

VOLUME VI

COLLECTION MINING AND
SUSTAINABLE DEVELOPMENT

MINING AS A STRATEGIC ASSET: MERGERS, ACQUISITIONS AND NEW DIRECTIONS

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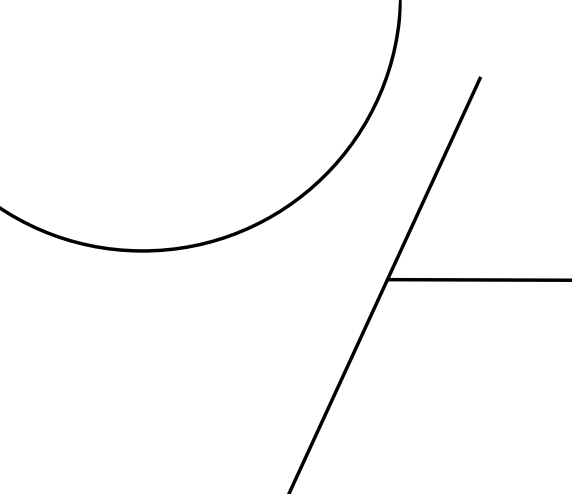
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ABSTRACT

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FOREWORD
MINING AS A STRATEGIC
ASSET: MERGERS,
ACQUISITIONS, AND
NEW DIRECTIONS

RAUL JUNGSMANN

CEO of the Brazilian Mining Institute (IBRAM)

MINING AS A STRATEGIC ASSET: MERGERS, ACQUISITIONS, AND NEW DIRECTIONS

Raul Jungmann¹

The acquisition of Mineração Taboca by a Chinese government-owned company in 2024 made media headlines, went viral on social media, and sparked a debate that goes beyond the specifics of the transaction. In essence, it was a typical corporate deal—the transfer of control of a private company for USD 340 million—in line with market practices and subject to regulatory and antitrust scrutiny. Still, it was portrayed, in part, in the news and social media, as if Brazil had handed over its largest uranium reserves, an alarmist interpretation soon debunked by independent analyses and official agencies. Taboca's operations focus predominantly on cassiterite (tin), with by-products of niobium and tantalum. No uranium is mined there, and nuclear minerals remain under the monopoly of the Federal Government, as determined by the Constitution.

The debate took on political overtones when a senator brought the matter before both the full Senate and the courts, framing the transaction as a threat to national sovereignty. Such actions are part of a legitimate democratic process, yet they underscore how minerals have once again come to be seen—rightly and with growing intensity—as strategic assets, particularly when linked to technological supply chains, the energy transition, food production, defense industries, and beyond. It is also worth recalling that Taboca had been under foreign (Peruvian) ownership for years, without generating comparable uproar. So, what has changed? The answer lies in the shifting geopolitical landscape around critical minerals, where competition over supply has intensified and come fully into the open. In fact, within the same short window as the acquisition in question, both Chinese and American players made moves on assets and projects in Brazil, as documented by the specialized press.

The so-called Age of Critical and Strategic Minerals is not mere rhetoric, it is a reality. Veja magazine has highlighted the backdrop—the acceleration of the Chinese appetite

¹ CEO of the Brazilian Mining Institute (IBRAM)

for mineral assets in the country and the regulatory debate it has stirred. At the same time, industry publications have noted the parallel surge of Chinese and American investments and financing in mining and energy-transition minerals across the country. The Taboca deal, therefore, is no bolt from the blue, it illustrates the classic tension between openness to foreign investment and the safeguarding of national interests—an equation that must be addressed with technical rigor, transparency, and predictability.

The position I put forward—and which I invite readers of this collection to reflect upon—is that Brazil must modernize and streamline its mineral policy. The country needs to move beyond reactive, episodic responses and instead design a stable, competitive institutional framework.

This requires **broadening geological mapping** at a scale compatible with the demands of investors and technical professionals, including geologists and mining engineers, among others, ensuring that the resulting data is open, interoperable, and promptly updated. It also means **creating credit mechanisms** suited to the high exploratory risk and long maturation cycle of mining, such as project finance instruments and collaterals aligned with mining rights. A **review of the legal and institutional arrangements regarding nuclear minerals** is equally necessary, exploring—with the safeguards of safety, compliance, and constitutional limits—partnership models with the relevant government-owned company, always for peaceful purposes.

Strengthening governance in sensitive areas, such as border regions and other strategic zones, is another step, with clearer authorization procedures, strict environmental conditions, and continuous monitoring. At the same time, **bureaucracy must be reduced**, litigation curtailed, taxation streamlined, and legal certainty reinforced across the sector, all while maintaining strong competition oversight by the Brazilian Antitrust Authority (CADE) without weakening competitive safeguards. Finally, it is essential to promote integrated domestic value chains, connecting exploration, mining, processing, and industry, to encourage value addition within the country, boost productivity, stimulate innovation, and improve Brazil's trade balance.

The horizon is unequivocal. The International Energy Agency (IEA) recalls that *“in the transition to clean energy, critical minerals bring new challenges to energy security”* and that *“a typical electric car requires six times the amount of mineral inputs of a conventional car”*. Consistent public policies will determine whether these minerals will be transition enablers or bottlenecks.

From a business and capital markets standpoint, the recent cycle underscores the importance of strategic transactions—mergers, acquisitions, joint ventures, and alliances—as pathways to scale, diversification, and reserve replenishment. Global projections suggest

that the mining sector will need to invest at least USD 2.1 trillion by 2050 to meet the demands of the energy transition. This staggering figure helps explain the wave of portfolio consolidation and repositioning currently underway, as highlighted by consulting firm EY.

It is precisely in this context that Volume VI of the collection *Mineração, Meio Ambiente e Desenvolvimento Sustentável* (Mining, Environment, and Sustainable Development, in English) is inserted—entitled Mining as a Strategic Asset: Mergers, Acquisitions, and New Directions is inserted. The work brings together national and international experts to analyze, from legal, economic, and regulatory perspectives, the various forms of strategic transactions and their practical impacts on the mineral sector. The discussion spans key themes such as mergers, acquisitions, and joint ventures; financing mechanisms for critical and strategic minerals; legal, labor, compliance, and land-related due diligence; competition policy and precedents established by CADE, as well as case studies and real-world experiences. Together, these contributions provide a valuable repertoire of lessons learned and insights into governance, financing, and international competitiveness.

This analysis helps us grasp why mining should be regarded as a strategic asset: not solely because of what lies beneath the ground, but because of the institutions, rules, technologies, capital, and human capabilities a country can bring to bear. For Brazil, the challenge is to transform its mineral resources into resilient and competitive value chains—anchored in high-quality geological research, efficient yet rigorous environmental licensing, strong logistical connectivity, and regulatory predictability. Only then will foreign acquisitions cease to be perceived as a threat and instead be assessed case by case, on the basis of technical criteria, appropriate safeguards, and clear counterparts, with the aim of maximizing economic, technological, and socio-environmental gains.

To frame this agenda, it is useful to draw on two authoritative references. IEA warns that the growing concentration of critical mineral supply chains creates vulnerabilities that must be addressed through diversification, new investment, and recycling, an area in which Brazil can and should deliver competitive responses. The World Bank, in turn, projects that the production of minerals such as graphite, lithium, and cobalt may need to rise by nearly 500% by 2050 to meet the demand of low-carbon technologies. This only reinforces the case for strengthening Brazil's environment for investment, innovation, and sustainability.

In the aftermath of the media uproar surrounding the Taboca case, it becomes clear that the episode is more a symptom than a cause of a broader shift in times. It also prompts us to reflect on why a straightforward acquisition—specifically, a share deal with transfer of corporate control—was able to cause such commotion.

In the face of this and similar situations, Brazil must respond with both technical composure and strategic ambition, updating its frameworks and instruments, strengthening its capital and technological base, and positioning itself at the forefront of an innovative, responsible, and globally competitive mining sector, from research through to export.

Works such as this elevate the debate on Mining Law and the economics of the sector, drawing attention to issues of legal certainty, best practices, and regulatory models aligned with international standards, while remaining attentive to Brazil's federative structure and socio-environmental context. May the analyses gathered here encourage a deeper and more well-grounded dialogue, inform public and private decision-making, and open pathways toward a mineral development that is ethical, sustainable, and conducive to shared prosperity.

Enjoy your reading.

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P R E S E N T A T I O N

MARCELO MENDO GOMES DE SOUZA

PRESENTATION

Marcelo Mendo Gomes de Souza¹

We are proud to present Volume VI of the Collection Mining and Sustainable Development (*Mineração e Desenvolvimento Sustentável*), entitled Mining as a Strategic Asset: Mergers, Acquisitions, and New Directions. This Volume continues our ongoing mission to foster the debate on the vital importance of mining in Brazil and its role on the global stage. Honoring the legacy and memory of José Mendo Mizael de Souza—and carrying forward the mission entrusted to me by my father—we, as the coordinators, hope that the insights shared by the authors will contribute to the development of Mining Law in our country and around the world.

This Volume comes at a particularly strategic time for the global mining industry. We are experiencing an era of profound transformations, in which mining is no longer viewed solely as a traditional extractive activity and is increasingly recognized as a key sector driving the global energy transition and the advancement of sustainable technologies.

