reduced tax rates for capital gain recognized and exemption to dividends paid abroad. As well, we point out the FIP (Private Equity Funds) which has an income tax exemption for income paid abroad, as long as the foreign party does not control over 40% of the fund. Specific benefits such as SUDENE, SUDAN and REID may also be available depending on the business sector and location of the investment in Brazil.

vernment transparency and regulatory certainty.¹⁶

Foreign investments in Brazil. According to the Direct Investment Report of Brazilian Central Bank¹⁷, by the end of 2022, the Direct Investment Position (DIP), meaning the passive position of direct investment, reached the highest value ever recorded, surpassing the US\$1,1 trillion mark.

Confirming the positive outlook for the country's post-pandemic economy, Brazil ranked 22nd in the 2022 Kearney FDI Confidence Index as one of the markets likely to attract the most investment over the next three years.¹⁸ In addition, the Brazilian mining sector is expected to receive US\$ 41,3 billion in investments by 2025.¹⁹

¹⁶ “Plano Nacional de Investimentos prevê ações até 2022 para retomada da economia. Ministério da Economia”, 2021. <https://www.gov.br/economia/pt-br/assuntos/noticias/2020/agosto/plano-nacional-de-investimentos-preve-acoes-ate-2022-para-retomada-da-economia>

¹⁷ Relatório de Investimento Direto 2023. Banco Central do Brasil. Available at: <https://www.bcb.gov.br/publicacoes/relatorioid>

¹⁸ A.T. Kearney. The 2022 Foreign Direct Investment Confidence Index. Available at: <https://www. Kearney.com/service/global-business-policy-council/foreign-direct-investment-confidence-index/2022-full-report> .

¹⁹ “Destaque: os planos de investimento até 2025 das mineradoras no Brasil.” BNAméricas, 2022. <https://www.bnamericas.com/pt/noticias/destaque-os-planos-de-investimento-ate-2025-das-mineradoras-no-brasil>.



22ND

IN THE 2021 KEARNEY FDI CONFIDENCE INDEX AS ONE OF THE MARKETS LIKELY TO ATTRACT THE MOST INVESTMENT OVER THE NEXT THREE YEARS

US\$ 41,3
BILLION

EXPECTED IN INVESTMENTS IN THE BRAZILIAN MINING SECTOR BY 2025

Foreign investments in Brazil are regulated by Law no. 4,131 amended by Law no. 14.286 (known as the “Foreign Capital Law”)²⁰ which requires that they be registered with the Central Bank²¹ to ensure foreign remittance of profits and/or interest on

²⁰ Law no. 4,131/1962, which was regulated and amended by Law no. 4,390/1964, Decree no. 55,762/1965, Decree-Law no. 37/1966, Decree-Law no. 94/1966, Law no. 8,383/1991, Law no. 8,685/1993, Law no. 9,069/1995 and Decree-Law no. 2,073/1983 (Lei N° 4.131, Brasil, 3 de setembro de 1962, Palácio do Planalto, online: http://www.planalto.gov.br/ccivil_03/leis/L4131.html).

²¹ The registration of foreign capital with the Central Bank of Brazil (Banco Central do Brasil or BACEN) is provided for by Law 4,131/1962 and Law 4,390/1964, which guarantees equal treatment of foreign and national capital (Ibid; Lei no. 4,390, Brasil

29 August 1964, Palácio do Planalto, online: https://www.planalto.gov.br/ccivil_03/LEIS/L4390.html.

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equity, repatriation of foreign capital invested in Brazil and reinvestment. In addition, within 30 days of closing the exchange contract, capital remittances must be registered with the online Brazilian Central Bank electronic system RDE-IED (“Registro Declaratório Eletrônico de Investimentos Estrangeiros Diretos”).²² Foreign capital may take the form of cash, goods, services or intangibles, with investments in cash being the simplest and most common form of initial investment.²³

According to the Foreign Capital Law, foreign capital includes any goods, values, rights and assets of any nature held in the national territory by non-residents. It also includes any funds brought into Brazil to be used in economic activities or owned by individuals or companies that reside or are headquartered abroad.

22 The Brazilian Central Bank is responsible for the registration and monitoring of foreign investments in Brazil. The Ministry of Finance is responsible for monitoring tax issues relating to foreign investments in Brazil.

23 A foreign creditor can convert into foreign investment the amounts due by Brazilian companies which can then be remitted abroad according to Brazilian laws. The profits and/or interest on equity payable to the foreign investor may also be reinvested in the same Brazilian company or in a third Brazilian company.

The remittance of profits to non-resident foreign investors must comply with the requirements set forth by the Central Bank - which is also responsible to regulate and monitor Brazilian capital abroad and foreign capital in the country, their flows and stock.²⁴

Investments in the capital market by individuals or legal entities that are non-residents of Brazil are also subject to registration with the Brazilian Central Bank as well as with the Brazilian Securities Commission (CVM).²⁵

24 Law No. 14.286, article 10.

25 Non-resident investors (individuals or legal entities) may invest their funds in the same financial and capital market instruments and operational modalities available to resident investors. See CVM Resolution 560/15, CMN Resolutions 4,373/14 and 2.687. For additional information please see generally ANBIMA, “Non-Resident Investors Guide” ANBIMA (July 2016), online: <http://www.anbima.com.br/data/files/4B/65/20/1C/F29D-851093995C8569A80AC2/Non-resident-Investors-Guide.pdf>

THE BRAZILIAN MINERAL EXPLORATION AND MINING INDUSTRY



Mining activities are the foundation of the production chain, providing the materials required to build, maintain and improve the infrastructure and objects we use in our everyday lives. Once a geological discovery is made, several studies and assessments must be conducted to evaluate the economic potential of the discovery, its social and environmental impacts, as well as the necessary logistics and infrastructure before developing and operating a mine.

These studies and assessments can lead to the completion of a definitive feasibility study, the construction and operation of a mine, and eventually the mine closure, along with the degraded area recovery. In each of those phases, there are several technical, economic and social challenges that require substantial investment to turn a geological discovery into mineral production.

There are also several stakeholders involved in each of these phases: the explorer or miner, the communities located in the neighboring areas, the governmental and supranational authorities, national and international institutions and associations, financial institutions, logistics operators, buyers (or consumers), etc. This section provides a general overview about the Brazilian mineral exploration and mining regulatory framework.

World-renowned for its incredible natural resources and for having the largest economy in Latin America, as shown before, Brazil has extremely rich mineral deposits and provides an excellent environment for foreign investments, particularly in the mining industry. The Brazilian Constitution treats mining as a national policy matter, that must be carried out with the national interest in

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mind. The Brazilian federal government has the jurisdiction to control, regulate and grant the rights to explore and exploit Brazil’s mineral resources.²⁶ Accordingly, the Brazilian Constitution states that all mineral resources are owned by the federal government and that these are distinct from land ownership.

In other words, the subsoil and soil are subject to distinct legal treatment, and the holder of a mineral exploration license or a mining concession has the right to conduct mineral exploration activities or mining activities even where there is a dispute with the landowner. Due to this distinction under Brazilian law, the mining rights holder has guaranteed access to the area covered by the title, provided that the landowner gets compensated for its usage.³⁵²⁷

26 The Brazilian Federal Constitution of 1988 states that the “mineral deposits, under exploitation or not, and other mineral resources and the hydraulic energy potentials form, for the purpose of exploitation or use, a property separate from that of the soil and belong to the Union, the concessionaire being guaranteed the ownership of the mined product”. Constitution of Brazil, art 176.

27 Brazilian Mining Code. Please note that generally the compensation payable by the mining rights owner to the landowner for the use of its land is half of the royalty payable to the Brazilian Government and compensa-

The constitutional system governing mineral deposits and the regulations on mining in Brazil establishes a special legal framework that protects the mining company (which invested resources in order to discover the mineral deposit), the state, the citizens, local communities, the environment and the landowner. Despite the government’s ownership of the resources, the product of the mining belongs to the mining rights holder.

As mining is treated by the Brazilian Law as a national policy matter, the power to regulate the sector is held exclusively by the federal government, which applies its control through a system of authorizations, concessions, licenses and permits established in the Brazilian Mining Code, which is periodically reviewed and amended.²⁸ The state and municipal governments have supplementary authority to regulate certain aspects of mining, such as matters related to the environment and zoning, and other aspects related to planning, implementation, operation, safety, tax and the decommissioning of tailings dams.

tion for any damage and loss caused or that may be caused as a result of such activities.

28 Decree-Law no. 227/1967.

The regulatory control of the exploration and mining industry in Brazil is carried out by the Brazilian Ministry of Mines and Energy (“MME”), which is responsible for regulating, granting, monitoring, overseeing and sanctioning activities within the mineral exploration and mining industry. These responsibilities are exercised through the ANM, a special independent federal agency under the MME, which administrative and financial independence was established with the modernization of the Brazilian Mining Code in 2017.²⁹

In addition to the Constitution and the Mining Code, the main federal legislation that governs exploration and mining activities in Brazil are:

LEGISLATION	PURPOSE
Law no. 13,575/2017	Created the National Mining Agency – ANM and extinguished the old National Department of Mining – DNPM.
Law no. 6,567/1978	Regulated the Licensing System.
Law no. 7,805/1989	Created the small-scale independent mining permit.
Law no. 8,176/1991	Defined illegal mining as an economic crime.
Law no. 7,990/1989	Created the Financial Compensation for Exploiting Mineral Resources.
Law no. 8,001/1990	Regulated the Financial Compensation for Exploiting Mineral Resources.
Law no. 13,540/2017	Altered the Financial Compensation for Exploiting Mineral Resources regulation.
Law no. 12,334/2010	Created the National Policy for Dam Safety, updated through Law n. 14,066/2020.
Law no. 14,514/2022	Addresses the encumbrance of mining titles, the exploitation of nuclear minerals by private parties, and the declaration of availability of resources of the miner.

²⁹ Law no. 13.575/2017 created the ANM and Decree no. 9.587/2018 installed ANM

Along with these main federal laws, there is a wide range of administrative rules, ordinances, and regulations, mainly issued by the ANM (and its predecessor DNPM) and the MME. Main regulations include:

Ordinance 155/2016	Consolidation of ANM normative acts;
Resolution 1/2018	Regulates the exploitation system known as extraction;
Decree 9,406/2018	Amended by Decree 10,965/2022 (Regulates the Mining Code);
Resolution 24/2020	Regulates the mining rights availability procedure;
Resolution 68/2021	Regulates the Mining Closure Plan;
Resolution 85/2021	Regulates the procedures to reuse mining waste;
Resolution 90/2021	Regulates the offer of mining rights as collateral for financing operations;
Resolution 94/2022	Regulates the Brazilian System of Resources and Reserves;
Resolution 95/2022	Consolidates the normative acts that deal with the safety of mining dams;
Resolution 102/2022	Bylaws of ANM;
Resolution 119/2022	Creates REPEM, an electronic system for exploration application;
Resolution 120/2022	Regulates the annual fee per hectare (“TAH – Taxa Anual por Hectare”);
Resolution 122/2022	Regulates the sanctions for non-compliance to mining norms;
Decree 11.310/2022	Regulates the National Dam Safety Policy – Law no. 12,334/2010;
Resolution 129/2023	It establishes rules to combat money laundering and the financing of terrorism and the proliferation of weapons of mass destruction.
Resolution 155/2024	Regulates the granting of installment payments for credits of the ANM before their registration as active debt.

A considerable change, especially for the regulated sectors, was the enactment of **Law no. 13,874/2019, called the “Economic Freedom Law”**. This law established that in given situations, after a term without a formal answer of the government entity, some applications and requests would be considered tacitly (automatically) approved. This tacit approval was recently reaffirmed by the changes in the Regulation of the Mining Code, that provided for the tacit approval for reuse of tailings requirements.

As of December 2021, meaningful economic aspects of mining were regulated by ANM through the entry into force of **three Resolutions**.

The first was Resolution ANM No. 85/2021 that regulated the exploitation of mining tailings and waste. Its entry into force was the sum of efforts held by ANM and stakeholders to encounter a solution to the sustainable management of tailings and waste.

As the matter was surrounded with legal uncertainty (once there were reasonable doubts con-

cerning to whom would fit the rights to reuse that material), and giving that the mining activity is expensive, the regulation came in hand and was able to bring a direction to the sector in finding solutions to sustainably manage this material.

Two main aspects of the Resolution are worth highlighting, the first concerns the linkage between the waste and the mine in which it was generated, even though being deposited outside its polygon, and the second concerns the fact that it is not necessary to obtain a new mining right to exploit that material. However, the title holder must fulfil some requirements to be entitled to exploit under this system. If not complied with, the exploitation is subjected to the regular legal regimes for mining.

The other is Resolution ANM no. 90/2021 that established the cases in which mining rights can be given as collateral on financing operations for mining and the requirements and conditions for the assignment of these titles. The regulation authorized the use as collateral of the mining concessions and the mining claims and, in both cases, the en-

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cumbrance must be requested before ANM with the financing agreement in which the mining right was granted as collateral.

In addition, it establishes the duties of the titleholder during the term of the encumbrance and when it would be written off. Once again, it depicts a path towards legal certainty and a friendly environment for investors.

Due to the previous understanding adopted by ANM that only mining concessions could be given as collateral, the Mining Code was altered in 2022 to allow all legal regimes of mining rights to be given as collateral to financing transactions. The security interest may be created by means of a pledge, fiduciary transfer for security purposes or any other contractual arrangement agreed upon by the parties considering the specifics of the transaction.

Thus, although ANM Resolution 90/2021 does not establish the procedure for the encumbrance of mining rights other than mining concessions,

there is no longer doubt that the encumbrance is possible, due to the recent amendment in the Mining Code.

The current regulation provide that security over mining claims (“*manifestos de mina*”) must be granted by means of a public deed or instrument, whereas security over mining concessions (“*concessão de lavra*”) may be created by means of private instruments. The lien must then be registered with the ANM, which is made by means of an online procedure.

The security agreement must disclose the name of the secured creditors, the debtors and the security providers; the amount of the secured transaction, its interest rate and payment terms; the mineral right given as collateral and the purpose of the financing operation. Current regulations allow the secured creditors to request to the ANM financial and operational information on the mining rights given as collateral.

In case of enforcement of the security interest, the secured creditor is obliged to sell the mining rights to a third party, by means of a public or a private sale. The sale must be reported to the ANM and its effects will be conditioned to ANM's consent. The new owner of the mining rights (i) must be a company headquartered in Brazil and (ii) assumes the legal position of the previous holder (the original security provider), including the responsibility for any debts relating to the period prior to the foreclosure (however, the previous owner is jointly and severally liable for those debts). Parties may contractually agree on redress rights, which however are not enforceable vis-à-vis third parties, such as the ANM.

Moving forward to 2022, another change implemented by ANM was the **publication of the Resolutions ANM no. 94, 95, 102 and 122.**

The first one, Resolution ANM No. 94/2022, regulated the Brazilian System of Resources and Reserves.