¹ Marcelo Mendo Gomes de Souza is a partner in the Mining practice at Cescon, Barrieu, Flesch & Barreto Advogados. He represents domestic and foreign clients in mergers and acquisitions, advising them on regulatory issues related to mining and the environment, involving the acquisition and sale of mining companies and mining rights, as well as in regulatory and environmental administrative procedures, in addition to judicial and arbitration proceedings involving mining, energy, real estate, and agribusiness companies, including in projects and ventures related to mineral research, mines, dams, hydroelectric plants, thermoelectric and solar/photovoltaic plants, wind farms, railways, pipelines, transmission lines, ports, freight ships, toll roads, railway terminals, airports, and industrial units. His practice in ESG & Impact is focused on the socio-environmental impacts of the mining activity. He has been recognized as one of Brazil's leading lawyers in Mining by Chambers and Partners, Legal 500, Who's Who Legal, and other publications for over 20 years. He holds an LLB degree from Universidade Federal de Minas Gerais (UFMG), a Postgraduate degree in Business Law from Fundação Dom Cabral, and a Master's degree in Administrative Law from UFMG. Author of *Direito Minerário e Meio Ambiente* (Editora Del Rey, 1995); Author of *Fechamento de Mina – Revista Brasil Mineral* (2004); Coordinator and co-author of *Direito Minerário Aplicado – Volume I* of the *Mineração e Desenvolvimento Sustentável* series (Mandamentos Editora, 2003, and 2nd edition 2009); Co-author of *Direito Ambiental: Enfoques Variados* (Lemos & Cruz, 2004); Coordinator and co-author of *Direito Minerário em Evolução – Volume II* of the *Mineração e Desenvolvimento Sustentável* series (Mandamentos Editora, 2009); Coordinator and co-author of *Compensação Financeira pela Exploração dos Recursos Minerais – CFEM* (Editora Del Rey, 2011); Co-author of *Direito Minerário: Estudos* (Editora Del Rey, 2011); Co-author of *Setor Mineral: Rumo a um novo Marco Legal* (Chamber of Deputies – Council of High Studies and Technological Evaluation), Co-author of *Mineração e Meio Ambiente – análise jurídica interdisciplinar* (Editora Lumen Juris, 2017); Co-coordinator and author of *Mineração, Meio Ambiente e Desenvolvimento Sustentável – Volume III* of the *Mineração e Desenvolvimento Sustentável* series (e-book organized by Thiago Passos and Fabiane Sousa, Cescon Barrieu, 2022); Co-coordinator and author of “Brasil, País Mineiro”: o novo ciclo da mineração – Volume IV of the *Mineração e Desenvolvimento Sustentável* series (e-book organized by Thiago Passos and Fabiane Sousa, Cescon Barrieu, 2023); and Co-coordinator and author of *Práticas Transversais no Direito da Mineração – Volume V* of the *Mineração e Desenvolvimento Sustentável* series (e-book organized by Thiago Passos, Fabiane Sousa, and Natália Marques, Cescon Barrieu, 2024)

In this context, mergers and acquisitions play a leading role in reshaping the market, optimizing resources, and enhancing operational efficiency.

This collection features articles by Brazilian and foreign experts, all written in English to broaden the work's global reach. The contributions explore the multiple facets of mining transactions and have been carefully selected to offer a comprehensive and current view of the challenges, opportunities, and innovations in today's mining M&A landscape.

The articles included in this volume cover a wide spectrum—from strategic analyses of joint ventures and foreign investments to detailed discussions on specific technical and legal issues, such as due diligence, land and real estate aspects, and financing alternatives. Particular emphasis is placed on critical and strategic minerals, a topic of increasing geopolitical relevance, as well as on the regulatory and compliance challenges that are integral to transactions within the mining sector.

The diversity of topics in this work reflects the inherent complexity of M&A deals in the mineral sector, where legal, economic, environmental, and social aspects are inextricably intertwined. From the analysis of real-world cases to conceptual discussions on emerging financial instruments and regulatory frameworks, each contribution offers valuable insights for all stakeholders in the mining sector, including public policymakers.

As one of the world's leading mining powers, Brazil features prominently in several of the analyses presented. The articles explore both the opportunities and constraints of the Brazilian market, including capital market access, strategic foreign investment, and the country's role in supplying critical minerals to the global economy.

This work is intended for a diverse and specialized audience: lawyers involved in complex deals, mining executives, consultants, academics, regulators, and anyone seeking to understand the nuances and trends shaping the future of mining and minerals as strategic assets. Each article has been authored by recognized experts in their respective areas, ensuring technical rigor and practical relevance.

With the release of Volume VI, we reaffirm our commitment to editorial excellence and the dissemination of specialized knowledge in the mining sector. The continuation of this Collection reflects not only the natural evolution of a consolidated editorial project but also our dedication to supporting sustainable and strategic development of mining in Brazil and worldwide.

We hope that this work becomes a key reference for those engaged in mining transactions, contributing to more informed decisions and fostering a mining sector that is more efficient, sustainable, and strategically positioned to meet the challenges of the 21st century.



In closing this Volume VI, I wish to once again express my sincere gratitude to all those who made this work possible: Instituto Brasileiro de Mineração (IBRAM), Cescon, Barrieu, Flesch & Barreto Advogados Associados, the contributing authors, coordinators Maurício Pellegrino de Souza and Paula Azevedo de Castro, organizers Fabiane Sousa and Júlia Cordeiro, and all collaborators and supporters of this new volume of the **Mining and Sustainable Development** series.



INTRODUCTION
THE BRAZILIAN
MINING LANDSCAPE

CINTHIA DE PAIVA RODRIGUES
JULIO CESAR NERY FERREIRA

THE BRAZILIAN MINING LANDSCAPE

Cinthia de Paiva Rodrigues¹

Julio Cesar Nery Ferreira²

The current Brazilian mining landscape³ has as its dominant theme the so-called Critical and Strategic Minerals (CSMs). While definitions vary—and some minerals are classified differently depending on the source—their importance remains undisputed, particularly in driving the transition to a low-carbon economy.

A simplified distinction between these categories defines Critical Minerals as those that are indispensable to economic activity and technological applications, while simultaneously presenting risks of scarcity or supply concentration in the hands of a limited number of dominant producers, whether companies or countries. By contrast, Strategic Minerals⁴ are those of particular significance for national and food security, for broader national development objectives, and their strong impact on the country's foreign trade.

For the sake of conceptual clarity and ease of reference, recognizing that both categories are indispensable either to high-technology applications or to the national economy, the term CSM is employed here as a comprehensive designation that encompasses both definitions. Within this framework, niobium provides an illustrative case: while considered critical in certain international contexts, in Brazil it assumes a more strategic character due to the country's abundant reserves. Potassium, by contrast, is classified as critical insofar as Brazil depends on imports for over 90% of its domestic consumption, despite its central role in national agriculture—one of the principal pillars of the Brazilian trade balance. In general terms, the degree of criticality attributed to a mineral should be understood as a function of two primary dimensions: supply-side risk and overall economic impact.

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³ Current scenario read the years 2024 and 2025.

⁴ For the MME, a list of strategic minerals was defined in 2021 with Decree 10,657; and Regulation 2 of June 18, 2021: sulfur, phosphate, potassium, molybdenum, cobalt, copper, tin, graphite, platinum group minerals, lithium, niobium, nickel, silicon, thallium, tantalum, rare earths, titanium, tungsten, uranium, vanadium, aluminum ore, iron, graphite, gold, and manganese.

Two major initiatives are currently underway seeking to define a National Policy for Critical and Strategic Minerals (PNMCE). The first originates in the National Congress, most notably through Bill 2780/2024, introduced by Congressman Zé Silva. This proposal institutes the National Policy on Critical and Strategic Minerals, creates the Critical and Strategic Minerals Committee (CMCE), and assigns it a role within the existing National Council on Mineral Policy, under the Ministry of Mines and Energy (MME). A fundamental aspect of this initiative is the definition of which minerals should be classified as critical and strategic for Brazil. It also establishes a mechanism for regularly reviewing and updating this list. Such periodic revisions are necessary, since technological developments can substantially alter mineral classifications and national priorities within relatively short timeframes. As a result, a comprehensive approach is essential—one that avoids concentrating policy efforts on a single mineral that may lose strategic relevance as circumstances evolve. In parallel, the Federal Senate has also advanced proposals, including additional bills that, similar to Bill 2780/2024, converge on the broader agenda of critical and strategic minerals. The eventual harmonization or consolidation of these legislative initiatives will depend on the progress of the parliamentary process.

The second major initiative aimed at defining a National Policy for Critical and Strategic Minerals is being developed within MME, under the coordination of the National Secretariat of Geology, Mining, and Mineral Transformation. This effort seeks to issue a regulatory decree designed to foster both the mineral value chain and the industrial transformation associated with CSMs. Initially, in 2024, the terminology under consideration was Clean Energy Minerals. However, following recommendations from the Brazilian Mining Institute (IBRAM), in coordination with other sectoral associations, the scope was expanded to include agrominerals—an adjustment that was positively received by MME. The enactment of this decree is expected in 2025. Importantly, the decree is not intended to replace or conclude the legislative process initiated with Bill 2780/2024; rather, the two instruments are conceived as complementary measures, both of which may play a significant role in developing the sector and attracting new investment to Brazil's mineral industry.

The definition of CSM should serve as a foundational element for the formulation of the National Mining Plan. This plan, whose objectives include the promotion of geological knowledge and the sustainable expansion of mining activity, must be articulated in close coordination with a broader industrial development strategy. Such alignment would foster the creation of a favorable environment for the establishment and consolidation of domestic value chains linked to these minerals. Achieving this requires a stable and predictable regulatory framework; a licensing process characterized by efficiency and celerity, but without compromising the rigor of environmental analysis, and the deliberate fostering of domestic markets for mineral applications. These conditions are essential not only for securing a reliable basis for production but also for generating surpluses that can

be directed toward exports with higher technological content and greater added value. Furthermore, the definition of CSMs should also underpin the National Fertilizer Plan, particularly concerning mineral fertilizers. Brazil remains heavily dependent on external suppliers for the bulk of its potassium needs, as well as for a significant share of phosphate and sulfur—inputs that are indispensable to sustaining the country’s large-scale agricultural production.

Advances in the development of mineral value chains will inevitably increase the demand for specialized labor and require infrastructure improvements, most notably access to competitively priced energy, as well as expanded road, railway, and port systems. At the same time, such progress is expected to generate a greater inflow of resources into Brazil’s trade balance. In parallel with these broader sectoral needs, a number of legislative initiatives currently under discussion in the National Congress address specific aspects of the Critical and Strategic Minerals agenda. These include Bill 2809/2023, establishing a voluntary certification system for green lithium in Brazil; Bill 2210/2021, passed by the Mines and Energy Commission of the Federal Senate, providing for the National Policy for the Promotion of Technological Development of Rare Earth Component Minerals; Bill 5424/2023, introducing measures to stimulate the mining sector, such as mechanisms to encourage investment in mineral exploration; Bill 2197/2025, in the Senate, seeking to create a National Policy for the Promotion of Technological Development of Rare Earth Component Minerals (PADT); and Bill 3829/2025, in the House of Representatives, providing for the mandatory processing and industrialization of strategic minerals within Brazilian territory, with a focus on rare earth elements.