It was published on February 7, 2022 and came into force on August 07. It is expected that the regulation brings even more legal certainty and transparency

regarding the publicity of the mining exploration results. Alongside with the use of mining rights as collateral regulation, it is unarguably a powerful tool to foster the Brazilian mining sector.

The second one, Resolution ANM No. 95/2022, consolidated dam safety standards, unified normative acts related to the matter and revoked prior regulation. Moreover, the Resolution provided for the innovations brought by Federal Law no. 14,066/2020, as will be discussed later in this guide. The Resolution brought significant changes regarding the automatic classification of mining dams in an emergency situation, with the main purpose of regulating the dams through the adoption of effective safety measures by the owners. Hypothesis of embargoes, suspension and interdiction are also included in the Resolution.

The third one, Resolution No. 102/2022, amended the by-laws of the ANM and reorganized the agency's structure and modernized its branches with clearer hierarchy, competences and centralization of strategic decisions, which was a way to bring

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more certainty, especially in such a large country as Brazil.

Finally, the **Resolution ANM No.122/2022** established the procedures for ascertaining the infractions, sanctions and amounts of fines imposed as a result of non-compliance with the obligations set out in the mineral legislation. Now, the amounts of fines can reach up to 1 billion BRL.

In addition, **Law No. 14,514/2022**, published in December 2022, amended the Mining Code to allow mining rights, regardless of their phase, to be encumbered and offered as security by their holders. This change, as explained above, is expected to encourage and facilitate the acquisition of resources by entrepreneurs in the sector.

Another important change introduced by Law No. 14,514 concerns the possibility for entrepreneurs to declare their commitment to seek financing necessary for the compliance with the Economic Operational Plan (*Plano de Aproveitamento Econômico - PAE*) and the operation of the mine, as an alternative to immediately proving the availability

of funds, as previously required by Article 38, VII of the Mining Code (Decree-Law 227/1967).

In 2023, **Resolution ANM No. 129** was promulgated, aimed at preventing money laundering, terrorism financing, and the proliferation of weapons of mass destruction. The primary objective of this regulation was to introduce new tools that enable ANM and other regulatory bodies to exercise effective control in combating the laundering of gemstones and precious metals, with the aim of preventing illicit activities in the mining sector.

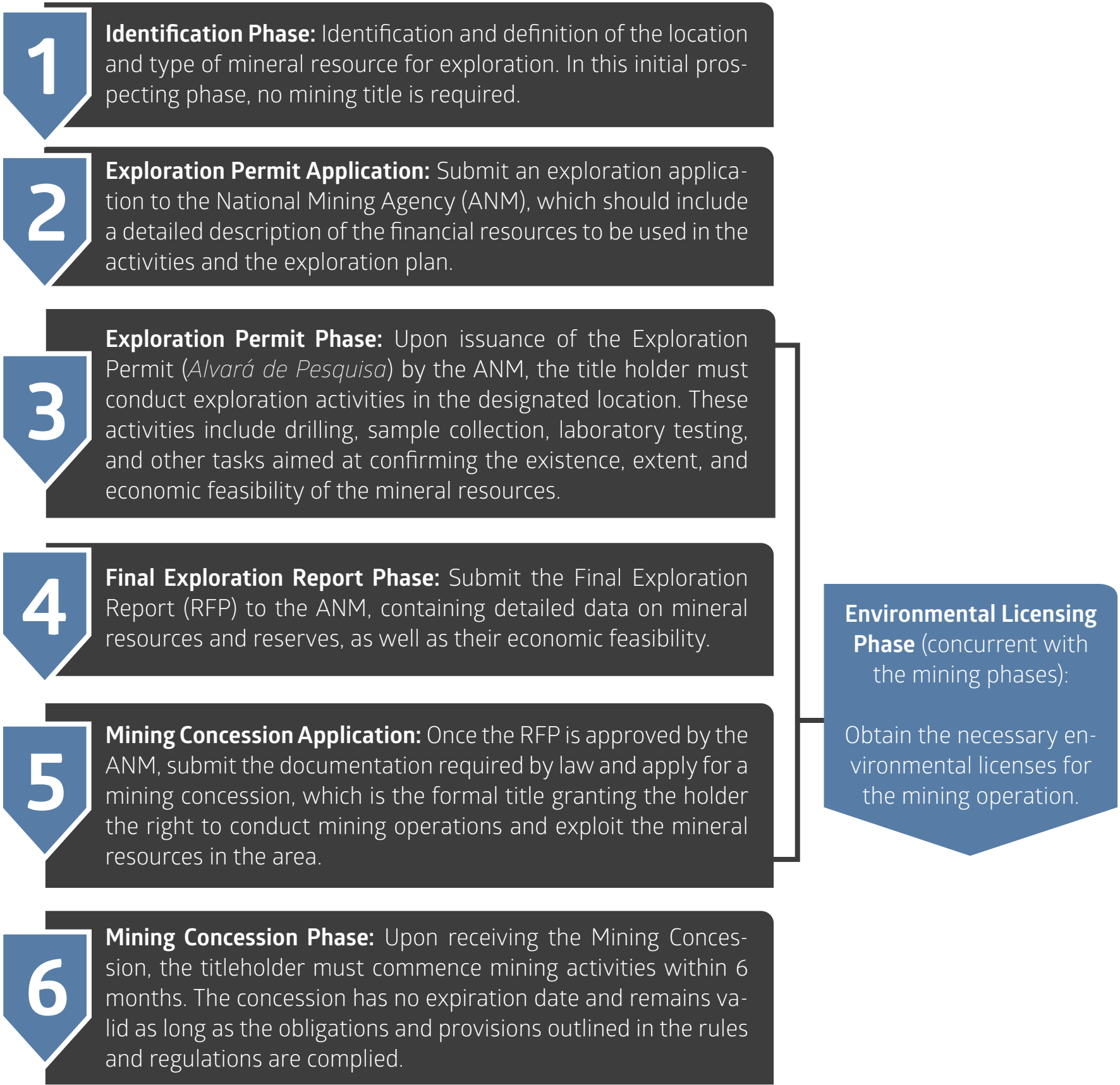
It is noteworthy that, despite the Resolution being published only in 2023, ANM had already been actively engaged in promoting various projects geared towards combating illegal mining and associated crimes.

Furthermore, it is emphasized that the Federal Government has been adopting measures to restrict the trade of gold sourced from illegal mines, as a means of deterring such activities. One of the measures currently under consideration by the government is the requirement for gold transportation

to always be accompanied by an electronic invoice. This measure is justified by the fact that the electronic invoice would facilitate the implementation of metal traceability and the identification of its origin. Presently, the law only mandates the use of a traditional invoice and a copy of the mining authorization title.

Lastly, another significant regulation enacted in 2024 was Resolution ANM No. 155/2024, which governs the granting of installment payments for ANM credits before their registration as outstanding debt. This regulation updated the previous rules on debt installments under the ANM and aims to reduce the need for judicial enforcement by the agency, while assisting miners in settling their debts.

Mining Rights & Surface Rights in Brazil



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Before carrying out mineral exploration or mining activities in Brazil, it is necessary to first obtain an exploration license, followed by a mining concession from the Brazilian government, represented by the ANM. To this end, an exploration license application or a mining concession application must be filed with the agency, which will evaluate if the application fulfils the necessary legal and technical requirements.

An exploration license (“*Alvará de Autorização de Pesquisa*”) regulates the stage of mineral exploration activities. After the recent amendment promoted in the Mining Code by Law no. 14.514/2022, exploration licenses are granted for a period for up to four years and may be extended by the ANM at its sole discretion, if requested by the holder. The extension of the original term of the exploration license must be requested by the holder at least 60 days prior to its expiration.

At the end of the exploration license term, a report of the work performed must be submitted to the ANM (the Final Mineral Exploration Report), which

must be approved or rejected by the ANM in the following cases:

- a) Proved the technical-economic feasibility of the mining, it shall be approved, resulting in the right to apply for the mining concession;
- b) Concluded by the inexistence of a deposit, the report must be filed by ANM, leaving the area available for future exploration applications;
- c) If there is evidence of insufficient exploration work or technical deficiency in its preparation, the report will be rejected by ANM;
- d) If the report concludes that there is temporary impossibility of the technical-economic feasibility of the mining, the decision about it will be suspended.

There is a penalty if the holder of the exploration license does not file the Final Mineral Exploration Report, as foreseen on Regulation 122/2022, and the area will also be submitted to the availability procedure.

The holder must carry out all exploration activities necessary to determine the existence and extent of a mineral deposit and define the technical and economic feasibility to explore said deposit. The exploration license can be assigned to a third party if the assignee fulfils the legal requirements of the original authorization and is approved by ANM.

The mining concession (“*concessão de lavra*”) is applicable to and regulates the exploitation stage. Following approval of the Final Mineral Exploration Report, the holder of the exploration license has the exclusive right to apply for the mining concession, which must be exercised or negotiated within a period of one year and may be extended for a further year at ANM’s sole discretion. The mining concession is granted for an indefinite period.

The granting of a mining concession is subject to the fulfilment of following conditions, but not limited to: exploring the area, obtaining an approved Final Mineral Exploration Report and ensuring that the area will be adapted to the technical and economic conditions necessary for carrying out

the mining operations and related works, in accordance with what was established under the Economic Operational Plan (*Plano de Aproveitamento Econômico*, the “**PAE**”) related to the concession.³⁰ The PAE must be submitted by the holder together with its application for the mining concession.³¹

An application for a mining concession includes the PAE, which contains a mining operational plan and an economic feasibility analysis, which may be prepared by the applicant. While ANM may request additional information, the main information required is as follows:

- (i) certificate of incorporation of the company;
- (ii) description of the minerals (quality, reserve calculation, volume, density, etc.) and an indication of the exploration license and the approved technical report;

³⁰ Essentially, the two reports may be seen as a feasibility study.
³¹ The PAE must contain a detailed description of the project and all technical and economic information defined by article 39 of the Mineral Code (Decreto-lei nº 227/67, Brasil 28 February 1967, Planalto, online: http://www.planalto.gov.br/ccivil_03/decreto-lei/Del0227.htm).

(iii) description and information related to the area and the main aspects of the deposit (maps, plants, roads, railways, rivers, topography, neighboring areas, surface landowners, etc.);

(iv) graphic definition of the area;

(v) areas in which a mining easement (*servidão mineral*) shall be instituted;

(vi) the PAE; and

(vii) proof of financial capacity required to carry out the mining.

After a mining concession is published in the official gazette, the mining company has 90 days to request possession of its respective mineral lode or deposit, and six months to start the preparatory work for commencing mining activities, as established in the PAE. Once mining has commenced, it cannot be interrupted for a period of six consecutive months. The mining company must file detailed annual mining reports with ANM. To exploit the mine, an ope-

rating license from the applicable environmental authority(ies) must also be obtained.

Throughout this process, the surface rights remain on the hands of the landowners, who can also be the owner of the respective mineral rights, and are typically farmers, ranchers or companies.³² In the event that the mining company does not hold the title to the underlying surface rights (nor the property of the land itself), the surface rights must be

³² Please note that there are some restrictions regarding the acquisition of a rural estate property in Brazil; for example, a foreign non-resident in Brazil or a foreign company authorized to operate in Brazil cannot acquire a rural property or a property that borders other countries, on a coastline or in areas considered to be national security areas. According to a 2010 binding legal opinion issued by the Federal Attorney General's Office ("Advogado Geral da União – AGU") interpreting the applicable regulation, the direct or indirect transfer of rural properties to a Brazilian company of foreign capital must be previously authorized by Brazil's National Institute of Rural Settlement and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária, "INCRA") and is subject to certain restrictions/limitations (although one can argue the constitutionality of such restriction). See Constitution of Brasil, supra note 11 at art 190, 20 para II as revised by Emenda Constitucional 46/05, Brasil 5 May 2005, JusBrasil, online: <http://presrepublica.jusbrasil.com.br/legislacao/96718/emenda-constitucional-46-05>; Lei nº 5.709, Brasil 7October 1971, Palácio do Planalto, online: http://www.planalto.gov.br/ccivil_03/leis/L5709.htm and its regulatory decree Decreto No 74.965/74, Brasil 26 November 1974, JusBrasil, online: <http://presrepublica.jusbrasil.com.br/legislacao/114840/decreto-74965-74>; Lei nº 6.634, Brasil 2 May 1979, Palácio do Planalto, online: http://www.planalto.gov.br/ccivil_03/leis/L6634.htm.

individually negotiated to allow the holder of an exploration license or a mining concession to access the land and conduct exploration and/or mining activities. The landowners are obliged by law to provide access to the exploration license holders to conduct the exploration works. If the parties cannot reach an agreement by mutual negotiations, there are legal mechanisms to enforce the entry of the miner in the land.

Accordingly, the acquisition of mining rights in Brazil may occur originally, by means of the assignment or lease of the mining rights:

- **Original Acquisition of Mining Rights.** Mining rights may be acquired originally, upon an administrative procedure with ANM and according to the principle of priority, under which the first applicant has assured priority to obtain exploration rights over an clear area if the other applicable requirements are met (first-come, first-served principle). ANM also conducts bidding processes for areas in which there is a certain level of geological information allowing the agency to put

such areas up for bidding. This is a fairly new process within ANM and is valid only for those areas in which ANM has declared the availability of the area, and, through a competitive process, has put said area up for bidding⁴¹. This procedure is opposed to the Principle of Priority, since it is applicable to those cases in which the title was lost or waived without being assigned to a new holder. Although in these occasions a bidding procedure will take place, if the area is not auctioned, it will return to the initial stage in which the first-come, first-served principle guides the acquisition.

- **Assignment of Mining Rights.** The assignment of mining rights, according to the Mining Code, is subject to the authorization of ANM, and it is not allowed prior to the granting of an exploration license. The documents which must be submitted with the request for the assignment vary according to the mineral rights phase. For instance, for the partial or total assignment of an exploration license, the application must include:

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- proof of the financial capacity of the assignee, as well as public or private instruments providing for the assignment; and
- corporate documents including proof of power of the representatives and proof of payment of the relevant fees.

It should be noted that the request for the assignment does not interrupt the legal term for the presentation of the application for an exploitation authorization (one year from the approval of the respective Report). The assignment of mineral rights located within the Brazilian border zones is subject to prior approval from the National Defense Counsel (CDN), and failure to comply with this requirement will nullify all contracts, acts and/or transactions.

- **Lease of Mining Rights.** In addition to the original acquisition and assignment of mining rights, and subject to the authorization of ANM, mining rights may be leased to third parties without the definitive assignment of the mining rights. The

documents which must be submitted with the request for the lease of mining rights include:

- the lease agreement; corporate documents (as applicable);
- a new plan for the exploration and/or exploitation of the deposit with a compliance commitment from the lessee;
- a declaration from the lessee with regards to the environmental recovery of the area; proof of the lessee’s financial capacity; and other documents.
- The product of the exploration is accepted as a means of payment for the lease, with or without preference in the acquisition in favor of the title-holder.