Underscoring the strategic relevance of CSMs for the future of mining in Brazil, a study conducted by IBRAM estimated sectoral investments for the period 2025–2029 at approximately USD 68.4 billion. Of this total, CSM-related projects account for nearly 64%, corresponding to USD 43.6 billion. Fertilizers and iron ore were also included in this estimate, given their fundamental role in supporting the construction of infrastructure associated with renewable energy development.

In summary, the National Policy should establish a coherent and systemic framework to guide the actions of both public and private stakeholders in the regulation and promotion of activities related to CSMs. Such a framework must shape the definition of medium- and long-term strategic objectives for the sustainable exploitation of mineral resources. Within this scenario, the CSM Council plays a pivotal role by articulating national guidelines that are consistent with the imperatives of the energy transition and food security. Its responsibilities also include ensuring the effective implementation of public policies aimed at fostering industry development and strengthening value chains, while promoting circularity and the efficient use of mineral resources. Together, these measures will help

the mining sector not only consolidate its role but also expand its contribution to Brazil's economic and social development.

In 2025, additional initiatives aimed at stimulating the mineral sector—particularly through CSMs and minerals essential to the energy transition—gained visibility with the announcement of companies selected in the public call for business plans dedicated to the transformation of strategic minerals⁵, with a special focus on energy transition and the decarbonization of the economy. The initiative, jointly launched in June by the National Bank for Economic and Social Development (BNDES) and the Brazilian Innovation Agency (FINEP), selected 56 business plans to advance to the next phase of the preparation of the Joint Support Plan (CSP), representing a combined investment of BRL 45.8 billion. At the time this article was ready for publication, the CSP phase had not yet been completed or made public.

In 2024, the National Bank for Economic and Social Development (BNDES) launched a Private Equity Investment Fund (FIP) in Strategic Minerals, in partnership with Vale. The initiative is expected to mobilize up to BRL 1 billion, with resources directed primarily toward approximately 20 junior and medium-sized companies engaged in mineral exploration, project development, and the implementation of new strategic mineral mines in Brazil. Capital contributions will be made by BNDES—through its subsidiary BNDES Participações S.A. (BNDESPAR)—and by Vale, with each subscribing a minimum of BRL 100 million and a maximum of BRL 250 million, subject to a 25% ceiling for individual participation in the fund's total committed capital. At the time this article was ready for publication, the fund management phase had been completed and publicly disclosed. However, the list of projects selected for investment had not yet been released.

Another noteworthy initiative, developed by an inter-institutional working group under the leadership of the Ministry of Finance, is the Brazilian Sustainable Taxonomy (TSB). Designed as a classification instrument, the TSB seeks to guide both public and private investment decisions in accordance with Brazil's environmental, climate, and socio-economic objectives. Its ultimate aim is to steer financial flows toward activities that contribute to building a low-emission, environmentally sustainable, and climate-resilient economy.

More than 50 countries have developed, or are in the process of developing, their own sustainable finance taxonomies. The Brazilian taxonomy, scheduled for launch in September and developed with the active participation of IBRAM on its Advisory Board,

⁵ The call from BNDES and FINEP aims to promote mineral transformation projects based on the following elements: aluminum, cobalt, copper, tin, graphite, lithium, manganese, platinum group metals (PGMs), molybdenum, niobium, nickel, silicon, tantalum, rare earths, titanium, tungsten, uranium, vanadium, and zinc.

distinguishes itself as one of the few frameworks worldwide that explicitly recognizes the extractive industry as a strategic economic activity.

In the proposal for the TSB, a specific set of minerals was identified on the basis of their relevance to decarbonization and their strategic importance for Brazil. At this initial stage of implementation, the list comprises lithium, niobium, nickel, copper, rare earth elements, graphite, silicon, aluminum, and iron. Beyond their contribution to the energy transition, the classification also considered the carbon intensity of extraction processes, measured in CO₂e emissions. It is noteworthy that the data supporting this criterion were drawn from the Greenhouse Gas (GHG) Inventory of the mineral sector, published by IBRAM in 2024.

Inclusion within a sustainability taxonomy implies the capacity to assess and monitor the real impact of each stage of an economic activity, with particular emphasis on its degree of environmental sustainability. In this sense, primary products that feed into value chains aligned with decarbonization and enhanced energy efficiency are expected to receive differentiated treatment within the classification framework.

A parallel can be drawn with the framework established for the Excise Tax (IS), in which the applicable rate is determined according to three key criteria: (1) energy efficiency, (2) material recyclability, and (3) greenhouse gas emissions associated with manufactured goods.

According to the Greenhouse Gas (GHG) Inventory mentioned above, Brazil's total emissions amount to 2,319.08 MtCO₂. Of this total, industrial processes account for 70.08 MtCO₂, equivalent to 3% of national emissions, while the mining sector contributes 12.77 MtCO₂—representing 18% of emissions from industrial processes and 0.55% of Brazil's overall GHG output. The 2024 survey constituted the third edition of this inventory, conducted by IBRAM.

In line with the growing relevance of environmental action within the mining sector, data from IBRAM's ESG Agenda highlight the extent of the industry's contributions. A 2024 survey, answered by 29 member companies, reported that the sector protects a total of 1,092,004.6 hectares, while directly impacting 113,300.0 hectares through their operational structures, such as pits, waste piles, dams, processing plants, and transportation infrastructure. This corresponds to a ratio of 9.6:1—that is, for every hectare impacted by mining activities, an additional 9.6 hectares are protected. This performance goes well beyond the sector's formal legal obligations, underscoring a proactive environmental commitment.

According to data from MapBiomass, mining activities occupy 0.052% of Brazil's national territory. MME, however, estimates this figure at 0.06%, as its calculation includes the entire area covered by mining permit titles, whereas MapBiomass measures only the land area that is effectively impacted. Despite this limited spatial footprint, the mining sector

exhibits a comparatively high level of GDP generation per unit of impacted area—among the highest ratios across productive sectors—demonstrating its economic relevance in proportion to its territorial use.

Mineral Sector Data 2024

Despite occupying only a small share of Brazil's territory, the mining sector generated, in 2024, revenues corresponding to BRL 270.8 billion, as measured through the collection of the Financial Compensation for Mineral Resource Exploitation (CFEM). For the extractive sector as a whole, including oil and gas, the Institute for Applied Economic Research (IPEA) estimated its contribution to the national GDP at 4%. Brazil currently produces 93 different mineral substances, with iron ore accounting for 59.4% of total revenues, followed by gold at 8.8% and copper at 7.5%. From a regional perspective, Minas Gerais recorded the highest share of revenue (40.0%), followed by Pará (36.1%), while São Paulo, Bahia, and Goiás each registered approximately 4%. In comparative terms, the sector's revenue in 2024 rose by 9.1% relative to 2023, with notable growth recorded in copper ore (25.2%), granite (17.9%), and gold (13.3%).

The mineral sector showed an increase in exports reaching 402 million tons in 2024, totaling USD 43.4 billion in value, an increase of 0.9% compared to 2023, while mineral imports totaled USD 8.48 billion, a reduction both in value, from -23.1%, and in tons, to 41.2 million tons or 1.6% less than 2023. In exports, iron ore represented 68.7% of the total, copper concentrate 9.6%, and semi-manufactured Gold 9.1%. In imports, potassium represented 44.8%, coal 36.6%, and sulfur 2.9%.

In 2024, China remained the primary destination for Brazilian mineral exports, accounting for 69.7% of the total volume exported (measured in tons).

Brazil's mineral imports originated primarily from the United States (19.8% of the total), followed by Russia (16.0%), Australia (13.3%), and Canada (12.2%). Over the same period, the country registered significant declines in the importation of key minerals, including potassium (-25.4%), coal (-23.3%), sulfur (-17.7%), and zinc (-12.5%).

Tax revenues generated by Brazil's mineral sector in 2024 totaled BRL 93.4 billion, representing an increase of 9.1% compared to the previous year. Within this amount, revenues from CFEM alone rose by 8.6%, reaching BRL 7.45 billion. Minas Gerais accounted for 45% of total CFEM revenues, followed by Pará with 41%. In terms of mineral substances, iron ore overwhelmingly dominated, contributing 74.9% of total CFEM revenues.

In 2024, 8,707 new direct jobs were created in the mineral sector, which ended the year with 220,800 direct jobs and more than 2 million direct and indirect jobs.

Legislative developments in 2025

The year 2025 is expected to be marked by significant institutional activity within the mineral sector.

The National Congress passed the General Licensing Law, expressly recognizing the importance of the mineral sector by ensuring its inclusion among the activities covered by the new framework. This represented a significant achievement for the industry, which had long sought to operate under the same regulatory conditions applied to other productive sectors.

The sector also expresses expectations regarding adjustments to labor legislation governing underground work. Currently, underground activity is limited to six hours per day, six days per week. However, greater operational flexibility is being sought in order to enhance productivity, particularly in deep mines—at depths approaching or exceeding 2,000 meters—where travel times between the surface and the work fronts can surpass 40 minutes, substantially reducing effective working hours. Another proposed revision concerns the age restriction, currently set at 50 years, which the industry argues should be updated to reflect the parameters introduced by the 2017 pension reform. Likewise, an additional amendment is under consideration to permit women to engage in underground mining activities, through a revision of Article 301 of the Consolidation of Labor Laws (CLT). Collectively, these legal adjustments aim to modernize the regulatory framework and improve conditions for underground work, moving beyond restrictions established in the 1940s that no longer correspond to contemporary realities in occupational health, safety, and technological development.

U.S. Tariffs and Negotiations with the Executive Branch in Brazil

The negotiation of tariff policies with the United States was at the center of discussions in July and August 2025. Data indicate that Brazilian mineral exports to the U.S. accounted for only 3.5% of Brazil's total mineral exports, while imports from the U.S. represented 19.8% of Brazil's total mineral imports in 2024—a considerably more significant share. This asymmetry is reflected in the trade balance: Brazilian mineral imports from the United States totaled USD 1,588.75 million, compared with exports valued at USD 1,528.57 million, resulting in a surplus of USD 60.18 million in favor of the United States.

A preliminary assessment of the list of materials exempted from maximum taxation indicates that approximately 75% fall within the exceptions established by the decree. Consequently, an estimated 25% of mineral exports will be subject to the new tax regime. Among the substances not covered by the exemptions are kaolin, copper, manganese, vanadium, bauxite, and certain categories of ornamental stones.

It is essential that the productive sector continue to closely monitor this issue, both to fully assess its potential impacts and to advocate for the exclusion of all Brazilian minerals from the newly implemented surcharge.

Other Relevant Issues in 2025

The regulation of the National Dam Safety Policy, currently being finalized by an interministerial group, represents a critical development for the sector. Its provisions are particularly significant in relation to the definitions established under Regulatory Standard NR-22, which are essential to ensuring legal certainty for existing operations located within the self-rescue zones of mining dams. The regulation foresees a five-year period for compliance and rectification measures, underscoring the importance of continuous monitoring to anticipate and properly scale the interventions that will be required.

In parallel, strong expectations have been set for the National Mining Agency (ANM) to initiate, in 2026, the regulatory process concerning waste rock and tailings piles. In anticipation of this, ANM amended its internal regulations in July 2025 to establish a more robust institutional structure capable of addressing this forthcoming regulatory agenda. It is also noteworthy that the committee responsible for revising ABNT NBR 13028—guidelines for the preparation and presentation of mining dam projects, already published—plans to submit, in the second half of the year, a draft chapter for public consultation at ABNT. This new section will address technical standards for the design and construction of tailings piles, including the co-disposal of waste rock and tailings.

Multi-stakeholder initiatives have gained increasing momentum in efforts to strengthen corporate mining and to attract new partners and investments into Brazil's mineral sector. Among the most significant is the Invest Mining network, an initiative led by the Brazilian Association of Mineral Exploration Companies (ADIMB), IBRAM, the Brazilian Association of Mineral Production (ABPM), and BNDES, which seeks to foster the development of a capital market tailored to junior mining companies in the country. Complementing this effort, the partnership between IBRAM and the Brazilian Trade and Investment Promotion Agency (APEX) has played an important role in promoting international business opportunities for the sector. In addition, forums such as LIDE Mineração have consolidated themselves as relevant spaces for dialogue, networking, and the showcasing of investment opportunities in Brazilian mining.

Speaking of Invest Mining, it is worth noting the outcomes of the recently held Invest Mining Talks. The discussions highlighted that, although Brazil continues to face significant structural and regulatory challenges, the country nonetheless offers a favorable window of opportunity to attract new investments into the mineral sector.

Drivers such as the approval of the General Licensing Law, the strategic emphasis placed on critical minerals for the energy transition, the development of the capital market as a mechanism to foster greater transparency and governance, and the growing recognition of the importance of social engagement collectively contribute to highly promising prospects for the Brazilian mineral sector.

Collaboration among the government, productive sector, industry associations, and financial institutions is fundamental to converting Brazil's mineral potential into new operational units, thereby generating employment opportunities and income in the localities where these projects are implemented.

A stable business environment, together with legal and fiscal certainty, constitutes a key element for ensuring predictability in the attraction of investments. These conditions are also essential for strengthening the reputation of mining in Brazil as a legal, transparent, and sustainable activity.

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ARTICLE

FOUNDATIONS OF MINERAL EXPLORATION FRAMEWORKS AND MINING FINANCE

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FOUNDATIONS OF MINERAL EXPLORATION FRAMEWORKS AND MINING FINANCE

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1. INTRODUCTION

Mining is one of the most important economic activities for Brazil's development, exerting a direct influence on its geopolitical prominence. This is well established, given the historical importance of mining for the country's economic and social development.

This article is designed as a guide and presents an introductory overview of the Brazilian mining sector, emphasizing its economic relevance, the fundamental legal frameworks applicable to the industry, and the essential procedures that companies and entrepreneurs must follow in the exploration of mineral resources.

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It further presents the mineral exploration regimes defined in the Mining Code, describes the main stages of the mining procedures, and considers the financing instruments available for the development of strategic projects, with emphasis on recent public policies focused on the energy transition.

Finally, the article briefly examines the environmental rules applicable to mining activities, highlighting the sector's challenges and responsibilities in the current regulatory environment.

2. THE ECONOMIC IMPACTS OF THE MINING SECTOR IN BRAZIL

Mining plays a central role in Brazil's history, economy, and identity. Minas Gerais, whose very name carries the mining tradition, emerged as a symbol of mineral activity following the first gold discoveries in the State, dating back to the 17th century. This activity not only drove the settlement and economic development of the countryside but also consolidated mining as a cornerstone of Brazil's territorial expansion and social formation.

Over the following centuries, modern mining expanded to other regions, especially in the State of Pará, with the exploration of the Carajás Project, whose iron ore deposits occupy a notorious position in the world rankings.

Today, alongside Minas Gerais and Pará, States such as Goiás, Mato Grosso, and Mato Grosso do Sul are home to extensive mineral operations, especially for iron ore, gold, and strategic minerals, including manganese, driven by the integration of large mineral deposits with complex logistics networks and industrial chains.

In recent years, the Brazilian mineral sector has played a crucial role in the global economic agenda of decarbonization and energy transition, increasingly recognized as a key supplier of critical minerals, including lithium, graphite, and niobium, while also demonstrating significant potential for the supply of rare earth elements, essential for the production of batteries, solar panels, and other low-carbon technologies.

When it comes to rare earth elements, Brazil holds the second largest reserves of these minerals in the world, accounting for 23% of the total reserves, behind China with 49% and far ahead of India, in the third place with 7.7%. This strategic positioning reinforces Brazil's role in the global supply chain for these minerals, attracting investment and adding value to national production.

Although production remains incipient, circumstances like the strength of Brazil's clean energy matrix—predominantly based on hydroelectric, solar, and wind generation—combined with research funding initiatives in the sector, including the one initiated

by the National Bank for Economic and Social Development (BNDES) and the Brazilian Funding Authority for Studies and Projects (Finep) at the beginning of this year, are increasingly enhancing the development of the activity.

In addition to its leading role in the critical minerals market, Brazil ranked ninth globally in total mineral production according to a survey published by World Mining Data 2025. More specifically, the country occupied eighth place in iron production, second in cobalt, fourth in lithium and manganese, third in nickel, and first in niobium.

The internal economic impact of mining is equally noteworthy. In 2024 alone, the sector generated BRL 270.8 billion, corresponding to a 9.1% increase compared to 2023. Last year, Brazilian mineral exports reached BRL 43.43 billion, accounting for 47% of the Brazilian trade balance surplus.

In the first semester of 2025, the sector's revenue was BRL 73.8 billion, reflecting a growth of 8.6% over the same period in the previous year.

In addition to direct revenue from mineral production, tax collection from the sector in 2024 totaled BRL 86 billion, a figure that rises to BRL 93.4 billion when mining royalties, known as Financial Compensation for Mineral Exploitation (CFEM), are included.

Mining has also generated more than 221,000 direct jobs in the last year and sustained over 2.5 million jobs across the wider value chain and market. This has significantly contributed to fostering regional economies and internalizing economic development.

From the above, it follows that Brazil benefits from a long-standing tradition in mining, supported by robust infrastructure, skilled labor, pioneering technologies, and a strong network of research laboratories, universities, and institutions. The country further offers considerable room for growth and a scenario that is open to foreign investors.

In this sense, the ongoing evolution of regulatory frameworks and financing alternatives for mineral research and exploration projects—topics that will be covered in more depth throughout the article—guarantees a future in which the Brazilian mineral sector will continue to be a vector for the country's development, poised to consolidate its position as a key component of the transition to a green economy, enhancing Brazil's prominence within the main global production and innovation chains.

3. HOW TO BECOME A MINING OPERATOR IN BRAZIL: LEGAL AND PROCEDURAL ASPECTS

The Brazilian mining legal framework adopts a dual system that combines government ownership of mineral resources with private sector involvement in exploration. Under article 176⁵ of the Federal Constitution, mineral resources are owned by the Federal Government, but their exploration and development may be authorized or granted to private parties through administrative procedures. This model aims to ensure national sovereignty over mineral resources, while offering legal certainty to investors and entrepreneurs.

Brazil's regulatory framework establishes the conditions for individuals or companies to exploit mineral resources in the country. This chapter outlines the foundations of Brazil's mining legal system, with particular attention to the administrative procedures required to secure mining titles.

The Federal Constitution provides that mineral resources, along with hydraulic energy potential, are federal assets and have a legal status separate from land ownership. This means that, as a rule, mineral exploration does not require ownership of the surface as mining rights are independent of real estate ownership.

Exploration of mineral resources can only be carried out by Brazilians or companies organized under Brazilian law, with headquarters and administration in the country (art. 176, paragraph 1,⁶ of the Constitution). Foreign investors, therefore, must set up a local subsidiary to operate in the sector or invest in Brazilian companies engaged in mining activities.

The Brazilian Mining Code (Decree-Law 227/1967) establishes the procedures for obtaining mining titles, under the regulatory oversight of the National Mining Agency (ANM, formerly, DNPM), the authority responsible for granting, inspecting, and regulating mining activity in Brazil.