Brazilian Mineral Exploration And Mining Regimes

The governing legislation provides that only Brazilians and mining companies incorporated under Brazilian law, headquartered and managed in Brazil may hold mining rights, which are issued by the federal government following the procedures regarding one of these regimes:

-  (I) exploration license (autorização de pesquisa)
-  (II) mining concessions (“concessão de lavra”) or mine manifest (“manifesto de mina”)
-  (III) mining licensing (licenciamento mineral)
-  (IV) small-scale independent mining permits (permissão de lavra garimpeira)
-  (V) monopoly (monopólio)

Exploration License and Mining Concessions

Exploration licenses and mining concessions are two separate regimes in Brazil. The exploration license consists in an authorization to conduct mineral exploration activities within a certain area; they are valid for up to four years and can be extended for the same period at ANM’s discretion, according to the recent amendment promoted in the Mining Code by Law no. 14.514/2022. As a general rule, the holder of an exploration license is not allowed to exploit the deposit, however, in exceptional cases, the holder may apply for a special permit to operate a small-scale mining operation, or as some prefer, to obtain a trial mining permit.³³

Requirements for Conducting Mineral Exploration in Brazil

Mineral exploration comprises the activities necessary for measuring, evaluating and delineating

³³ Utilization Bill (Guia de Utilização – GU), a special permit to operate a small-scale mining operation during the exploration phase. Ordinance no. 155/2016.

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mineral deposits, and defining the technical and economic feasibility of a mine. To carry out these activities in Brazil, interested parties must apply for an exploration license from ANM, called “*Alvará de Pesquisa*” (exploration license).

After applying for an exploration license, local ANM officers will assess the application and, if all legal requirements are met, the exploration license will be granted for a term of up to four years (extendable for a period equal to or lesser than the original exploration license, subject to the approval of ANM). The extension of the term of an exploration license may only occur once, unless the relevant exploration area cannot be accessed, or if the authorizations or environmental licenses are pending exclusively due to factors not attributable to or controlled by the title-holder. The exploration license remains valid as long as the decision regarding the extension request is pending, provided that such request was filed in a timely manner.

In order to conduct mineral exploration activities in Brazil, the holder of an exploration license also ne-

eds to obtain (i) the relevant environmental permits such as authorization for vegetation suppression, intervention in the Atlantic Forest and others; and (ii) the corresponding right of access to the land covered by its mineral rights (if he is not also the holder of the surface rights nor the land property).

Normally, landowners in Brazil receive a fee that is on average half of the royalty payable to the Brazilian Government (in other words, they receive a compensation that is equivalent to half of the CFEM) and are also entitled to be compensated to any damages caused by the holder of an exploration license to the land. If the corresponding area is located within public lands, then the payment of said fee is waived.

In the event the holder of an exploration license or mining concession does not reach an agreement with the landowners of the area covered by said mining rights, there is a specific legal court proceeding in Brazil to force the landowner to give access to the property in order to allow the miner to conduct activities within the areas covered by said mining rights.

Upon completion of mineral exploration activities, the holder of an exploration license must file a Final Mineral Exploration Report with the ANM showing the results of the activities carried out within the granted area and the conclusion regarding the feasibility or non-feasibility of further exploitation. The Report is subject to the approval of the ANM.³⁴

After approval of the Exploration Report, the miner must apply for a mining concession within one-year of the approval (extendable for one more year), or assign it to a third party. If the miner requests the extension of the one-year term to apply for the mining concession in a timely manner, the exploration license remains valid, and the holder may continue exploration activities for as long as the decision regarding the extension request is pending.³⁵

³⁴ Articles 23 and 30 of the Mining Code

³⁵ Holders of exploration license may carry on exploration activities even after the delivery of the Report, as long as these activities have the purpose of converting the resources into reserves or further improve the level of knowledge about a deposit.

Requirements to Conduct Mining Activities in Brazil

The Brazilian mining concession regime encompasses all activities necessary for developing, exploiting and decommissioning a mine. To conduct mining activities in Brazil it is necessary to first obtain a mining concession from the ANM and the corresponding environmental license(s) from the relevant environmental authority.

Within sixty days from the application for a mining concession with ANM, the miner shall prove that it applied for the relevant environmental license with the proper authorities. Thereafter, every six months, the miner shall prove to ANM that its environmental licensing process is in its due course and that it has (or it is complying with) all necessary actions and requirements in order to obtain the environmental license, otherwise it could prevent the granting of the mining concession. Upon the fulfilment of all legal requirements,³⁶ the mining concession is granted without a term, and is valid until total depletion of the deposit and mining closure.

³⁶ Mining Code and Ordinance no. 155/2016.

Other Mining Regimes

Licensing

In Brazil, the exploitation of sand, gravel, grit, and crushed stones for immediate use in the construction industry; rocks and other mineral substances for paving blocks, curbstones, gutters, posts, and the like; clays for various industries; rocks, when crushed for immediate use in civil construction and the limestones used as soil corrective in agriculture; ornamental and cladding rocks; and calcium and magnesium carbonates used in various industries is authorized to be conducted by third parties under a licensing system (regulated by Law no. 6,567/1978 and Ordinance no. 155/2016). This system includes specific characteristics such as **(i)** the areas subject to the licensing system are limited to 50 ha, **(ii)** it is under the jurisdiction of the municipality; and **(iii)** it does not require prior exploration license.

Small-Scale Mining Permit

The small-scale mining permit is applicable to artisanal mining activities and is an exception to the mining concession regime. This simplified system allows individuals to perform mining activities in areas of up to 50 ha and independent mining co-ops in areas of up to 10,000 ha in the Legal Amazon Forest and 1,000 ha in other regions.

The existence of other mining rights does not prevent the granting of a small-scale mining permit in the same area, which may be granted upon the conclusion of an administrative procedure, as long as the original title-holder gives authorization and the coexistent activities are technically and economically feasible.

In addition, interested parties must obtain permission from local authorities (mainly environmental licenses). Once granted, a small-scale mining consent is valid for five years and may be successively renewed at ANM’s discretion. Recently, the ANM enacted the Normative Ruling no. 22/2020 regarding the procedures and deadlines for the analysis and granting of small-scale mining permits.

Monopoly Regime

The monopoly regime is applicable exclusively to nuclear minerals, which can only be exploited by the federal government (or by third parties in partnership with the federal government). Recently, the Ministry of Mines and Energy stated that the federal government has already drafted a constitutional amendment to present to Congress aimed at overturning this monopoly, but it is uncertain when and if it will pass.

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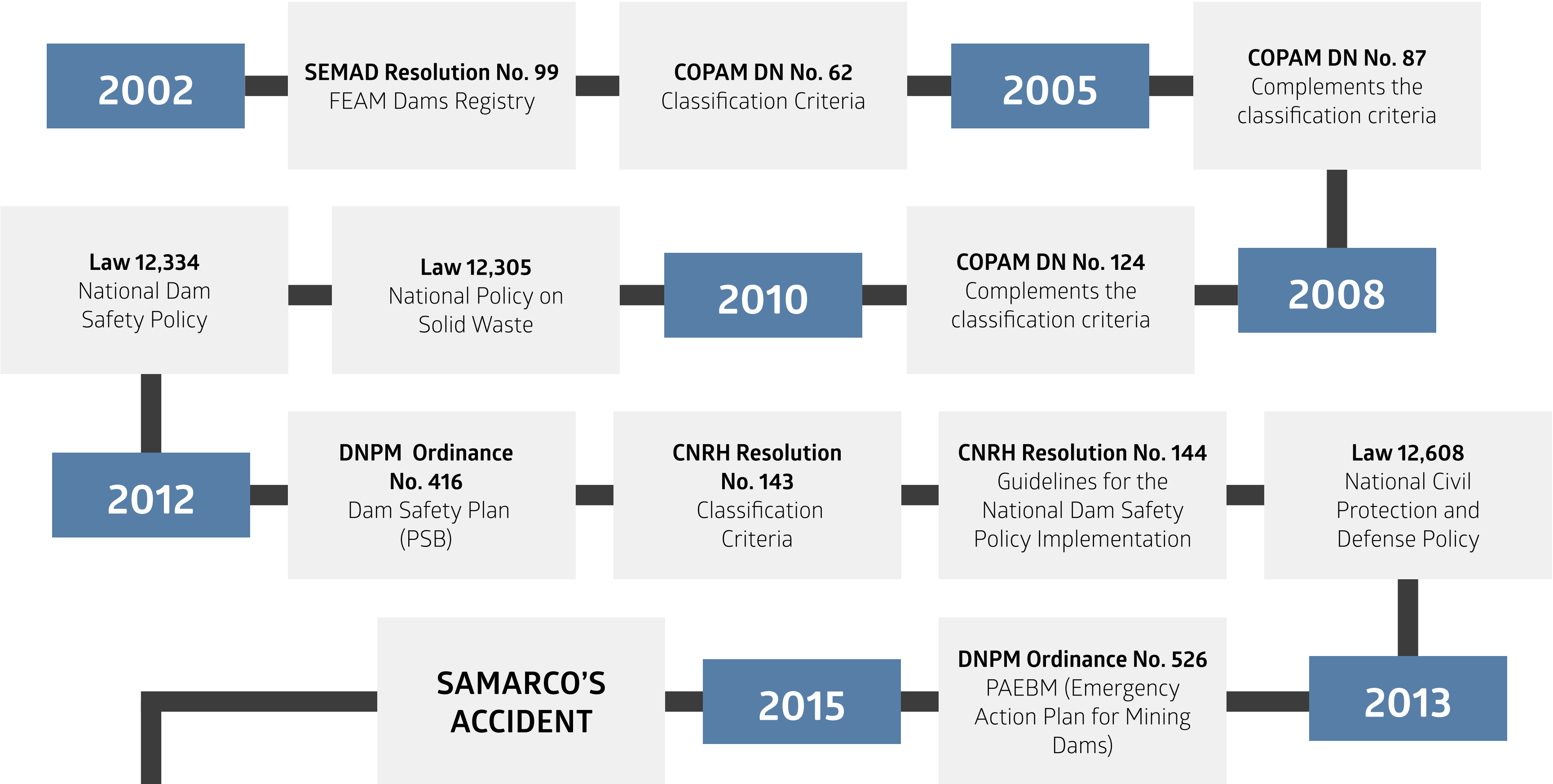


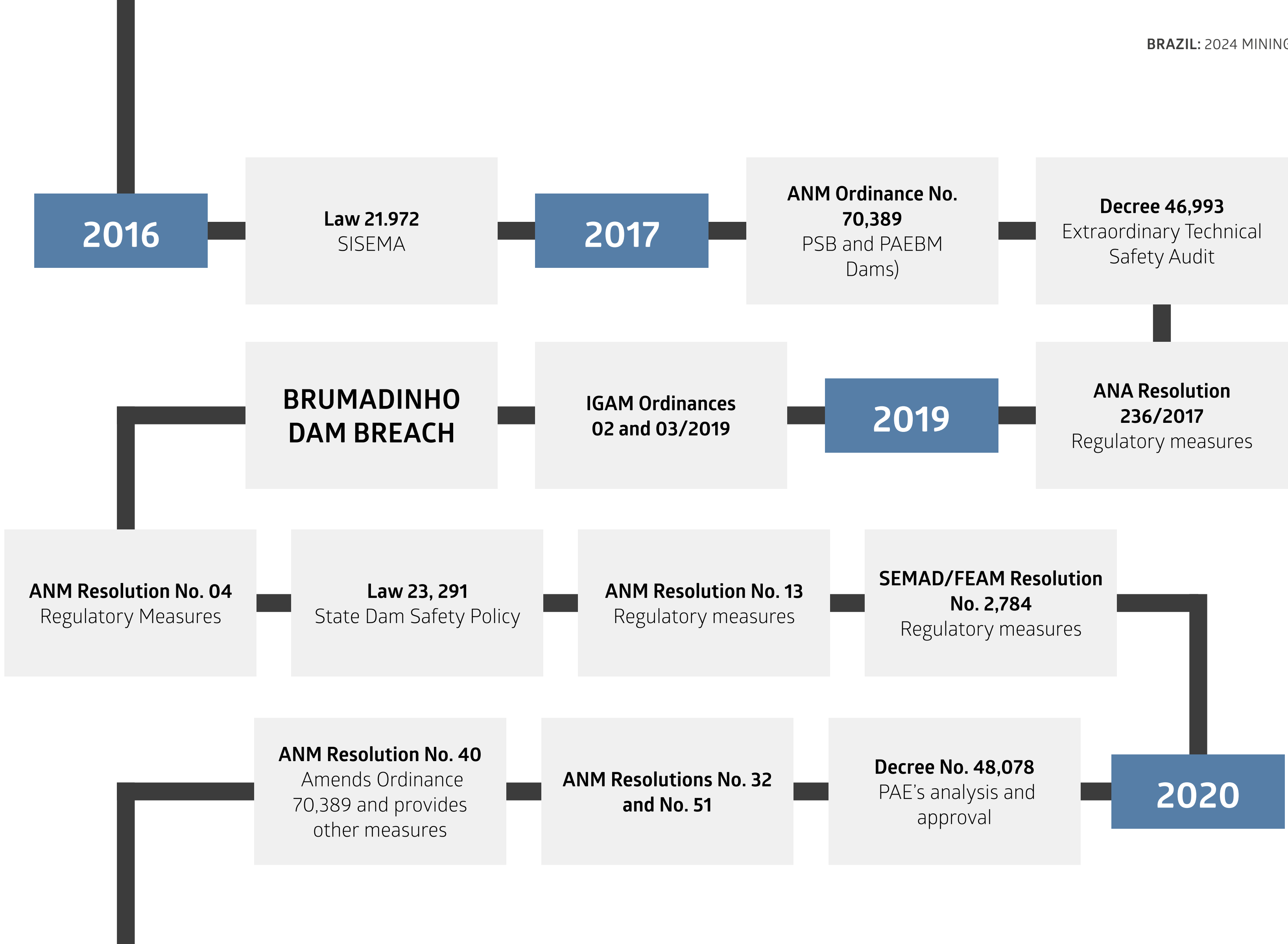
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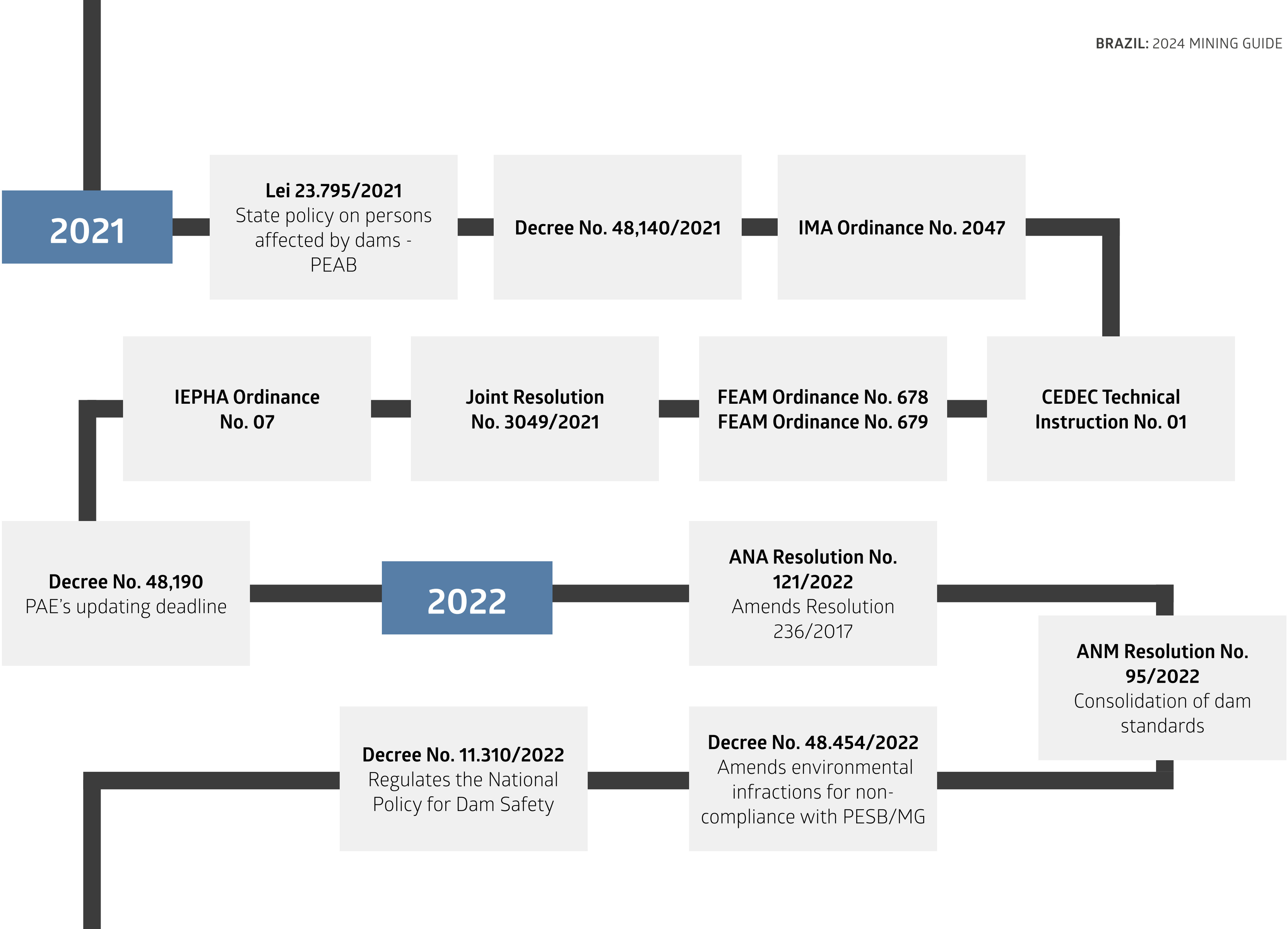
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1977	Euclides da Cunha	São Paulo	Decree no. 10,752/1977
1986	Fernandinho	Rio Acima	-
2001	Rio Verde	Macacos	Normative deliberation no. 62/2002
2003	Indústria de Papel Cataguases Ltda	Cataguases	Bill no. 1181 (PNSB)
2006	Mineração Rio Pomba	Miraí	Normative deliberaton no. 87/2005
2007	Mineração Rio Pomba	Miraí	Normative deliberaton no. 124/2008
2014	Herculano	Itabirito	-
2015	Fundão	Mariana	ANEEL's Resolution no 696/2015; ANA's Resolution no 236/2017; Ordinance 70,389/2017
2019	Córrego do Feijão – B1	Brumadinho	PESB; ANM'S Resolution no. 13/2019; Review of Ordinance 70,389/2017
2022	Dique Lisa	Belo	Possible regulation for tailings piles