⁵ “**Art. 176.** The deposits, whether they are being mined or not, and other mineral resources and the potential for hydraulic energy constitute property distinct from that of the soil, for the purposes of exploration or development, and belong to the Federal Government, with the concession company being guaranteed ownership of the outputs.” Federal Constitution

⁶ “**Art. 176, paragraph 1.** The exploration and development of mineral resources and the use of the potential referred to in the head of this article may only be carried out through authorization or concession by the Federal Government, in the national interest, by Brazilians or companies incorporated under Brazilian law and having their headquarters and administration in the country, in accordance with the law, which will establish specific conditions when these activities are carried out in border areas or indigenous lands.” Federal Constitution

4. MINERAL EXPLORATION REGIMES

The Mining Code provides for five different regimes for the exploration of mineral resources (art. 2), which vary based on the nature of the substance and the scale of the operation:

Regime	Scope	Main characteristics
Authorization	Research on deposits	Fixed term and, as a rule, no mining activity
Mining Concession	Exploration of the deposit	Indefinite term, until the deposit is exhausted; requires proof of the technical and economic viability of mining
Licensing Regime	Substances for direct use in civil construction	Simplified regime; limited area; governed by Law 6,567/1978
Mining Permit (PLG)	Substances for which mining activities do not require prior mineral research	Specific rules; reduced area; aimed at individuals or cooperatives; governed by Law 7,805/1989
Monopoly System	Exploration of specific substances	Exclusive exploration by the Federal Government

For medium and large projects, the **research authorization** and **mining concession** regimes are the most common. For this reason, we will outline the stages of the mining procedures associated with these two models.

• Stages of the mining procedures

The procedure usually begins with a **Request for Research Authorization**, which must be submitted online to ANM through the Mineral Research Electronic Request (REPEM)

system.⁷ The application must meet the requirements set out in article 16⁸ of the Mining Code, including a detailed description (descriptive memorial) of the intended area and a plan for the research work.

The REPEM was regulated by ANM through Regulation 119/2022. This regulation sets out the technical criteria to be met by the applicant when preparing the documents to accompany the application.

ANM will analyze the application and, once it confirms that the documents are in order, the area is available (i.e., not overlapping with other mining rights), and the mining activity is compatible with the use and destination of the land,⁹ the **Research Permit** will be issued.

The **Research Permit** is the title that authorizes geological studies to be carried out for up to four years, renewable once, with exceptions,¹⁰ to identify the deposit.

As the mining rights are independent of land ownership, access to the area to be surveyed must be authorized in advance by the landowner. In these cases, the mining operator and the landowner can reach an agreement to include, among other things, the amount to be paid by the mining operator to enter the property and carry out the research work.

If an amicable agreement is not possible, the mining operator may seek court authorization to access the property without the landowner's consent. This is supported by legal provisions granting mining activities the status of national and public interest,

⁷ Electronic Application for Mineral Exploration available at: <https://www.gov.br/anm/pt-br/assuntos/acesso-a-sistemas/requerimento-de-pesquisa>

⁸ “**Art. 16.** The research authorization shall be requested in an application addressed to the Director General of DNPM, delivered upon receipt to DNPM's protocol, where it shall be mechanically numbered and registered, and shall be presented in two copies and contain the following: I – name, nationality, marital status, profession, domicile, and registration number with the National Register of Individual Taxpayers of the Ministry of Finance, of the applicant, natural person. In the case of a legal entity, the company name, registration number of its articles of association with the competent Registry of Commerce, address and registration number with the National Register of Corporate Taxpayers the Ministry of Finance; II – proof of payment of the respective fees; III – identification of the substances to be researched; IV – delimitation of the superficial extension of the targeted area, in hectares, and the Municipality and State in which it is located; V – a detailed description (descriptive memorial) of the intended area, under the terms to be defined in an order issued by the Director General of DNPM; VI – a situation plan, the configuration, and information elements of which will be established in an order issued by the Director General of DNPM; VII – a plan for the research work, accompanied by the budget and timetable for its execution.” Mining Code

⁹ In other words, no social or public interest overrides the activity in question, e.g., research permits should not be granted for fully protected conservation units, as mining is prohibited in these areas.

¹⁰ “**Art. 22 (...)** III – the term of the permit shall be up to four (4) years, according to the request of the interested party, taking into account the special characteristics of the situation of the area and of the mineral research aimed at, as established in a regulation by ANM, subject to:” Mining Code

meaning that the development of mining takes precedence over the private interests of the landowner.

Court authorization will also be contingent on payment of compensation to the landowner for the restriction imposed on the land use and for any damage caused.¹¹

This procedure is commonly referred to as judicial assessment of rents and damage, with specific criteria for determining the amount payable to the landowner set out in article 27¹² of the Mining Code.

It is worth noting that it is possible to request a preliminary injunction from the court¹³ to secure access to the area before a final decision on the proceeding is issued.

During the research stage, the holder of a Research Permit may apply for a **Utilization Permit** to ANM. This is a provisional title that allows for exceptional mineral extraction (art. 22, paragraph 2,¹⁴ Mining Code).

Mining activities, regardless of the authorizing title, including those based on a Utilization Permit, are subject to prior environmental license and payment of the **Financial Compensation for Mineral Exploration (CFEM)**,¹⁵ Brazil's equivalent to mining royalties.

CFEM is due monthly, and its rate, levied on the tax base,¹⁶ varies according to the type of mineral.¹⁷

¹¹ This legal action is commonly referred to as “rents and damage”.

¹² “**Art. 27.** The holder of the research authorization may carry out the respective works, as well as the necessary auxiliary works and services, on land in the public or private domain, covered by the areas to be researched, provided that it pays the respective owners or squatters a rent for the occupation of the land and compensation for damage that may be caused by the research works, subject to the following rules: I – The rent may not exceed the amount of the maximum net income of the property to the extent of the area to be actually occupied; II – Compensation for damage caused may not exceed the property's officially assessed value to the extent of the area actually occupied by the survey work, except in the case provided for in the following item; III – When the damage is such as to render the entire property on which the area required for the research work is located unusable for agricultural or pasture purposes, the compensation corresponding to such damage may reach the maximum officially assessed value of the entire property; IV – The officially assessed values referred to in items II and III will be obtained by comparison with the officially assessed values of property of the same kind in the same region; V – In the case of public land, payment of rent is waived, with the holder of the survey being subject only to payment for damage; (...)” Mining Code

¹³ This decision is commonly granted by the Judiciary upon the prior deposit of an amount as a security deposit.

¹⁴ “**Art. 22, paragraph 2.** The extraction of mineral substances in a titled area, prior to the granting of a mining concession, is exceptionally permitted, subject to prior authorization by ANM, in compliance with the relevant environmental legislation.” Mining Code

¹⁵ “**Art. 20, paragraph 1.** The Federal Government, the States, the Federal District, and the Municipalities are guaranteed, under the terms of the law, participation in the results of the exploration of oil or natural gas, water resources for the purpose of generating electricity, and other mineral resources in their territory, continental shelf, territorial sea, or exclusive economic zone, or financial compensation for such exploration.” Federal Constitution

¹⁶ The tax basis varies according to the CFEM taxable event and is available at Law 8,001/1990

¹⁷ The rates are available at Law 8,001/1990

Once the research is completed, the holder of the Research Permit must submit the **Final Research Report** to ANM.¹⁸ This report must contain data attesting to the technical and economic viability of the mining operation.

If approved by ANM,¹⁹ the Research Permit holder will have one year²⁰ to apply for a **Mining Concession**.

This period is granted to the mining operator because the concession application must be accompanied by various documents,²¹ including the Economic Utilization Plan (PAE), which outlines the mining method and resources, and proof of technical and financial capacity to carry out the project.

ANM will assess the technical and legal compliance of the application and accompanying documents. If all conditions are met, it will publish the corresponding **Mining Ordinance** upon presentation of an environmental license allowing the mining project to be set up.

¹⁸ “**Art. 25.** Upon completion of the work, the holder shall submit to ANM a final report on the exploration work carried out, in accordance with the provisions of an ANM Regulation.” Regulation of the Mining Code.

¹⁹ “**Art. 26.** Once the survey has been carried out and the final report referred to in art. 25 has been submitted, ANM shall verify its accuracy and, in view of a conclusive opinion, issue an order: I – approving the report, when the existence of a technically and economically usable deposit has been demonstrated; II – not approving the report, when the research work is found insufficient or there are technical deficiencies in its preparation, making it impossible to assess the deposit; III – archiving the report, when there is evidence that there is no technically and economically feasible deposit, with the area becoming available for future applications, including access by the interested party to the report which concluded that there was no deposit; or IV – suspending the decision on the report, when the temporary impossibility of the technical and economic feasibility of mining is characterized, under the head provisions of art. 23, item III, of Decree-Law 227, of 1967 – Mining Code.” Regulation of the Mining Code

²⁰ “**Art. 31.** Once the report has been approved, the permit holder shall have one (1) year to apply for the mining concession and, within this period, may negotiate its right to this concession, in accordance with this Code.

Sole Paragraph. DNPM may renew the period referred to in the head of this article, for an equal period, upon a substantiated request from the holder, submitted before the end of the initial period or the current period.” Mining Code

²¹ “**Art. 38.** The application for a mining permit shall be addressed to the Ministry of Mines and Energy by the holder of the research permit, or his successor, and shall be accompanied by the following information and evidence: I – certificate of registration of the incorporated entity with the National Department of Trade Registration; II – identification of the mineral substances to be mined, indicating the Research Permit granted and approval of the respective Report; III – the name and description of the location of the field intended for mining, identifying it precisely and clearly to the valleys of rivers or streams, on maps or plans of notorious authenticity and precision, and railroads and highways, or even to natural landmarks or topographical accidents of unmistakable determination; its confrontations with the research authorization and neighboring mining concessions, if any, and indication of the District, Municipality, County and State, and also the name and residence of the owners of the land or squatters; IV – a graphic definition of the intended area, delimited by a geometric figure formed, mandatorily, by straight segments with a true North-South and East-West orientation, with two (2) of their vertices, or exceptionally 1 (one), tied to a fixed and unmistakable point on the land, with the vectors of mooring being defined by their true lengths and directions, and also configuring the territorial properties interested in it, with the names of the respective superficiaries, as well as a situation plan; V – easements that the mine should enjoy; VI – a plan for the economic use of the deposit, with a description of the processing facilities; VII – a declaration of the availability of resources or a commitment to seek the necessary funding to carry out the plan for the economic use and operation of the mine, in accordance with an ANM regulation.” Mining Code

Once the Mining Ordinance has been published, the holder has 6 (six) months²² to start the mining work.