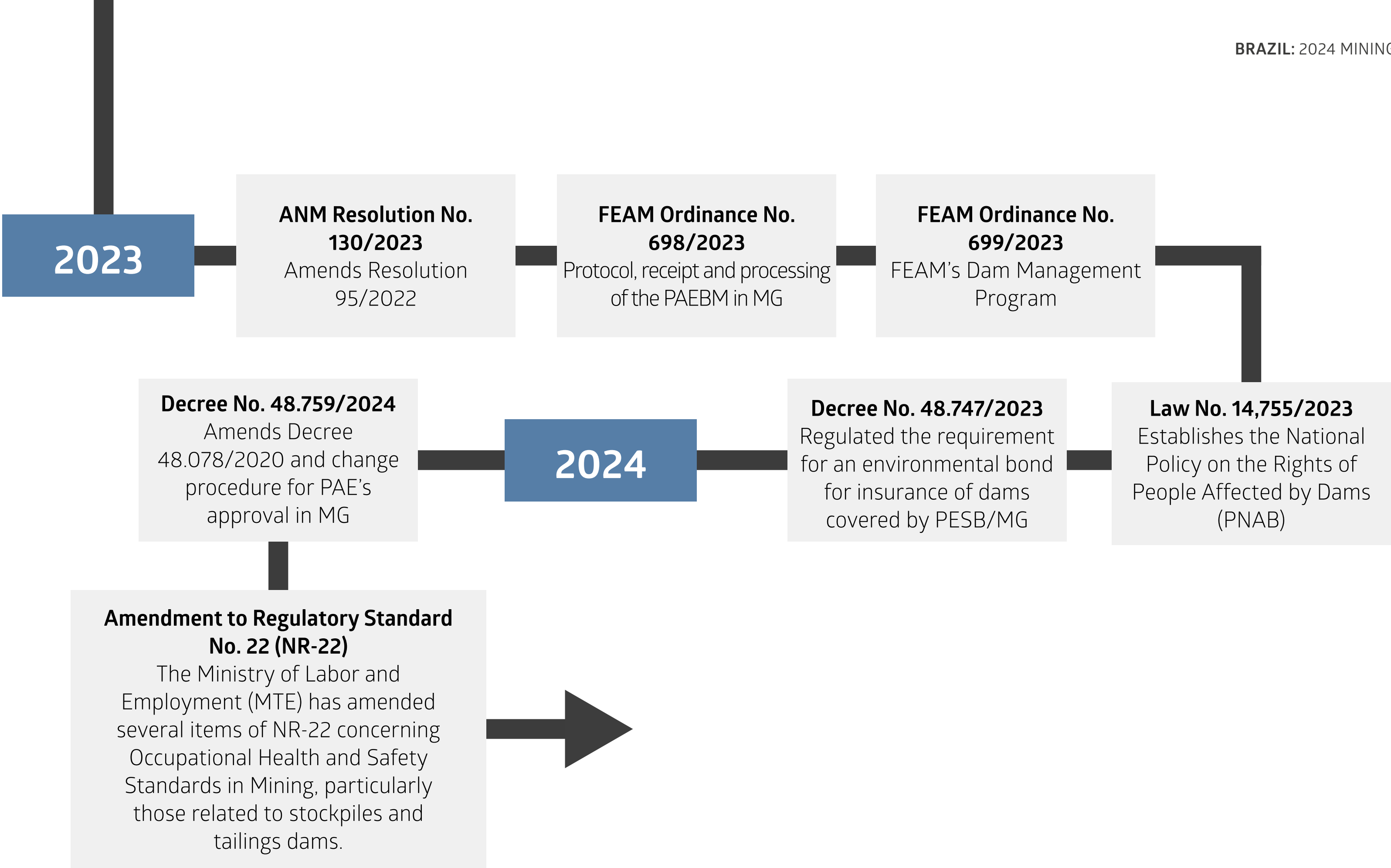
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The National Policy for Dam Safety (*Política Nacional de Segurança de Barragens* – “**PNSB**”), enacted by Law no. 12,334/2010, established several goals and the corresponding obligations to reach them, seeking the compliance with dam safety standards to reduce accidents and their consequences.

As a general policy, the PNSB delegated more specific regulations to regulatory bodies and assigned the supervisory competence to these agencies, without affecting the supervisory role of environmental agencies that are part of the National Environmental System.

In addition, although the authority to regulate the mining sector is exclusively held by the federal government, which might suggest that only the federal government can enact laws regarding mining aspects, some states, like Minas Gerais and others, also created their own Dam Safety Policies.

As of 2012, ANM, as the competent agency to oversee and regulate mining activities, has further regulated aspects regarding tailings dams. Recently,

it issued a new regulation, Resolution ANM No. 95/2022, which consolidated and modernized all rules concerning the safety of tailings dams. This regulation aligns the regulatory framework with the changes introduced to the National Policy on Dam Safety by Law No. 14,066/2020, as well as with international dam safety guidelines.

Law no. 14,066/2020 entered into force and changed significantly the PNSB. One of these changes was the inclusion of the Engineering Best Practice Guides in dam safety managements as an instrument of the National Policy (an example of such of guides is the Global Industry Standard on Tailings Management issued by International Council on Mining & Metals – ICMM). This inclusion reflects the Brazilian legislator’s concern with aligning the management of tailings dams in Brazil with global best practice guidelines.

In addition to aligning with the changes introduced in the PNSB by Law No. 14,066/2020, Resolution No. 95/2022 also introduced other significant changes and concepts. These include the definition

of ALARP (As Low as Reasonably Practicable), the identification of critical controls, the requirement for high-risk dams to be overseen by an Engineer of Record, and the implementation of a Risk Assessment Program.

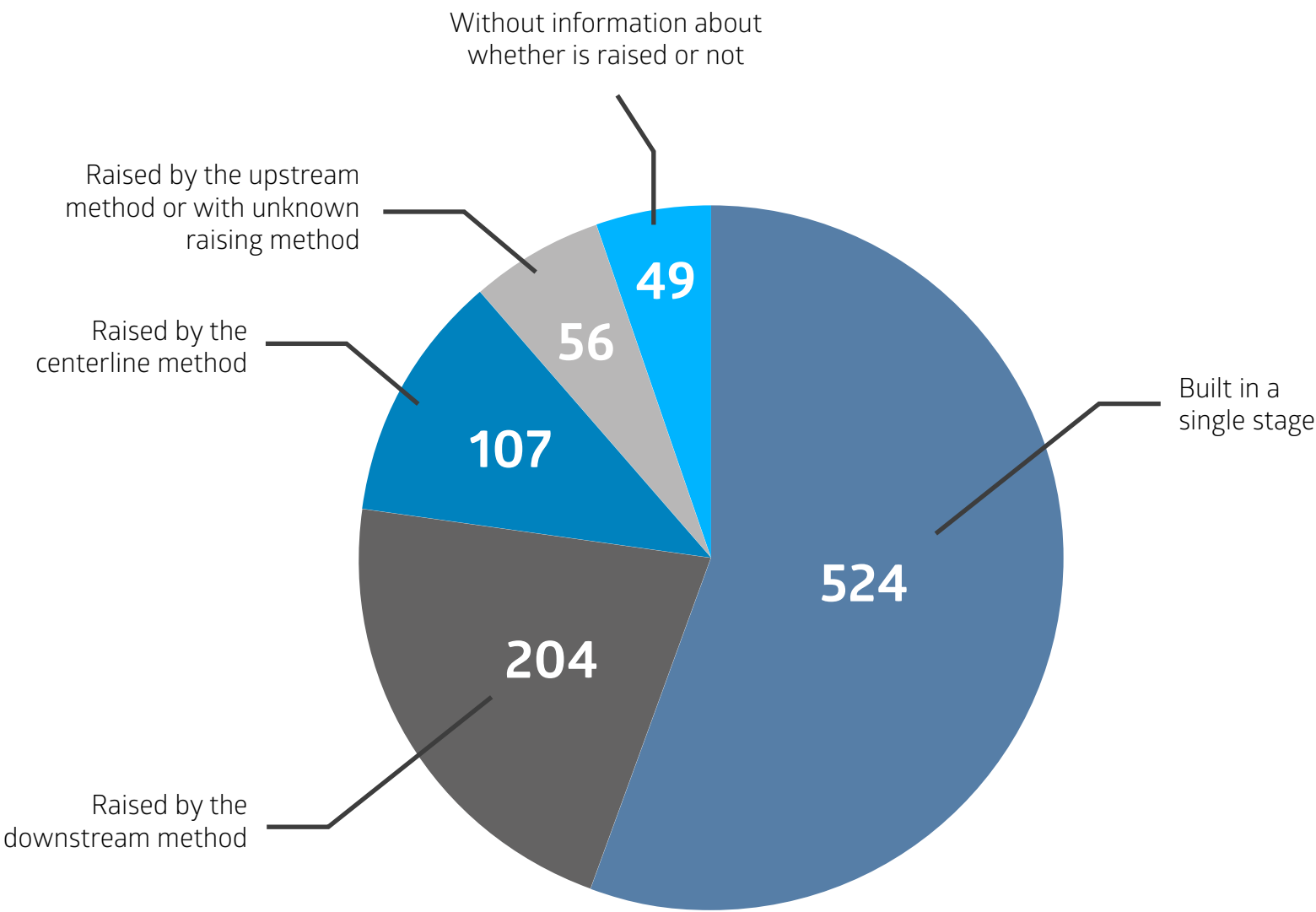
These changes bring the Brazilian dam safety regulatory framework much closer to global best practices. Additionally, it is important to emphasize that, since 2020, good practice guides have been considered a vital tool for implementing the National Dam Safety Policy.

Alongside these new aspects, it is noteworthy that the provisions now require the automation of alert siren triggering mechanisms. The system must be integrated with the dam’s monitoring, which must also be automated. As a result, in case of an emergency, the alert system will be triggered automatically.

According to SIGBM³⁷, Brazil currently has 942

tailings dams, classified as follows: 524 are built in a single stage, 204 raised by the downstream method, 107 by the centerline method, 56 by the upstream method or with an unknown raising method, and 49 without information about whether they are raised or not.

Brazil currently has 942 tailings dams



37 SIGBM. ANM. Available at <https://app.anm.gov.br/SIGBM/Publico/Estatistica> accessed at April 24, 2022.

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After the incidents occurred in Mariana and Brumadinho, legislation concerning the disposal of tailings in dams significantly changed, peaking in the prohibition of the raising through the upstream and unknown methods and, furthermore, in determining the de-characterization of all the dams raised by the upstream method or with unknown information about the constructive and/or raising method.

Although the answers given to the society were necessary, the deadlines given to the fulfillment of the de-characterization of the upstream dams were potentially dangerous once the intense movement near the dams could reflect in triggers to liquefaction. For this reason, the recent changes in the Federal Law regarding tailings dams provided the possibility to the Mining Agency extend the deadline to the de-characterization, initially of February 25, 2022. However, such an extension can only be granted in cases of technical infeasibility and must be approved by the licensing authority within SISNAMA.

Nonetheless, the National Mining Agency (ANM), in line with its commitment to sustainability and global best practices in the mining sector, regulated the reuse of mining waste through Resolution ANM No. 85/2021. This regulation significantly enhances legal certainty surrounding this practice and marks a significant step toward more sustainable mining practices.