Similar to mineral research, the holder of mining rights must also obtain authorization from the landowner to access the area and exercise the associated mining rights and obligations²³. If an amicable agreement is not reached, the mining operator can also resort to the Judiciary. In addition, it is possible to create a mineral servitude for the installation of ancillary structures inside or outside the Mining Right polygon.

In this case, the landowner will be entitled to compensation for the restriction imposed on the use of his property, as well as a share in the proceeds resulting from the mining activities.²⁴

Article 11 of the Mining Code establishes that the landowner is entitled to a participation in the mining proceeds amounting to fifty percent (50%) of the total amount due as CFEM. However, since this is a negotiable right, the participation may be mutually agreed upon between the landowner and the mining operator.

During the mining concession phase, the mining operator must comply with various obligations, including submitting the Annual Mining Report (RAL).²⁵ In this document, the mining operator must provide ANM information about: **(i)** the method of mining, transportation, and distribution to the consumer market; **(ii)** the investments made in the mine and the research work; and **(iii)** its annual balance sheet, among other relevant data.

²² “**Art. 47.** In addition to the general conditions set out in this Code, the holder of the concession shall also have to comply with the following, subject to the sanctions set out in Chapter V: I – start the work set out in the mining plan within six (6) months of the date of publication of the Concession Decree in the Federal Official Gazette, unless there is a reason for force majeure, at the discretion of DNPM.” Mining Code

²³ The holder of a mining right not only can but must carry out the research or mining work.

²⁴ “**Art. 176, paragraph 2.** The landowner is guaranteed a share of the mining proceeds, in the form and amount laid down by law.” Federal Constitution

²⁵ “**Art. 50.** The Annual Report on the activities carried out in the previous year must contain, among other things, data on the following topics: I – Method of mining, transportation and distribution in the consumer market of the mineral substances extracted; II – Changes in reserves, characteristics of the mineral substances produced, including the minimum economically rewarding content and the ratio observed between the useful substance and the waste product; III – Monthly table showing at least: production, stock, average sale price, destination of the raw and processed product, collection of the Single Tax and payment of the owner’s Tithe; IV – Number of mine and processing workers; V – Investments made in the mine and research work; VI – The Company’s annual balance sheet.” Mining Code

- **Can I acquire a mining right?**

All mining titles, from Authorizations and Permits to Mining Ordinances, may be assigned or transferred to third parties (art. 42,²⁶ Decree 9,406/2018 – Mining Code Regulation). In other words, they are negotiable titles.

Those willing to acquire these titles must meet the minimum requirements set out in the Mining Code, and the assignment must be previously approved by ANM. In addition, as previously mentioned, foreign investors are required to organize a local subsidiary to operate in the sector or contribute capital to Brazilian mining companies.

Mining rights may also be acquired in auctions held by ANM. The scope of these auctions is areas that once belonged to a mining operator but were returned to the market upon expiration of previously existing mining titles.

The auctions take place through the Public Offering and Auction of Areas System (SOPLE), and the titles are acquired at the stage at which the corresponding area becomes available. Those acquiring titles at auction undertake all obligations and rights associated with the current stage of the mining title.

At the time this article was completed, there were no active notices of available areas. However, according to SOPLE, 1,167 areas are suitable for availability but have not yet been auctioned. There are also 6,783 areas with indications that they are potential candidates for future auctions.²⁷

5. FINANCING INSTRUMENTS FOR MINING ACTIVITIES IN BRAZIL

Financing tools for mining activities in Brazil have gained prominence in recent years, particularly through initiatives supporting the development of strategic mineral projects.

One of the key instruments is the Equity Investment Fund (FIP) launched in March 2024 by BNDES and the Ministry of Mines and Energy (MME). BNDES estimates that the fund could mobilize up to one billion reais (BRL 1 billion), with the potential for even greater contributions than the initial estimate.

²⁶ “Art. 42. The research authorization permit, the mining concession, the license, and the mining permit may be subject to total or partial assignment or transfer, provided that the assignee meets the applicable constitutional, legal, and regulatory requirements.” Mining Code Regulation

²⁷ We say “indications” because the declaration of forfeiture of these mining rights will still be subject to analysis by ANM. If the forfeiture is confirmed, they will be made available for auction.

The funds raised may be invested in up to 20 junior and medium-sized companies. To qualify, companies benefiting from the contributions must be engaged in mineral research, development, and implementation of new mines of strategic minerals in Brazil.

At the same time, in March 2024, Decree 11,964/2024 was published, through which the Federal Government classified projects to process strategic minerals for the energy transition as eligible for infrastructure debentures under Law 14,801/2024.

Infrastructure debentures are securities that, under current regulations, can be issued to finance projects considered to be a priority in Brazil. To encourage their issuance, Law 14,801/2024 introduced significant tax benefits for the issuer, streamlined bureaucratic issuance procedures, and removed the need for ministerial approvals.

Based on the rules set out in Decree 11,964/2024, on January 23, 2025, MME released Ordinance 825/2025 for public consultation. The ordinance provides for specific rules defining the criteria and conditions for issuing debentures to finance priority projects in the strategic mineral transformation chain for the energy transition.

Although the work undertaken by MME to prepare the ordinance for public consultation is of great importance, there is still room for improvement, especially in expanding the scope of substances that can benefit from this financing instrument.

It is also worth noting that the Public Call for Proposals launched in January 2025 by BNDES and Finep for the selection of business plans for investment in the transformation of strategic minerals for the energy transition and decarbonization.

Through this initiative, it is estimated that up to five billion reais (BRL 5 billion) will be invested in projects ranging from large-scale industrial plants to research for new industrial facilities in the future.

In June 2025, the results of the selection, with 56 Business Plans out of the 124 submitted, were announced. The selected Business Plans encompass projects located in 17 States, covering various mineral substances, such as rare earths, lithium, graphite, nickel, copper, silicon, titanium, and platinum.

Taken together, these financing initiatives highlight the importance of mining to Brazil's development, especially in relation to strategic minerals, and the growing market interest in these financial tools.

6. MINING AND THE LEGAL PROTECTION OF THE ENVIRONMENT

Environmental protection in Brazil is grounded in the Constitution. Article 225 guarantees everyone the right to an ecologically balanced environment and assigns both the public authorities and the community the duty to defend it.

Under article 24, all government levels share concurrent authority to rule on environmental protection. While this provision is intended to protect the environment, expanding the number of entities with legislative powers can lead to significant conflicts when federal and state rules diverge.

In addition, article 30 of the Federal Constitution grants Municipalities the power to rule on local matters and manage territorial planning within their boundaries. This can have an impact on the development of economic activities, often under the pretext of protecting areas of local significance, including for environmental reasons.

The government regulates activities or undertakings that use natural resources and are, or could be, polluting through the administrative procedure of environmental licensing. This framework is currently governed by Supplementary Law 140/2011.

However, on July 17, 2025, the National Congress passed Bill 2,519/2021, providing for the General Environmental Licensing Law. The approved text introduces relevant updates, incorporating practices that had already been common in environmental licensing procedures.

Mining activities were included in the approved bill after lengthy political debates that began in the 2000s.

At the time of writing this article, the deadline for the Brazilian President to sanction Bill 2,519/2021 was still underway. As a result, further significant developments on the subject may occur in the coming months.

It is important to note that, under Supplementary Law 140/2011 and the current wording of Bill 2,519/2021, as a rule, the authority for environmental licensing rests with the States, with only a few specific exceptions. Accordingly, the States maintain internal bodies with the power to grant the licenses provided for by the rules in force.

At the same time, Law 14,066/2020, which amended several provisions of the Mining Code (Decree-Law 227/1967), deserves particular attention, especially those regarding environmental protection. Under these rules, mining activities entail the mining operator's responsibility to prevent, mitigate, and compensate for the environmental impacts caused by the mining enterprise.

As this illustrates, environmental protection in Brazil is governed by an extensive and complex legal framework. This makes the environmental licensing procedure one of the strategic components in the development of mining projects in the country.

7. CONCLUSION

The mining sector in Brazil holds a strategic position on the global stage, not only because of its significant production and export volumes but also due to its central role in the production chains driving the energy transition and the sustainable economy.

Recent financing initiatives, such as investment funds and infrastructure debentures, underscore the increasing importance of strategic minerals for national competitiveness.

Thus, understanding the legal rules applicable to mining—including the procedural steps for securing mining titles, the nuances of environmental licensing, and ongoing regulatory advances in the sector—is essential to guarantee legal certainty for investors and foster the development of the sector. This knowledge contributes to consolidating Brazil's position as a hub of innovation and a reference in the responsible exploration of its mineral resources.

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ARTICLE

JOINT VENTURES AS
STRATEGIC ASSETS:
INNOVATION AND
COLLABORATION IN
THE MINING SECTOR

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JOINT VENTURES AS STRATEGIC ASSETS: INNOVATION AND COLLABORATION IN THE MINING SECTOR

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Abstract: This paper explores how joint ventures (JVs) are evolving into strategic tools for collaboration, legitimacy, and sustainability in the mining sector. Through three Chilean case studies, it highlights new JV models that combine public, private, and indigenous participation, demonstrating their potential to address complex economic, social, and environmental challenges while enabling long-term value creation.

1. INTRODUCTION

JVs in mining have expanded beyond their traditional focus on investment and risk-sharing. They now address broader challenges such as regulatory complexity, community legitimacy, and environmental responsibility—reflecting a wider industry shift toward balancing profitability with long-term sustainability.

JVs account for over 40% of the output of the ten largest mining operations worldwide (Bamford et al., 2022), underscoring their central role in complex, large-scale projects. In Chile—the world’s top copper producer and a rising force in lithium—this shift is especially clear. New JV models are emerging that involve public and private actors, indigenous communities, and shared governance structures.