More recently, and specifically in Minas Gerais State, Decree 48,747 was published, regulating the requirement for environmental collateral for dams covered by the State Policy for Dam Safety (PESB-MG). The collateral amount shall be calculated based on: **(i)** the reservoir area of the dam, including the area occupied by tailings or residue and water, in square meters; **(ii)** the dam's classification and purpose, in accordance with Decree 48,140/2021; and **(iii)** the estimated cost of dam decommissioning projects per area. It is important to note that failure to comply with these obligations during the licensing phase will result in the denial of the intended environmental license.

Lastly, in 2024, the Regulatory Standard No. 22 (NR-22) was amended by the Ministry of Labor and Employment (MTE), introducing new obligations on several items concerning Occupational Health and Safety Standards in Mining, particularly those related to stockpiles and tailings dams.

The amended text introduced significant restrictions on mining activities in areas located below tailings dams, which have the potential to negatively impact numerous currently operating mines. Due to the potential impact of the regulation, the text is currently under review by the MTE and is being widely discussed within the sector to ensure that the new restrictions do not unintentionally harm the industry.

TAXES, ROYALTIES AND INCENTIVES IN BRAZIL (MINING)



Brazilian tax legislation is complex. There are three jurisdictions and tax collection levels in Brazil (as defined by tax legislation): the Federal, State and Municipal levels. The main taxes levied are:

Corporate Income Tax (“*Imposto de Renda Pessoa Jurídica - IRPJ*”): The IRPJ is levied on annual company profits at the rate of 15%, plus a 10% surtax on profits which exceed R\$240 thousand per year. Taxable income includes gross earnings minus allowable deductions. The term, “gross earnings,” includes operational and non-operational income (interest, capital gains, etc.). Deductions are allowed whenever expenses are considered ordinary and necessary to the company’s business activities. Business expenses, including interest paid to lenders, are generally deductible. Moreover, tax losses may be carried forward

without any time restrictions, but compensation against future profits cannot exceed 30% of the profits obtained per year.

Social Contribution on the Net Income (“*Contribuição Social sobre o Lucro Líquido - CSLL*”): CSLL is a type of IRPJ surtax, as both of these taxes adopt the same tax basis. The CSLL is levied on the company’s net income at the rate of 9%.

Gross Receipts Taxes – Contribution to the Social Integration Program (“PIS”) and Social Security Funding Contribution (“COFINS”): Gross monthly revenue is subject to PIS and COFINS. Under current legislation, gross revenue includes not only operating revenues but also other types of accrued revenue. The rates of the PIS and COFINS vary depending on whether or not the taxpayer is subject

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to the cumulative system of the contributions. As a general rule, companies are subject to the non-cumulative system and the PIS and COFINS rates are 1.65% and 7.6%, respectively. Financial revenue obtained by taxpayers subject to this system are taxed at 4.65%.

Furthermore, under the noncumulative system, the acquisition of certain goods (raw materials, packing materials, intermediary products and fixed assets) and services used in the company’s operational activities grant PIS and COFINS credits at the same rates, making these charges similar to value-added taxes. The system applicable to the taxation of financial revenue does not allow the recognition of tax credits. These credits can be offset against the PIS and COFINS fees owed as a result of future operations. If credits exceed debits, the credit balance of one month can be carried forward to offset PIS and COFINS debits in subsequent months.

The export of goods or services is PIS and COFINS exempt, regardless of the calculation of the tax sys-

tem to which the company is subject. In specific situations, exporting companies may use accumulated PIS and COFINS credits to offset other federal tax liabilities non related to PIS and COFINS. Lastly, it is worth noting that some companies may be subject to a specific PIS and COFINS system, which may result in a total tax burden greater than that explained herein (*regime monofásico*).

A state value-added tax on services and circulation of goods (“ICMS”): ICMS is a value-added tax, applied across all stages of a product’s commercial life cycle and calculated in accordance with the “debit and credit” method. Thus, ICMS debits owed on the sale of products may be offset against ICMS credits booked in connection to the acquisition of raw materials, intermediary products, packing materials and fixed assets used in connection with the company’s operational activities. If credits exceed debits, the credit balance of one month may be carried forward to offset ICMS debits in subsequent months.

The tax is assessed based on the price of the product sold. The tax basis mechanism includes the amount of the tax due on its own base (tax on tax), so that the effective ICMS rate is higher than those indicated below. ICMS rates vary according to the state, within the limits set forth in the relevant federal legislation, as well as the product and its destination: internal transactions (within the same state) are usually taxed at the rate of 19%, 18% or 17%, depending on the internal legislation of the state. The rate applicable to interstate transactions, which involve the transfer of goods from one state to another, is 7% or 12%.

Please note that some states charge an additional rate in addition to the standard ICMS rates, which may increase the total ICMS burden. Export transactions are ICMS exempt.

Tax on Financial Transactions (“*Imposto sobre Operações Financeiras - IOF*”): This is a federal tax levied on credit, exchange, insurance and securities transactions executed through financial institutions.

IOF/Credit Tax is applied to financial transactions, except for loans extended by foreign entities to Brazilian borrowers, which are not subject to IOF/Credit Tax.

Loans granted by Brazilian entities, either to Brazilian or foreign borrowers, are generally subject to a daily IOF rate of 0.041%, calculated based on the amount which is lent. As of January 2008, any loan transaction is also subject to the additional rate of 0.38%.

Furthermore, Brazilian law imposes a tax on foreign exchange transactions (“IOF/Exchange Tax”) due on the conversion of reais into foreign currency and vice versa. The current applicable rate for almost all foreign currency exchange transactions, including investments in Brazilian companies carried out outside the Brazilian stock exchange, is 0.38%.

Services Tax (“*Imposto Sobre Serviços - ISS*”): ISS is a municipal tax assessed on revenue derived from rendering general services, except for inter-municipal and interstate transport and communication services, which are taxed by ICMS.

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The services subject to ISS are those expressly included in a federal “taxable services” list, which must be respected by the municipalities in order to assess the tax. ISS rates vary from municipality to municipality, and also depend on the service rendered, but they cannot exceed 5% and cannot be lower than 2%. The tax base is the price of the service rendered.

As a general rule, ISS is owed to the municipality in which the service provider is located, except for some services, such as civil construction and related services, in which case ISS is owed to the municipality where the services are rendered.

Payroll and Other Social Security Contributions: As a rule, social security contributions are owed to the Internal Revenue Service on the company’s payroll at the rate of 20%.

There are additional contributions imposed at rates that usually vary from 3.5% to 8.8%, which are owed to other government agencies. The rates of these contributions vary depending on the com-

pany’s line of business. Additional increases to the rates mentioned herein may also apply depending on the line of business.

Furthermore, the company must make monthly contributions to FGTS at a rate of 8% of each employee’s base salary plus benefits.

Excise Tax (“*Imposto sobre Produtos Industrializados - IPI*”): This federal tax is not applicable to mining activities.

Import Tax (“*Imposto de Importação - II*”): In the case of imports of mineral products, the rates of this tax often vary from 0% to 9%, although there are several exceptions that are subject to higher or lower rates.

In addition to these taxes and any other taxes generally paid by Brazilian companies, such as those fees for environmental licenses, labor and social security expenses (average 20% on wages and other paid earnings) and FGTS (“*Fundo de Garantia por Tempo de Serviço*”), there are other taxes and fees payable by a mining company.

The additional material tax and fees related exclusively to the mining sector are:

- **Financial Compensation for Exploiting Mineral Resources (“Compensação Financeira pela Exploração de Recursos Minerais - CFEM ”):** The rate, which varies according to the mineral, **has a limit of 4%** and is calculated based on the mineral net revenue (or its cost, When used in industrialization).³⁸
- **Land Owner Royalty:** During the exploitation phase, under the mining concession regime, if the land does not belong to the miner, a royalty must be paid by the last business day of the mon-

³⁸ According to the Appendix of Federal Law 13,540/2017:

- 1% for rocks, sand, gravel, clay and other mineral substances when immediately extracted in construction-related activities; ornamental rocks, mineral and thermal waters;
- 1.5% for gold;
- 2% for diamond and other mineral substances;
- 3% for bauxite, manganese, niobium, and rock salt;
- 3.5% for iron ore*.

* The Mining Agency is authorized to reduce iron ore’s rate to up to 2% for mineral deposits with feasibility compromised due to low grades, production scale, taxation or the number of employees. This reduction shall be regulated by a Presidential Decree, which was not published until the date of conclusion of the analysis herein.

th subsequent to the taxable event. The value of this royalty is commonly 50% of the accrued value of the CFEM.³⁹

- **Annual fee per hectare (“Taxa Anual por Hectare - TAH”):** R\$ 4.53 per hectare during the term of the mining exploration license and R\$ 6,78 per hectare during any extended term.⁴⁰
- **TFRM:** In certain states, the holder may also be subject to the Control, Monitoring and Inspection Fee for Exploration, Production, Extraction, Transport and Use of Mineral Resources (Taxa de Controle, Acompanhamento e Fiscalização das Atividades de Pesquisa, Lavra, Extração, Transporte e de Aproveitamento de Recursos Minerais - TFRM) due on the mining activities of exploration, production, exploitation and development of mineral resources. The amounts of TFRM may vary from state to state.

³⁹ Property tax (IPTU) is levied annually abased on the fair market value and it varies by Municipality (range from 0.3% to 1.5%).

⁴⁰ The TAH value is updated yearly by ANM. The values shown above are valid until February 29, 2025, according to ANM’s Resolution No. 150/2024. Available at: Resolução 150/2024 DG/ANM/MME - ANMlegis (datalegis.net).

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Tax reform: It is important to mention that, on December 20, 2023, Constitutional Amendment No. 132/2023 was enacted, which changes consumption taxation in Brazil.

In general terms, the main changes, which will be implemented over the next few years, are the following: **(i)** ICMS and ISS will be gradually reduced until 2032, being definitively replaced by the Tax on Goods and Services (IBS), under shared jurisdiction between states and municipalities, as of 01/01/2033; and **(ii)** PIS and Cofins will be extinguished in 2027, being replaced by the Contribution on Goods and Services (CBS), under federal jurisdiction. With this, Brazil will adopt a “Dual VAT” model.

Furthermore, the IPI will be reduced to zero for all products that do not have industrialization encouraged and there will be the creation of a selective tax (IS) charged on goods and services harmful to health or the environment, which includes the possibility of increasing taxation on mining activity.

Finally, it is worth highlighting that the Income Tax reform is being discussed in the National Congress, which is expected to be completed in 2025.

Additional Taxes and Fees for Mining Companies

CFEM	LAND OWNER ROYALTY	TAH	TFRM
Financial Compensation for Exploiting Mineral Resources (CFEM): The rate of CFEM varies based on the mineral, ranging from 0.2% to 3.5%. It is calculated based on the mineral's net revenue or its cost when used in industrialization.	Land Owner Royalty: If the land does not belong to the mining concessionaire, a royalty is paid, typically 50% of the accrued value of the CFEM.	Annual fee per hectare (TAH): An annual fee per hectare is applicable during the term of the mining exploration license and any extended term.	Controlling, Monitoring, and Supervision Tax (TFRM): In certain federal states, mining companies may be subject to TFRM, which is due on mining activities and can vary from state to state.

ENVIRONMENTAL LAW IN BRAZIL (MINING)



Pursuant to Brazilian law, federal, state and municipal governments are entitled to legislate and require authorizations, licenses and permits containing provisions for the control and protection of the environment, and of historical and cultural heritage.

Federal and state governments in Brazil have concurrent jurisdiction over: **(i)** the protection of the natural environment, including forests, fauna, conservation of nature, protection of the soil and natural resources as well as pollution control; **(ii)** protection of the cultural environment, including the protection of historic, artistic and landscape environments; and **(iii)** liabilities for environmental damages. This jurisdiction is also shared by the Municipalities regarding specific matters of local interest.

Liability for environmental damage splits in civil, administrative and criminal branches depending on the nature, extent and conduct of an agent, and can occur cumulatively or separately.

Mineral exploration and mining in Brazil are subject to environmental licensing. This consists of an administrative procedure, where the relevant environmental authority assesses the project and authorizes the company to conduct exploration or exploitation.

There are three types of environmental licenses in Brazil:

- **Advance (also called provisional) Licenses (LP):** Certifies the viability of the project (including approval of the site and planning) and establish the basic requirements and conditions that must be fulfilled in subsequent phases. It is worth

noting that the licensing of projects that could potentially or effectively cause degradation is subject to submission to and approval by the environmental authorities of the environmental impact assessment.

- **Installation Licenses (LI):** Authorize commencement of construction (installation of the enterprise or activity) according to the specifications set out in the approved plans and programs, and define the environmental control measures, etc.
- **Operating Licenses (LO):** Granted when the project is ready and able to operate following an assessment of compliance with the terms of the preceding licenses.

All types of environmental licenses have a defined term and cannot be transferred. The holder of an environmental license must apply for its renewal no more than 120 days before its term is due to end. In the case of a change in control of a company holding mineral rights and assets, or in the event of a sale of assets and mineral rights, a company is required to file a request to issue a new license with the state

environmental authority. Under the existing regulations, the cost of a new license may range from C\$2,000 to C\$20,000. This is in addition to expenses relating to visits and a 5% administrative fee.

According to Brazilian law, a company that acquires a business with environmental liabilities is deemed to be its successor and therefore assumes said environmental liabilities, although the parties in an acquisition transaction are free to negotiate and limit their respective liabilities.

Mining activities and facilities are subject to environmental licensing procedures to the extent that they consume environmental resources, pollute, and cause or have the potential to cause environmental impacts.

The use of water resources requires, in most cases, an authorization from the environmental agency. Lastly, environmental compensation of different natures may be applied in connection with projects (not only mineral projects) that may strongly affect the environment.

Besides the provisions of the Brazilian Federal Constitution, the main environmental legislation includes:

LEGISLATION	CONTENT
Law no. 6,938/1981	Regarding the national environmental policy
Law no. 9,605/1998	Regarding environmental crimes
Decree no. 6,514/2008	Regarding administrative penalties
Law no. 9,433/1997	Regarding water resources
Law no. 12,305/2010	Regarding the solid wastes policy
Law no. 12,651/2012	Regarding the forest code

The main environmental agencies are:

- **The Ministry of the Environment**, which is responsible for the national environmental policy;
- **The Brazilian Institute of Environment and Renewable Natural Resources (IBAMA)**, which is responsible for the execution of the national environmental policy at the federal level;
- **The National Council for the Environment (CONAMA)**, which is a committee responsible for

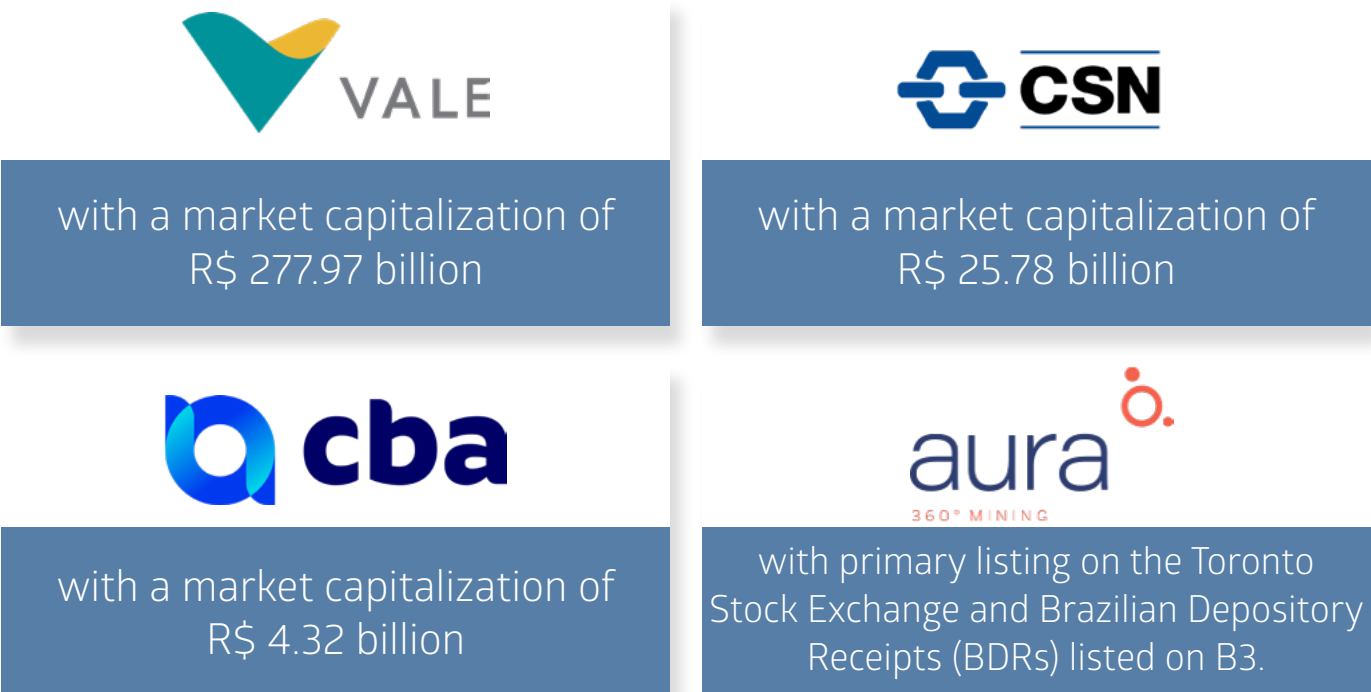
consultative and deliberative measures regarding the national environment system (*SISNAMA*); and state (and sometimes also municipal) environmental bodies.

For example, in the State of Minas Gerais (one of the most important states in the Brazilian mining industry), a technical committee specialized in mining activities – Council of Environmental Policy (COPAM) – is responsible for giving opinions on environmental licensing requirements and the analysis of administrative appeals regarding the penalties imposed by State Law no. 7,772/1980 and State Decree no. 47,383/2018.

BRAZILIAN MINERAL EXPLORATION AND MINING COMPANIES ON THE B3



B3 S.A. – Brasil, Bolsa, Balcão (“B3”) is currently the only stock exchange operating in Brazil and is the largest stock exchange in Latin America. Currently there are 4 mining companies listed on B3 with shares traded⁴¹:



⁴¹ Considering their values on June 04th, 2024. “Valor de mercado das empresas listadas”. B3, 2023. Available at: https://www.b3.com.br/pt_br/market-data-e-indices/servicos-de-dados/market-data/consultas/mercado-a-visa/valor-de-mercado-das-empresas-listadas/bolsa-de-valores-diario/

Vale is listed in the Novo Mercado corporate governance segment. This segment is intended for shares issued by companies that choose to comply with higher corporate governance practices and transparency requirements, in addition to those set forth by Law no. 6,404, dated December 15, 1976, as amended (“**Brazilian Corporate Law**”) and by the Brazilian Securities Commission (*Comissão de Valores Mobiliários* or “**CVM**”).

Vale is one of the largest mining companies in the world and the most lucrative in Brazil. The mining giant is also part of the Bovespa Index, an index comprised of companies with the highest trading volumes on B3.

Aura is a Canadian mining company focused on the production of gold and copper and is listed on

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the Toronto Stock Exchange (“**TSX**”). The company completed its initial public offering of BDRs on 2020 with restricted selling efforts.

It is important to mention that other major Brazilian conglomerates and steel companies listed on B3 also include mining operations, such as **Gerdau S.A.**, Cia de Ferro Ligas da Bahia – **Ferbasa**, and Usinas Siderúrgicas de Minas Gerais S.A. – **USIMINAS**.

All of these companies are currently listed in the Nível 1 corporate governance segment, in which the companies are obliged to, among other requirements, maintain a free-float of at least 25% of the share capital; promote capital dispersion on public offerings and improve their quarterly financial reports – ITR Form to include the disclosure of relevant party transactions with special audit revision.

As described above, Brazilian equity capital markets have been accessed by a few major companies and, therefore, have a significant growth potential if other mining companies (especially medium-sized ones) are able to access this funding alternative. B3

is currently evaluating alternatives to make it possible for smaller companies (including from the mining sector) to go public on the Brazilian stock market.

There have been several discussions involving Brazilian mining associations, mining companies, securities regulators and the Brazilian mining agency.⁴² There is a real interest in improving Brazilian capital markets to create the environment needed for Brazilian mineral exploration and mining companies to access public equity capital. In the meantime, listing on the Toronto Stock Exchange, Toronto Stock Exchange – Venture, and issuing BDRs in Brazil seems to be an interesting alternative for Brazilian mineral exploration and mining companies.

⁴² “How stock exchange operator B3 is seeking to incorporate Brazil’s mining juniors”. BNAméricas, 2020. Available at: [https:// www.bnamericas.com/en/news/how-stock-exchange-operator-b3-is-seeking-to-incorporate-brazils-mining-juniors](https://www.bnamericas.com/en/news/how-stock-exchange-operator-b3-is-seeking-to-incorporate-brazils-mining-juniors).

SETTING UP A MINING COMPANY IN BRAZIL



Main types of companies in Brazil: Summary

To start a mining company in Brazil it is important to previously analyze the existing corporate types in order to assess which one is the most suitable for a certain objective.

The two most common corporate types of legal entities in Brazil are the limited liability company (“***Sociedade Limitada***” or “***Ltda.***”) and the corporation (“***Sociedade Anônima***” or “***S.A.***”).

In general terms, the *Sociedade Limitada* is a simpler and less expensive structure and, most commonly, is the structure we recommend to be adopted in Brazil by foreign clients that intend to start activities in the country. *Sociedades Anônimas* are usually recommended whenever the entity will

need to have a complex management/ governance structure, stock option plans or a more sophisticated capitalization structure and/or have plans to carry out public offerings of securities. The *Sociedade Anônima*, however, is subject to higher disclosure and publicity standards.

Which corporate type is faster to incorporate?

The *Sociedade Limitada* is usually faster to incorporate, as does not require prior funding. Pursuant to Brazilian Law, the incorporation of *Sociedades Anônimas* requires at least 10% of paid-in capital, which is not applicable to *Ltdas*.

We do not recommend foreign entities to start activities in Brazil as a branch (as opposed to incorporating a local vehicle). In summary, branches are subject to more formalities on their setting up and daily management.

The main distinctions between the *Sociedade Limitada* and the *Sociedade Anônima* are the following:

	LIMITED LIABILITY COMPANY (LTDA.)	CORPORATIONS (S.A.)
MAIN ADVANTAGE	Simpler and less expensive structure.	Suitable for more complex management/governance structure.
FUNDING	Not allowed to access debt or equity capital market: the <i>Sociedade Limitada</i> cannot have its shares (known as quotas) traded in stock exchanges.	Can access capital and debt capital markets, which in some cases requires the company to register as a listed company.
LIMITATION OF LIABILITY	Liability of each partner limited to its respective subscribed capital, but all partners are jointly liable for full payment of corporate capital.	Shareholders liability limited to the amount paid for the shares which each subscribed.
VOTING RIGHTS	Voting power according to the percentage the quotas held by each partner represent in the capital stock. As a general rule, simple majority of the partners present at a partners' meeting may approve matters. However, under Brazilian law, there are specific key matters that require special supermajority.	One vote per share rule, but company may issue preferred shares without voting rights up to the limit of 50% of all shares. As a general rule, simple majority of shareholders present at shareholders' meeting may approve matters (bylaws of privately held companies may provide for supermajority). Under Brazilian law, there are specific matters that require 50% plus one of the voting shares.
CAPITAL STOCK	Capital stock is divided into quotas.	Capital stock may be divided into common and preferred shares - nonvoting preferred shares may have certain political or financial privileges.
MANAGEMENT	<i>Sociedade Limitada</i> must be managed by one or more individuals, partners or not, appointed in the company's articles of association or elected by a quotaholder's meeting. The installation of a board of directors in <i>Sociedade Limitada</i> is allowed, applying, by analogy, the rules provided for <i>Sociedades Anônimas</i> . The members of the executive board and the board of directors (if any) do not need to be Brazilian citizens nor domiciled in Brazil. In case the executives are not domiciled in Brazil, they must appoint a legal representative residing in Brazil with powers to request and receive notices and/or summons of legal processes.	<i>Sociedade Anônima</i> must be managed by one or more individuals, shareholders or not, elected by a shareholders' meeting or by the board of directors (if installed). It may have a board of directors, which may be responsible for approving major decisions. The members of the executive board and the board of directors do not need to be Brazilian citizens nor domiciled in Brazil. In case the executives are not domiciled in Brazil, they must appoint a legal representative residing in Brazil with powers to request and receive notices and/or summons of legal processes. Brazilian corporations must also have a statutory oversight board (conselho fiscal) composed of Brazilian residents; which may not be permanently installed, i.e. may only operate when the installation is required by the shareholders.
PROFIT DISTRIBUTION	Allocated according to the articles of association. Disproportional distribution may be allowed.	Shareholders must have equal treatment, provided that holders of preferred shares may be entitled to special dividends provided for in the by-laws. Before any allocation, at least 5% of the net profits shall be applied for the formation of the statutory legal reserve (which must not exceed 20% of the corporate capital).

Subject to the applicable approval quorum and the respective incorporation requirements, a *Sociedade Limitada* may be transformed into a *Sociedade Anônima* and vice versa.

Liability of Shareholders or Partners. Obligations, liabilities and contingencies of civil or commercial nature arising in connection with the company’s (either *Ltda.* or *S.A.*) financings and activities are a risk to be borne solely by the company’s own assets, goods and rights, except in the case of deviation of purpose or commingling of assets, where a judge can determine the piercing of the corporate veil, in order to affect the personal assets of the partners.

There are a few critical areas (i.e., tax, labor, environmental liability, compliance/anticorruption) in which the piercing of the corporate veil or joint or subsidiary shareholder liability may be applied more frequently, as a result of specific legal provisions and court precedents.

Foreign Investment. In general, there are no restrictions on foreign investment, except for mining activities on border zone.

Within a 150-kilometer zone along Brazil’s land borders, the federal government enforces stricter policies on foreign investment and mining companies to protect national interests, including external defense. Prior approval from the National Defense Council (CDN) is required for any grant or assignment related to mining rights along the border strip (which is indicated in yellow on the map on the next page).

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Border zone areas have specific rules for exploitation consent, as regulated by special laws such as Law No. 6,634 of 1979. These laws strictly regulate and prohibits licensing and exploitation procedures for non-native companies.

Therefore, to operate mining activities in the border zone, at least 51% of the company’s capital must be held by Brazilian residents, and a minimum of two-thirds of the staff must be Brazilian. The management and executive boards must also include Brazilian citizens.

Brazil’s stricter regulations towards foreign investments in border zone reflect its commitment to its national security policy, and, as a result, foreign investment companies face rigorous limitations to operate in this specific area.

1. Limited Liability Company – *Sociedade Limitada*

Sociedades Limitadas are regulated by Law No. 10,406/02, as amended (“Brazilian Civil Code”) and

residually, whenever set forth in their articles of association, by Law No. 6,404/76, as amended (the “**Brazilian Corporations Act**”), which regulates Brazilian corporations.

A *Sociedade Limitada* is simple to incorporate and operate, since very few formalities are required for its organization and management.

1.1 Incorporation Requirements

- **Quotaholders.** The *Sociedade Limitada* may be formed by one or more individuals or legal entities, called quotistas or sócios (quotaholders or partners).

Single Quotaholder?

Since the enactment of Law No. 13,874, it is possible for *Sociedades Limitadas* to be incorporated by a single quotaholder

The partner, whether an individual or a legal entity, may be domiciled outside Brazil. If such partner is domiciled/ headquartered abroad, he/she must grant a power-of- attorney to a Brazilian resident with powers

to receive service of process on his/hers behalf and to represent him/ her before tax authorities.

- **Filing.** The incorporation process of a *Sociedade Limitada* begins with the execution of the articles of association by its partner(s) (or by the corresponding attorney(s)-in-fact domiciled in Brazil) and the subsequent filing of this document with the respective state Board of Trade, followed by its registration with other applicable governmental bodies. The *Sociedade Limitada* is formally deemed as incorporated upon registration of its articles of association with the relevant Board of Trade.
- **Title and Ownership.** The existence and the ownership of the quotas are evidenced by the articles of association (a *Sociedade Limitada* does not issue share or quota certificates).
- **Capital Stock.** The capital of a *Sociedade Limitada* is divided into quotas, which must have a par value. As a general rule, there is no legal requirement concerning the minimum or maximum

capital for it to be incorporated. Accordingly, except as in the case of regulated industries, such as certain financial services, there is no requirement that a minimum amount of the capital be paid in initially, nor is there any mandatory time limit in which the capital must be fully paid in (such deadline is established by the partner(s) in the articles of association).

Nonetheless, the company may only increase the capital stock once the corporate capital previously subscribed is fully paid in. The partner may pay in the interest in a *Sociedade Limitada* in cash (Brazilian currency), assets or credits. Capital contributions made with services are prohibited.

- **Funding.** With respect to equity funding, no public offering of securities is allowed and a *Sociedade Limitada* cannot be listed companies, issue certain kinds of bonds or list on a stock exchange.
- **Profit Distribution.** There is no compulsory or minimum threshold for distribution of profits. The distribution may be disproportional among

partners if provided under the articles of association or if unanimously approved by partners.

- **Corporate Name.** The company name must include either the word “*Limitada*” or its abbreviation “*Ltda.*” as the last word and indicate the core business of the company. The name may be formed with:

(a) name of partners; (b) words of common use in national or foreign language; and/or (c) with fantasy expressions. Prior to filing the incorporation documents with the Board of Trade, the partners shall perform a search to confirm the availability of the chosen corporate name. If available, the corporate name may be reserved for use for a short period of time while the incorporation documents are being analyzed by the Board of Trade.