This paper examines three Chilean JV models involving **(i)** Wealth Minerals, **(ii)** CODELCO–Anglo American, and **(iii)** CODELCO–SQM.

Together, these cases show that JVs are no longer just technical or financial tools, but flexible institutional mechanisms that can advance social, environmental, and policy

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goals. Properly structured, they enable diverse actors—including state-owned enterprises, indigenous communities, and multinationals—to co-create value under complex and evolving conditions.

2. FROM GLOBAL CONCEPT TO LOCAL PRACTICE: JVS IN MINING AND THEIR APPLICATION IN CHILEAN CASE STUDIES

JVs have traditionally enabled financial risk-sharing, asset pooling, and access to technology in capital-intensive sectors, such as mining (Thomson Reuters, 2023). Over time, they have evolved into governance tools that address operational, environmental, social, and regulatory challenges (Johnson et al., 2025).

Risk-sharing itself dates back centuries, with early forms like Italy’s commenda and Genoese trade agreements combining capital and shared returns—precursors to today’s JV models (Brouwer, 2005; Van Doosselaere, 2009). In mining, JVs have long helped partners finance projects, manage risks, and leverage local infrastructure and expertise. More recently, “next-generation” JVs have incorporated ESG metrics, fostered cross-sector collaboration, and supported inclusive governance (Johnson et al., 2025).

This reflects a broader shift toward stakeholder engagement and corporate responsibility. In Chile, this evolution is visible in hybrid JVs combining public, private, and indigenous actors, driven by rising environmental concerns, pressure for state control over lithium, and the growing recognition of indigenous rights (Reuters, 2025).

2.1 Case Study 1: The Ollagüe JV – An Innovative Model of Indigenous Participation in Lithium Mining

2.1.1 Context

The Kuska Project is located in the Salar de Ollagüe, in Chile’s Antofagasta Region, and covers approximately 10,200 hectares. Wealth Minerals Ltd (Wealth), a mineral resource company with holdings in Canada and Chile, began exploring the site in 2019 and later confirmed the presence of lithium-rich brines. An early study estimated a combined total of over 1.4 million tonnes of lithium carbonate equivalent (LCE) in indicated and inferred resources (Wealth Minerals, 2024).

In early 2024, a Preliminary Economic Assessment projected strong returns for a 20,000-ton-per-year lithium extraction plant with a 20-year mine life. The Chilean government subsequently named Ollagüe one of six priority salars for lithium development. (Wealth Minerals, 2025).



2.1.2 Project Description and JV Structure

This section analyzes the JV formed by Wealth Minerals and the Quechua Indigenous Community of Ollagüe (QICO) through Kuska Minerals SpA. On May 23, 2025, Wealth announced the formal agreement to advance the Kuska Project in the Salar de Ollagüe, Antofagasta Region. Kuska Minerals is structured with a 95% stake for Wealth and 5% for the QICO, which holds preferential rights such as anti-dilution protection and the appointment of one director to a five-member board. Wealth contributed over 10,000 hectares of mining rights, exploration data, DLE technology assessments, and economic studies. (Wealth Minerals, 2025).

The next phase focuses on securing a Special Lithium Operating Contract (CEOL by its acronym in Spanish), crucial for further exploration, permitting, and feasibility work. Wealth reports that prior consultation with the QICO, initiated in late 2024, has progressed successfully due to the QICO's strong familiarity with the project (Wealth Minerals, 2024).

2.1.3 Function and Innovation: Indigenous Partnerships in Mining – Chile and Beyond

The Kuska Minerals JV represents a notable shift in Chile's mining approach by including the QICO as an equity partner rather than a passive stakeholder. This structure promotes shared decision-making and aligns with Chile's National Lithium Strategy, while also helping to build trust and secure the social license to operate in environmentally sensitive salt flats.

Internationally, similar models have proven successful. In Canada, the Cree Nation of Eeyou Istchee co-manages hydroelectric projects with Hydro-Québec (Hydropower & Dams, n.d.). In Australia, Rio Tinto's agreements with the Yandicoogina (Gumala) people have enabled Indigenous participation in iron ore operations (National Native Title Tribunal, 1997). These cases show how co-ownership fosters sustainability and trust.

2.1.4 Legal Features: Community Autonomy, Rights, and Obligations

Legally, the JV acknowledges the QICO's collective rights over ancestral lands and traditional knowledge. The agreement ensures the QICO's autonomy through anti-dilution protection and direct representation on the Board of Directors.

The framework complies with ILO 169 and the United Nations Declaration on the Rights of Indigenous Peoples, ensuring free, prior, and informed consent. Furthermore, the corporate structure clearly defines the community's rights and obligations: participation in profits, information rights, fiduciary duties, and internal dispute resolution mechanisms.

2.1.5 Function of the JV: Securing Legitimacy and a Social License to Operate

QICO's participation in Kuska Minerals secures project legitimacy. Lithium mining in salt flats is particularly sensitive due to its potential impacts on fragile ecosystems and ancestral territories. Wealth Minerals has stated that integrating the CIQO as a partner aligns with Chile's National Lithium Strategy and raises the bar for environmental and social governance standards.

This alliance aims to rebalance mining–community relations by combining economic and territorial goals.

2.1.6 Lessons Learned: Social License Through Community Ownership

The Kuska Minerals JV is a pioneering case in Chile of direct community shareholding in lithium projects. Its structure combines contractual innovation, respect for collective rights, and the creation of shared value, aligning with international trends and best practices in responsible mining. Its success will depend on the effective implementation of preferential rights, transparent management, and the evolution of regulatory frameworks governing CEOLs and indigenous participation.

2.2 Case Study 2: CODELCO and Anglo American Partnership

2.2.1 Context: Declining Ore Grades and High Investment Costs

Chile's mining sector is under pressure from declining ore grades, rising energy and labor costs, and increasingly complex permitting processes (Morel, 2024). In response, CODELCO and Anglo American (Anglo) have formed a long-term collaboration to optimize operations, share infrastructure, and reduce duplicative investments, aiming to maintain competitiveness in a challenging economic and regulatory environment.

2.2.2 Project Description and JV Structure

The *Andina* and *Los Bronces* mines, located in a major copper-producing district and sharing contiguous deposits, have long faced challenges such as declining ore grades and high operating costs. For nearly five decades, CODELCO and Anglo have addressed these pressures through formal cooperation agreements to coordinate operations, avoid conflicts, and share infrastructure (CODELCO, n.d.).

In 2025, they signed a Memorandum of Understanding (MoU) to implement a Joint Mining Plan for 2030–2051. The plan aims to add 120,000 metric tons of fine copper annually—about 2.8% of Chile’s 2023 production—and generate an estimated USD 5 billion in pre-tax value, excluding additional synergies (Codelco & Anglo American Sur, 2025).

2.2.3 Function and Innovation: Joint Efficiency

Rather than forming a traditional JV with shared ownership of assets, each company retains full control over its respective concessions, plants, and infrastructure. Pursuant to the MoU, the parties will establish a jointly owned Common Agent with a fiduciary mandate to coordinate core activities such as mine planning, processing, infrastructure utilization, and cost-benefit allocation.

Under this model, extraction remains separate, but processing is centralized to achieve efficiency gains. While revenues are distributed equally, product marketing remains independent. The Common Agent will also be responsible for overseeing compliance with environmental and social commitments (Codelco & Anglo American Sur, 2025).

Though CODELCO has emphasized that the alliance is not technically a JV, it effectively functions like one—two companies collaborating on a defined project, sharing resources, risks, and benefits. As such, this paper refers to it as a JV for analytical purposes, underscoring its relevance as a model of future-oriented mining collaboration.

2.2.4 Legal Features: Centralized Operations, Separate Ownership

This alliance represents a hybrid governance model that blends autonomy with shared coordination. By maintaining ownership boundaries while introducing a centralized operational mechanism through the Common Agent, CODELCO and Anglo navigate legal and regulatory frameworks while unlocking joint efficiencies. This collaborative and non-competitive approach avoids duplication of infrastructure and mitigates environmental impact, especially in high-Andean ecosystems where responsible water and land management is critical.

2.2.5 Lessons Learned: Value of Public–Private Alliances

One of the most important lessons from this case is that strategic partnerships can be an effective tool for addressing industry-wide challenges, even between public and private actors traditionally seen as competitors. Such alliances can align diverse interests to unlock synergies, share risks, and ensure long-term sustainability. The experience of CODELCO and Anglo demonstrates that innovative governance structures can balance autonomy with cooperation, offering valuable insights for other sectors facing similar economic and environmental pressures.

2.3 Case Study 3: CODELCO–SQM JV for Strategic Lithium Control

2.3.1 Context

The *Salar de Atacama* is Chile’s most productive lithium brine deposit and a major global source. For decades, Sociedad Química y Minera de Chile (“SQM”) operated there under a lease with state agency CORFO. In April 2023, Chile’s National Lithium Strategy introduced a policy to expand public control over lithium, now deemed strategic for the country’s energy transition (Reuters, 2025).

In this context, the state-owned copper company, CODELCO, was tasked with negotiating new agreements to align lithium operations with national priorities. In December 2023, CODELCO and SQM announced a landmark agreement to form a JV to govern lithium extraction in the *Salar de Atacama* starting in 2025, with a framework that includes majority public control, shared governance, and extended operational rights through 2060 (Reuters, 2025).

2.3.2 Project Description and JV Structure

In 2025, CODELCO and SQM agreed to form a JV to manage lithium production in the *Salar de Atacama* from 2025 to 2060. CODELCO will hold 50% plus one share, securing strategic control, while SQM—currently operating the world’s second-largest lithium site—will handle operations, technology, and investment (Reuters, 2025; Johnson, Poustie, & Urda Kassis, 2025).

This partnership reflects a public–private hybrid governance model: CODELCO represents national interests in value capture and sustainability, while SQM brings infrastructure and market expertise. SQM will transfer its rights (expiring in 2030) to the new entity (Reuters, 2025).