- **Duration.** The *Sociedade Limitada* may be incorporated for a determined or undetermined term. Its duration will be stated in the articles of association.

1.2 Governance Structure

- **Management.** The *Sociedade Limitada* must be managed by one or more individuals (the so called “managers” or “administradores”), partners or not. It is not necessary for the managers of a *Sociedade Limitada* to be Brazilian nationals nor domiciled in Brazil. In case the managers are not domiciled in Brazil, they must appoint a legal representative residing in Brazil with powers to request and receive notices and/or summons of legal processes. Legal entities cannot be managers of the company.

Is it possible to appoint foreign individuals as officers?

Yes, Brazil has recently changed its corporate regulations allowing the appointment of foreign individuals as officers provided that they appoint a legal representative residing in Brazil with powers to request and receive

The management structure of the *Sociedade Limitada* is stated in the articles of association, which shall set forth the management powers as well as

the acts and corresponding thresholds that require prior authorization by the partners.

- **Board of Directors.** Although it is legally permitted that a *Sociedade Limitada* have a Board of Directors, it is less usual that such corporate body be adopted by *limitadas*.
- **Voting Rights.** The voting power of a partner corresponds to the percentage that his quotas represent in the capital stock (rather than by the number of quotas held by a partner, since quotas may have different par values). As a general rule, simple majority of the partners present at a partners’ meeting may approve matters (articles of association may also provide for supermajority). Pursuant to the Brazilian Civil Code, the following decisions by the partners of a *Sociedade Limitada* require a special quorum to be approved, as follows:

REQUIRED QUORUM	MATTER
Simple majority (more than half of the corporate capital)	• Transformation (into a corporation/ <i>Sociedade Anônima</i> or other type of corporate entity), except if otherwise provided in the articles of association Appointment of managers, when done by means of a separate instrument (i.e., not in the articles of association)
	• Removal of manager
	• Appointment of non-partner managers, after the capital has been fully paid up
	• Compensation of management in case of omission by the articles of association
	• Request for recuperação judicial or extrajudicial (the former a court-supervised reorganization similar to U.S. Chapter 11 procedure and the latter its out-of-court equivalent)
	• Amendment to the articles of association (including increase and reduction of the capital)
	• Merger, dissolution or cessation of liquidation proceedings
	• Removal of minority partners for cause
Three-fourths of the corporate capital	• Appointment of non-partner managers, in the event the capital has not been fully paid in
Unanimous vote	• Transformation (into a corporation/ <i>Sociedade Anônima</i> or other type of corporate entity), except if otherwise provided in the articles of association

A quotaholders/partners agreement (similar to a shareholders’ agreement) may be executed by its partners in order to govern their relation as partners, governance rights, transfers of quotas and other rights.

• **Liability of the Partners.** The liability of each partner is limited to its respective subscribed capital, but all partners are jointly liable for full payment of corporate capital. However, they will have no further liability once all the quotas have been

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fully paid in, except for certain cases of violation of law, the articles of association and fraud, in which case the company’s legal personality can be disregarded (“piercing the corporate veil”) or in which the law provides for jointly or subsidiary liability to partners. If necessary, we can provide further details about situations that could lead to the piercing of the corporate veil or specific liability to partners in Brazil. As mentioned above, the Brazilian Civil Code provides the hypotheses in which a judge can determine the piercing of a company’s corporate veil, in order to access the personal assets of the partners.

The managers (partner or not) of the company are not liable for obligations of the company unless they exceed their powers or violate the law or the articles of association, in which case they will be liable towards the company.

- **Disclosure Obligations.** In case a *Sociedade Limitada* (i) owns assets in excess of R\$240,000,000; or (ii) registers annual gross revenue in excess of R\$300,000,000, the company may be classified

as a *Sociedade de Grande Porte* under the terms of Law No. 11,638/2007, and thus be required to disclose and publish its financial statements (which implies more costs and disclosure of information to the market).

- **Dissenting Quotaholder.** In the event of disagreement between the partners (if more than one), the minority partners can, in certain cases, request the partial dissolution of the company and withdraw from it.
- **Transfer of Quotas.** Transfers of quotas are legally binding and effective before third parties if done by means of an amendment to the articles of association. Nevertheless, Board of Trade authority that it should recognize the assignment of quotas of a limited liability company entered into by means of an instrument of assignment. A partner may freely transfer the respective quotas if there is no opposition of partners holding more than 25% of the capital, if more than one partner. Scholars and courts have issued opinions that if the partners grant a right

of refusal to other partners, partners would not be entitled to transfer the quotas, especially if such mechanism is clearly provided for in the articles of association.

2. Corporation – *Sociedade Anônima*

Sociedades Anônimas are the form of business organization best suited for more complex enterprises with different groups and/or types of shareholders, and it is only under this form that a company can obtain funds from public equity offerings. *Sociedades Anônimas* are regulated by Law 6,404/76, as amended from time to time (the “Brazilian Corporations Act”).

2.1 Incorporation Requirements

- **Plurality of Shareholders.** A *Sociedade Anônima* with foreign shareholders must have at least two shareholders, either individuals or legal entities.

The Shareholder, whether an individual or a legal entity, may be domiciled outside Brazil. If such partner is domiciled/headquartered abroad, they must grant a power-of-attorney to a Brazilian resident with powers to receive service of process on their behalf and to represent them before governmental authorities.

- **Filing.** The incorporation process of a *Sociedade Anônima* begins with a shareholders’ meeting for the incorporation of the company, approval of its bylaws and appointment of its initial executives. The minutes of the meeting and the bylaws are subsequently filed with the respective state Board of Trade, followed by its registration with other applicable government bodies. The *Sociedade Anônima* is formally deemed as incorporated upon registration of its bylaws with the relevant Board of Trade, provided that, at least, ten percent (10%) of the company’s capital stock has already been paid-in, in cash, by the shareholders at a specific account in Banco do Brasil S/A.

- **Title and Ownership.** Title and ownership of the shares of a privately-held corporation is evidenced by means of an annotation in the company’s Share Register Book, or, in case of a publicly held corporation, by the certificate issued by the bookkeeping agent.
- **Capital Stock.** The capital stock of a *Sociedade Anônima* may be divided into common and preferred shares, with or without par value. The shareholder must make a deposit in cash equivalent to at least 10% of the capital stock to be paid-in. In case of foreign shareholders, such deposit requires a foreign exchange transaction in order to provide the remittance of funds to Brazil. The paid-in capital stock must be deposited with a commercial bank (i.e., Banco do Brasil) until all incorporation formalities have been completed and prior to the filing of the incorporation act with the Board of Trade.

After the incorporation process is concluded this initial capital can be withdrawn and transferred to a company’s account. There is no mandatory time

limit within which the capital must be fully paid in (such deadline is established by the shareholder(s)), except for the minimum of 10% to be initially paid in. Nonetheless, the company may only increase the capital stock with issuance of shares once at least $\frac{3}{4}$ of the corporate capital is fully paid in. The shareholders may pay in the interest in a *Sociedade Anônima*, in cash (Brazilian currency), assets or credits.

- **Dividends.** If the bylaws are silent on the matter, dividends shall be distributed to the shareholders in the amount of 50% of the net profit. It is possible for the shareholders to set forth a lower threshold, subject to a minimum mandatory dividend of 25% of the net profit.

Except if there is opposition of any shareholder present at a shareholders’ meeting, it is possible for shareholders of a privately held company to resolve to refrain from paying the mandatory dividends and retain all profits in a certain year.

Before any other allocation, at least 5% of the net profits shall be applied for the formation of the statutory legal reserve (which must not exceed 20% of the corporate capital)

As a general rule, only proportional distributions are allowed.

- **Corporate Name.** The corporate name must include the words “*sociedade anônima*” or “*companhia*” or their respective abbreviations, “S.A.”, “S/A” or “Cia.”. Prior to filing the incorporation documents with the Board of Trade, the shareholders shall perform a search to confirm the availability of the chosen corporate name. If available, the corporate name may be reserved for use for a short period of time while the incorporation documents are being analyzed by the Board of Trade.
- **Duration.** The *Sociedade Anônima* may be incorporated for a determined or undetermined term. Its duration will be stated in the bylaws.

2.2 Governance Structure

- **Management.** A *Sociedade Anônima* must be managed by one or more individuals (the so called “diretores”). If the company is privately held, a Board of Directors is optional. Publicly held companies must have a board of directors.
- **Officers (Diretoria).** The officers shall be elected by a shareholders’ meeting or by the board of directors (if the company has such board), for the term set forth in the bylaws, not to exceed three years. The duties and titles of the officers must be set forth in the bylaws and their compensation fixed periodically by the shareholders’ meeting. It is not necessary for the officers of a *Sociedade Anônima* to be Brazilian nationals nor domiciled in Brazil. However, in case the officers are not domiciled in Brazil, they shall appoint an individual domiciled in Brazil with powers to request and receive notices and/or summons of legal processes.

Is it possible to appoint the same individuals as directors and officers?

Only 1/3 of the members of the Board of Directors can also act as officers.

• **Board of Directors (Conselho de Administração).**

In addition to the officers, a *Sociedade Anônima* may also have a Board of Directors, which may be responsible for approving major policy decisions – to be implemented by the Officers - but cannot have powers to represent the company. The members of the board of directors do not need to be Brazilian citizens nor domiciled in Brazil, but shall be represented by an individual with residence in Brazil with powers to receive service of process. If the *Sociedade Anônima* has a board of directors, the officers will be elected and dismissed by such board rather than by the shareholders’ meeting.

• **Oversight Board (Conselho Fiscal).**

A *Sociedade Anônima* must have, by law, an oversight board, composed of a minimum of three and a maximum of five members with an equal number of

alternates, who must be resident in Brazil. The oversight board does not have to permanently be installed and will only operate when requested by the shareholders. It is mandatorily installed, though, during liquidation.

- **Voting Rights.** The rule under Brazilian law is one share per vote, but the company may issue preferred shares without or with restricted voting rights up to the limit of 50% of the total shares issued. Also, the bylaws may set forth limitations on the total number of votes of each shareholder.

The Brazilian Corporations Act has adopted the principle of majority, which means that 50% of the voting shares plus one additional share present at a shareholders’ meeting shall suffice to approve resolutions. However, in the case of privately held companies, the Brazilian Corporations Act provides that certain resolutions, in order to be approved, require the affirmative vote of the supermajority of the company’s shareholders. There are specific matters that require 50% plus one of the voting shares under Brazilian law.

- **Preferred Shares.** The issuance of preferred shares cannot exceed 50% of the total number of shares. Preferred shares have certain privileges and priorities provided by law, but may have no voting right. Some of such privileges are priority in the distribution of dividends⁴³, and/or priority in the reimbursement of the capital in case of liquidation. The privileges and advantages granted in the bylaws to the preferred shares cannot be changed by the shareholders without the approval of the holders of a majority of the affected class of preferred shares.

The holders of preferred nonvoting shares may acquire the right to vote when dividends are not distributed and paid to them for three consecutive years, or any shorter period if set forth in the bylaws. The right to vote will continue to be held until the next payment of dividends.

⁴³ Brazilian law allows distributing profits also in the form of “interest on stockholders’ equity”. Dividends are tax-free to the beneficiary but not tax deductible by the company, while interest on stockholders’ equity is tax deductible by the company but subject to a flat 15% withholding tax from the beneficiary.

The bylaws may set forth restrictions on the transfer of shares but cannot eliminate such right. Rights of first refusal are valid and enforceable.

- **Liability of the Shareholders.** In a *Sociedade Anônima*, the shareholders liability is limited to the amount paid for the shares which they subscribed, except for certain cases of violation of law, the articles of association and fraud, in which case the company’s legal personality can be disregarded (“piercing the corporate veil”) or in which the law provides for jointly or subsidiary liability to shareholders. If necessary, we can provide further details about situations that could lead to the piercing of the corporate veil or specific liability to shareholders in Brazil. As mentioned above, the Brazilian Civil Code provides the hypotheses in which a judge can determine the piercing of a company’s corporate veil, in order to access the personal assets of the shareholders.

The managers (partner or not) of the company are not liable for obligations of the company unless they exceed their powers or violate the law or the

articles of association, in which case they will be liable towards the company.

- **Disclosure Obligations.** The *Sociedade Anônima* must annually publish its balance sheet and other financial statements in a local newspaper along with simultaneous disclosure of the entirety of the documents on the respective newspaper's website, except for privately held companies with annual gross revenue of up to R\$78,000,000.00. The publications of financial statements may be carried out in a summarized form, provided that they contain, at least, the information provided for in Article 289, item II, of the Brazilian Corporations Act - publicly-held companies must comply with the guidelines issued by the Brazilian Securities and Exchange Commission (CVM) on the subject.
- **Dissenting Shareholder.** A dissenting shareholder does not have a general right to withdraw from the company. The shareholder will have such right, however, if the disagreement was caused as a result of any of the following matters:

- issuance of preferred shares or increase of the existing classes thereof, without maintenance of the proportion with other types and classes, except if such an issuance or increase had been provided or authorized in the bylaws;
- changes in the preferences, advantages and conditions of redemption or amortization of one or more classes of preferred shares, or creation of a new and more favored class;
- reduction of the minimum dividends set forth in the bylaws;
- merger of the company into or by another one or merger of shares, except as provided for in the law in some specific situations involving publicly held corporations;
- participation of the company in a conglomerate, except as provided for in the law in some specific situations involving publicly held corporations;

- change of the stated business purposes;
- spin-off (but only if: **(i)** the company being spun-off is publicly held and if the resulting corporation is not or is no longer registered as a publicly held company - providing for the admission of new shares in the secondary market, if this is the case - within 120 days from the resolution approving the transaction, or **(ii)** any time the spin-off results in the change of the business purposes, reduction of the mandatory dividends or participation in a conglomerate).

3. Management Visa

Managers of a *Sociedade Limitada* and officers of a *Sociedade Anônima* that are not Brazilian citizens must have a resident visa to perform such functions if domiciled in Brazil. Considering that this is a preliminary condition, it is not possible to appoint a foreign citizen resident in Brazil for such positions before he/she obtains the respective visa. As

the visa can only be obtained after the company is already incorporated in Brazil, it is not possible to incorporate a company with a foreign manager resident in Brazil from the very beginning.

One of the conditions to obtain such permanent visa is that the Brazilian company must have an equity investment (registered with the Central Bank of Brazil, as explained below) of:

- at least R\$600,000 for each applicant or
- higher than R\$150,000 for each applicant, plus the generation of 10 new jobs for Brazilian citizens in the period of two years after the settling of the company or the entrance of the applicant in Brazil.

Also, in order to require the visa, the applicant must **(i)** prove that the function to be exercised is related to the company's management; **(ii)** prove the existence of the relation between him and the company; and **(iii)** provide the Brazilian Central Bank with his indication to assume the office.

4. Registrations Applicable to Partners/ Shareholders

- **Federal Revenue Secretariat.** Pursuant to applicable Brazilian tax regulations, foreign legal entities or individuals that hold equity in a Brazilian company are required to obtain a Legal Entity's Taxpayer Registration Number ("*Cadastro Nacional de Pessoas Jurídicas – CNPJ*") or Individual's Taxpayer Register ("*Cadastro de Pessoas Físicas – CPF*"), respectively. In order to establish their activities in Brazil, foreign companies must be enrolled with the *CNPJ* in order to be able to invest in Brazilian companies. The enrollment does not imply that the company is headquartered in Brazil, neither does it require tax return.
- ▶ With respect to **foreign individuals**, their registration with the Brazilian tax authorities can be obtained:
 - directly, at any Brazilian consulate or embassy with jurisdiction over his/her place of residence, by presenting an enrollment application

form, available at the website of the Federal Revenue Secretariat, and a photocopy of any identification document; or

- through an attorney in fact in Brazil.
- ▶ When **companies (legal entities)** holding foreign investments are registered with the Central Bank of Brazil, they have their *CNPJ* automatically issued, based on the information available in the Brazilian Central Bank Information System. In order for such registration to be completed, the foreign legal entity will be required to present the power of attorney granting powers to an individual to be responsible therefor before the tax authorities, as well as the applicable corporate documents proving its legal existence in the country of its incorporation.
- **Beneficial Owner.** Upon enrollment with the *CNPJ*, the entity will be required to inform its beneficial owner to the Federal Revenue Office within 30 days.

► **Definition.** A beneficial owner is defined as the individual that:

- directly or indirectly owns, controls or significantly influences the company or entity; or
- on behalf of whom a transaction is carried out.

► **Significant influence is deemed to exist if the individual:** owns, directly or indirectly, more than 25% of the company or entity; or directly or indirectly detains or exercises the preponderance in the decision-making process of the entity and has the power to elect the majority of its board of the directors, without controlling it.

► **Disclosed Information.** If there is a beneficial owner, its identity shall be disclosed, including: name, date of birth, nationality, and country of residence. If no individual meets the beneficial owner definition, the entity will only be required to inform that there is no individual falling within the definition of beneficial owner. The do-

cumentation attesting such information must be submitted by means of an online statement.

► **Waiver.** The obligation to disclose the ownership chain up to the beneficial owner is waived whenever in any of the following cases:

- a Brazilian and/or a non-Brazilian is a listed company located in non-tax haven countries that disclose the company's significant shareholders;
- a not-for-profit entity located in non-tax haven countries that do not act as fiduciary owners of property, as long as such company is regulated and supervised by the public authority;
- multilateral organizations, central banks, sovereign funds or any State-owned entity, as well as the entities controlled by such organizations;
- pension funds and similar institutions, as long as such companies are regulated and supervised by the public authority;

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- Brazilian investment funds meeting certain tax-related reporting obligations; and
- foreign investment vehicles with a minimum of 100 shareholders (among other requirements to be observed).

5. Other Required Registrations and Enrollments

- **National Social Security Institute (INSS).** INSS is a government authority which collects taxes for the National Social Security system. Even if a company does not own employees, it shall be registered with such authority.
- **Caixa Econômica Federal.** *Caixa Econômica Federal* is an official bank that manages the Employee Severance Indemnity Guarantee Fund (*FGTS*), into which employers must make monthly deposits into individual accounts for all their workers.

- ▶ The company must register with INSS and Caixa Econômica Federal even if it has no registered employees. There is no legal requirement that the company maintain employees in Brazil.
- **Municipal Authorities.** In order to operate, the company also need to apply for an Operation Permit (*Alvará de Licença de Estabelecimento*) with the Municipal Authority of the location where the company will operate. The obtaining of such permit is not mandatory for all companies. The necessity to obtain the permit will vary according to the corporate purpose of each company.
- **State Authorities.** Apart from the enrollment with the Municipal Authority, the register of the company with the State Authority may also be required if its activities involve the circulation of goods and services. Only companies that will develop such activities are subject to this register. Procedures for the registration of the company with both Municipal and State Authorities may be performed simultaneously with the company's enrollment with the Federal Revenue Secretariat.

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- **Fire Department Inspection Certificate (AVCB).** The AVCB issued by the Military Fire Brigade of the competent State is required for every commercial. This certifies that the building of the company meets the safety requirements against fire or other situations that may be prejudicial for the real property. The timing to obtain this license varies depending on the municipality and then current workload.
- **Professional Boards/Class Entities.** Entities performing specific services that are subject to supervision or regulation by professional or class entities may need to enroll with such bodies. For example, entities performing engineering services may need to enroll with *CREA - Conselho Regional de Engenharia e Agronomia*.
- **Goods Declaration (SISCOMEX).** Entities performing export and import activities, as well as dispatchers, dispatchers’ assistants, depositaries, cargo agents, port operators and transporters must register themselves before *Sistema Integrado de Comércio Exterior (Siscomex)*, an in-

tegrated system controlled by the Federal Revenue Office. The timing to register and access such system may vary according to the volume of imported goods.

- **Environmental Licenses.** The companies that use natural resources and/or have pollution potential, have to obtain environmental licenses (Preliminary License – “LP”, Installation License – “LI” and Operation License – “LO”) with the local environmental agencies for location, construction, installation, expansion and operation of their activities. Usually, the environmental agencies take up to 6 (six) months counted from the company’s request to issue each environmental license and the order in which licenses are issued (if concomitant or not) may vary depending on the competent environmental authority. However, the term to issue the preliminary license can vary from six (6) to twelve (12) months, depending on the complexity of the project and the technical feasibility studies.

- **Environmental Register.** Pursuant to the legislation all the activities that are considered as potentially pollutant or any kind of use of natural resources that may cause environmental damage or related construction, installation, expansion and operation are subject to the Environmental Registry (*Cadastro Técnico Federal*) before the Brazilian Institute of Environmental and Renewable Natural Resources - “IBAMA”.

6. Central Bank – Foreign Investment Registration

All foreign exchange transactions in Brazil must be carried out through local authorized financial institutions. This foreign exchange market encompasses, among others, the following transactions: the purchase and sale of foreign currency, international transfers of Brazilian Reais, the holding of Brazilian capital abroad and the holding of foreign capital in Brazil.

Foreign direct investments in Brazilian companies

can be made primarily in two⁴⁴ different manners:

- through the remittance of an amount in foreign currency (as capital contribution to a Brazilian company or as the purchase price of existing shares/quotas), which is sold in the foreign exchange market by a bank authorized to deal in foreign currency; or
- through the in-kind capitalization of companies with goods (i.e., equipment, machinery). In both cases, the amount of currency or the value of such goods is subsequently registered with the Central Bank of Brazil. Intangible assets, such as trademarks and goodwill may be utilized for the capitalization of companies, provided they are evaluated by experts beforehand.

⁴⁴ These two manners of investment result in registrations with the Central Bank denominated in the applicable foreign currency. There are certain circumstances of foreign direct investment in Brazil, however, that would not fall within the Central Bank’s regulatory framework (for instance, capital contributions made in BRL while the foreign investor is located in Brazil) and would not, in principle, be possible to be registered with the Central Bank. In order to guarantee the repatriation of such investments, Law 11,371, dated November 28, 2006, permitted the registration such foreign investments with the Central Bank, but in BRL. This creates a foreign exchange risk in the repatriation of funds.

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The Central Bank of Brazil is responsible for the control and registration of foreign investments, in addition to the repatriation of capital and the remittance of profits abroad. The registration of foreign investment with the Central Bank electronic registry system is essential to ensure the right to repatriate the capital invested and to make remittances or reinvestments of profits and other forms of remuneration of capital.

In order to operate the electronic registry system (“**RDE-IED**”), the investee and the foreign investor must obtain a “CDNR code” from the Central Bank by means of enrollment of the investor/ investee and his or her respective representatives’ data with the “*Cadastro Declaratório de Não Residentes*” (Foreign Investors Declaratory Registry).

The registration of foreign investments is done electronically (online) by the company receiving the investment and the foreign investor (by its representative in Brazil), within 30 days following the investment’s date of entry into Brazil.

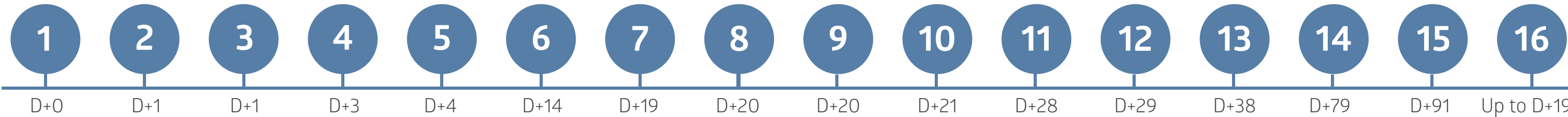
Foreign investments are registered in the currency that effectively enters Brazil. Profits are remitted in the currency of the country where the investor is resident or has its head office, or where the branch making the investment is located, while reinvestments of profits are registered in the currency of the country to which the respective profits would have been remitted pursuant to such rules.

There is no minimum period during which the registered funds must remain in Brazil. Therefore, at any time after the investment, the foreign investor may sell equity in Brazil or liquidate the investment and thereafter repatriate the capital. In principle, the foreign investor may, without the prior approval of the Central Bank of Brazil, freely repatriate the proceeds resulting from the sale of shares/ quotas or from the liquidation or winding-up of a company. However, any repatriation is subject to demonstration that the amount to be repatriated corresponds to the fair market value of the sold or liquidated investment.

There are no limits with regard to the transfer of dividends abroad, provided that the those distributed by the Brazilian company are paid to Brazilian and foreign partners under similar and non-discriminatory conditions.

Estimated Timeline

The timeline presented below is tentative and based solely on our recent experiences. The timing may vary significantly depending on the state of incorporation and on the workload of the public offices. Also, public agents may require additional information or edits to the documents submitted for review, which could significantly alter the estimates below.



1	Receipt In Brazil of documents related to foreign partners/shareholders (i.e. powers-of-attorney, corporate documents proving their legal existence)	9	Creation of the RDE-IED (code of the investor/investee to be Informed to the bank for purposes of execution of foreign currency Exchange agreement)
2	Completion of sworn translation of documents related to foreign partners/shareholders (provided that digital copies were made available beforehand)	10	Enrollment with Caixa Economica Federal to obtain FGTS registration
3	Application for enrollment of the investor/investee and his/her respective representatives' data with "Cadastro Declaratório de Não Residentes - CONR" of the Central Bank	11	Remittance of funds to Brazil (if applicable) and execution of foreign currency exchange agreement with the Brazilian bank
4	Deposit of mandatory initial capital (10% of the amount paid in cash for the company's capital). A provisory RDE may be required, which may affect the estimated timing - Not applicable for Ltda.	12	Registration of the foreign direct investment with the Central Bank
5	Filing of the PoA, the articles of organization/bylaws and DBE (request for enrollment on the National Registry of Legal Entities - CNPJ) before the Board of Trade	13	Completion of registration with municipal and/or state tax authorities
6	Registration of the articles of association/bylaws before the Board of Trade and enrollment on the National Registry of Legal Entities (CNPJ)	14	Update of SISCOMEX registration to "UNLIMITED" category (import and export volume above USD 150.000,00 per semester)
7	Registration before SISCOMEX in the "EXPRESS" category (import and export volume up to USD 50.000,00 per semester)	15	Appointment of the beneficiary owner before the Brazilian Federal Revenue Office
8	Filing for opening the bank account at a commercial bank chosen by the client. Depending on the procedures adopted by the relevant bank, the opening of the bank account can take longer than expected	16	Issuance of environmental licenses. The term to issue the preliminary license can vary from 6 (six) to 12 (twelve) months, depending on the complexity of the project and the technical feasibility studies

Preliminary Questionnaire⁴⁵

1. Corporate type. Please confirm whether NewCo shall be incorporated as a limited liability company (“*Limitada*” or “*Ltda.*”) or as a corporation (“*Sociedade Anônima*” or “*S.A.*”).

Please see chart in Page 1 for a highlight comparison between the Limitada and the *Sociedade Anônima*.

2. Corporate Purpose. Please inform what activities NewCo shall perform in Brazil. All activities shall be described in NewCo’s Articles of Association/Bylaws.

3. Corporate Name. What shall be NewCo’s corporate name?

⁴⁵ These two manners of investment result in registrations with the Central Bank denominated in the applicable foreign currency. There are certain circumstances of foreign direct investment in Brazil, however, that would not fall within the Central Bank’s regulatory framework (for instance, capital contributions made in BRL while the foreign investor is located in Brazil) and would not, in principle, be possible to be registered with the Central Bank. In order to guarantee the repatriation of such investments, Law 11,371, dated November 28, 2006, permitted the registration such foreign investments with the Central Bank, but in BRL. This creates a foreign exchange risk in the repatriation of funds.

The corporate name shall include reference to the main activity to be performed by NewCo (e.g. in case of a holding entity, the corporate name must include, for example, the word “Holding” or “Participações”).

4. Headquarter Address. What shall be NewCo’s headquarters address? In case you don’t have a specific address yet, we can recommend a few service providers that provide lease services to facilitate the incorporation process until the establishment of a local address.

5. Quotaholder(s)/Shareholders.

a. Please inform what entities/individuals shall act as NewCo’s quotaholder(s)/ shareholders and their corresponding equity percentage.

The Limitada may be formed by one or more individuals or legal entities, whereas the *Sociedade Anônima* requires at least two shareholders.

b. In case such quotaholder(s)/shareholders are domiciled outside Brazil, who shall act as local representative of the quotaholder(s)/shareholders?

In case you don't have any presence in Brazil yet, we can recommend a few service providers that may be engaged by you to act as attorney-in-fact of the quotaholders/shareholders.

6. Capital Stock. What shall be NewCo's initial corporate capital? Confirm the terms and form for the payment of the subscribed corporate capital by the partners or shareholders, as applicable.

Except in cases when the activity to be performed by NewCo requires an initial minimum capital, there is no legal requirement concerning the minimum or maximum capital for incorporation. It is fairly common that the initial capital stock be of R\$1,000.00. In case of Limitadas, each quota shall have a nominal value and it is fairly common that such value be set at R\$1.00.

7. Governance Structure and Management. Please inform the intended governance structure for NewCo, including:

a. Who shall act as officer(s) of NewCo in Brazil?

Limitadas and *Sociedades Anônimas* are required to appoint at least one officer. In both cases, the officers shall be individuals, and may not be domiciled in Brazil, provided, however, that they must appoint a legal representative residing in Brazil with powers to request and receive notices and/or summons of legal processes. In case you don't have any presence in Brazil yet, we can recommend a few service providers that may be engaged by you to act as legal representative of the officers of NewCo until it becomes operational.

b. Will there be a Board of Directors or an Advisory Board?

It is not required that the Limitada or the *Sociedade Anônima* have such corporate bodies. Additionally, in case of a Limitada, it is not common to have a Board of Directors, as the deliberative powers of directors in case of Limitadas is not clear under Brazilian Law. Please note that the directors or advisors can be domiciled outside of Brazil.

For more information, contact our Mining Law team:

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