2.3.3 Function and Innovation: Public–Private Model for Lithium Governance

The venture represents a strategic innovation in resource governance—reclaiming state sovereignty over lithium without expropriation. By securing majority ownership, Chile can align lithium development with national goals such as economic rent capture, sustainability, and decarbonization.

The model supports co-governance, private efficiency, and improved ESG standards, pending regulatory review (Reuters, 2025).

2.3.4 Legal Features: Ownership, Oversight, and Consultation

Legally, the JV is anchored in a shareholder agreement granting Codelco majority voting rights and authority to appoint key executives. SQM's participation is conditioned on compliance with stricter ESG standards and transparency mechanisms such as public reporting and oversight (Johnson et al., 2025).

The agreement also references Chile's obligations under ILO Convention 169 regarding indigenous consultation. However, civil society and indigenous groups have raised concerns over the limited participation of affected communities in shaping the deal's terms (Reuters, 2025).

2.3.5 Current Challenges and Public Scrutiny

Indigenous and environmental advocates, as well as political leaders, have criticized the CODELCO–SQM deal for its lack of transparency and suspected behind-closed-doors negotiation, bypassing a public tender process (Argus Media, 2025).

Indigenous leaders have expressed concern over the absence of community representation or ownership in the JV—unlike the Kuska JV model in Ollagüe (Reuters, 2025).

2.3.6 Lessons Learned: Missed Opportunities in Governance Design

The JV illustrates an attempt to increase state control through public–private governance, aiming to align lithium policy while relying on SQM's operational expertise. However, the agreement reveals key limitations.

Critics cite vague environmental goals, weak enforcement, and minimal indigenous inclusion compared to models like the Kuska JV. These concerns point to missed opportunities in governance design (particularly regarding transparency, consultation, and stakeholder engagement) which may undermine both the legitimacy and long-term effectiveness of the arrangement.

3. CONCLUSION

The cases analyzed in this paper show that joint ventures in the mining sector are evolving from purely financial or technical arrangements into flexible governance structures capable of addressing complex challenges. Far from being static contracts, modern JVs can serve as strategic assets that foster collaboration, innovation, and legitimacy in a rapidly changing industry.

The Ollagüe JV demonstrates how indigenous equity and shared governance can strengthen social license while aligning mining with community interests and national policy goals. The CODELCO–Anglo American partnership illustrates that hybrid models can generate operational and environmental synergies without merging ownership, offering a model for mature districts facing rising costs and declining grades. The CODELCO–SQM agreement reveals both the promise and the limits of public–private models, stressing the importance of transparency, stakeholder inclusion, and strong ESG frameworks.

While many of these ventures are recent or not yet fully realized, their success remains uncertain. They face governance, operational, and socio-environmental challenges that will test their resilience. Together, these cases suggest that well-designed JVs can help balance economic, social, and environmental goals—but they are no panacea. For companies, governments, and communities, treating JVs as strategic assets and investing in governance capacity will be essential for navigating the sector’s future.

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ARTICLE

STRUCTURING MINING TRANSACTIONS IN PERU: LEGAL AND STRATEGIC IMPLICATIONS OF ASSET VS. SHARE DEALS

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OSCAR BENAVIDES RODRIGUEZ LA ROSA

STRUCTURING MINING TRANSACTIONS IN PERU: LEGAL AND STRATEGIC IMPLICATIONS OF ASSET VS. SHARE DEALS

Claudio Ferrero Merino¹

Oscar Benavides Rodriguez La Rosa²

“Investment success doesn’t come from ‘buying good things,’ but rather from ‘buying things well.” **Howard Marks³**

Abstract: This article analyzes the legal, tax, and strategic implications of structuring mining acquisitions in Peru as asset or share deals. It highlights key considerations such as liability exposure, continuity of operations, labor and tax risks, and regulatory hurdles. While asset deals offer lower liability, share deals are often preferred for operating mines due to smoother permit transitions and operational continuity.

1. INTRODUCTION

Investors interested in acquiring a mining company or mining assets in Peru must consider a series of regulatory, environmental, corporate, labor, and tax challenges when deciding between a share transaction or an asset transaction. Each company or mining asset is a universe of its own, so the best acquisition structure and strategy depend on the risks, advantages, and contingencies identified during the **due diligence** process prior to the acquisition. For the purposes of this article, we will refer exclusively to the direct acquisition of 100% of the shares or mining assets.

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³ Marks, Howard. It’s All Good [Memo]. Oaktree Capital Management Memo, July 16, 2007. Available at: <https://www.oaktreecapital.com/docs/default-source/memos/2007-07-16-its-all-good.pdf>

When evaluating a mining transaction in Peru, investors need to take an initial strategic decision between acquiring assets or shares. Sophisticated mining transactions usually involve a Peruvian established company, either as seller or as the subject matter of the transaction (share deal) since mining concessions in Peru must be held directly by: **(i)** an individual domiciled in Peru (it can be a Peruvian national or foreign individual, except if it is within 50km of the Peruvian international border); or **(ii)** a corporation or branch incorporated in Peru.⁴

While buyers of exploration projects typically favor asset acquisitions to isolate liabilities, certain sellers prefer share deals for tax efficiency and simplicity. In case of operating mines, a share deal is the preferred approach to maintain the continuity of the mining productive operations without potential interruptions caused by the need to assign mining, environmental and operational permits, licenses and authorizations to the new owner. This article explores the key considerations that influence this strategic decision in the Peruvian mining context.

Asset vs. Share Deals in the Peruvian Mining Sector: Legal, Tax, and Operational Considerations

In general, the transfer of shares is the most favorable structure for sellers, especially if they are domiciled individuals. This is because individual sellers of shares issued by Peruvian companies are subject to a capital gains tax of only 5%, applied over the difference between the tax cost of the shares and their market value (deemed “capital gain”). For the acquiring company, the purchase price of the shares is not a deductible expense but a cost, which only provides a tax advantage in the event of a subsequent sale of the shares, as it serves as the tax basis for income tax purposes in case of a future disposition. Additionally, the transfer of shares is not subject to VAT (18% value added tax applicable in Peru for the sale of goods or services).

Capital gains earned by non-resident sellers arising from direct transfers of shares issued by Peruvian companies (“Peruvian shares”), are subject to a 30% income tax in Peru (a 5% rate applies only if the shares are listed in the Lima Stock Exchange and the transfer is perfected therein). For purposes of determining the capital gain, the non-resident seller must follow a proceeding before the Peruvian tax authority (SUNAT) to obtain a certification of the tax basis (cost) of the shares being sold before the sale is done and any portion of the purchase price is received. If the seller fails to obtain such tax cost certification before the sale is done, the Peruvian tax authority will not

⁴ Ministry of Energy and Mines. (1992). Consolidated Text of the General Mining Law, Supreme Decree No. 014-92-EM, Article 10. Official Gazette El Peruano. Retrieved from <https://busquedas.elperuano.pe/dispositivo/NL/1470542-2>.

recognize any tax cost, and the entire amount of the purchase price will be deemed as the taxable “capital gain”.

From the perspective of tax, labor, civil, contractual, environmental, administrative liability, litigation, and judicial or administrative proceedings, the buyer of the shares assumes —through the acquired company— all obligations and rights of the acquired mining company. The new shareholder and its management remain protected by the limited liability of the acquired company, as long as it maintains a corporate form that grants such protection and does not lose it due to irregularity (e.g., if the target company is or becomes irregular by continuing operations despite having incurred in a cause for dissolution — Articles 423 and 407 of the General Corporations Law). Therefore, when acquiring a company with significant liabilities, it is advisable to restore the company’s equity balance before the new shareholder’s administrators or representatives undertake any act on behalf of the acquired company.

For this purpose, the company’s accumulated losses must not reduce the net equity below 1/3 of its registered capital stock. If the target company has a negative net equity or a net equity below the referred 1/3 threshold, the acquiror must either **(i)** contribute new capital to the company; **(ii)** reduce the company’s capital stock to amortize accumulated losses by redeeming part of the acquired shares in the company; or **(iii)** procure the capitalization of loans or debts owed by the company by increasing the share capital in the same proportion of the capitalized loans and issuing new shares to the former creditors in exchange for the capitalization of their loans.

On the other hand, in an asset sale, only the transferred or assigned goods, rights, and obligations are acquired, although there may be exceptions to this rule from a tax and labor liability standpoint. If the selling company continues operating, it remains liable against SUNAT for any tax obligations. However, pursuant to the Peruvian Tax Code, acquirers of a sizable portion of or critical assets owned by companies with tax liabilities, may be jointly liable for any past or future tax debts owed by the transferor.

In the sale of assets of a mining unit, movable assets (e.g., vehicles, equipment, machinery) are often transferred along with immovable assets (e.g., mining concessions), requiring individual valuation of each transferred asset. The acquisition of movable assets is subject to 18% VAT, which the acquiring company may use as a VAT tax credit. In the case of immovable assets, their transfer is not subject to VAT, but the buyer must pay a 3% transfer tax (Peruvian *alcabala* tax). Acquired assets are incorporated into the buyer’s balance sheet and may be depreciated for income tax purposes, which can represent a significant financial advantage for the acquiror.



From a labor perspective, workers of the seller of mining assets may invoke the **persecutory nature of labor claims**, which take precedence over any other company obligations. This priority extends to anyone who fully or partially replaces the employer in the direct payment of such obligations. Labor laws regulate the circumstances under which this preference or priority is exercised with a persecutory action. In such cases, the company acquiring a significant portion or critical mining assets from a seller in Peru may be required to pay existent or future labor obligations of the seller, even if the acquired assets were initially unencumbered, due to the persecutory nature of labor claims.

In principle, persecutory labor liability applies:

- (a) when the employer has been declared insolvent, leading to the **dissolution and liquidation of the company**, or its judicial declaration of bankruptcy. The action applies to transfers of **fixed assets** or businesses made within six months prior to the debtor's insolvency declaration ("suspicion period"); and
- (b) in cases of termination of labor relations and non-compliance with obligations due to **simulation or fraud of the law**.

Notwithstanding, persecutory liability has been applied excessively by labor judges and Peruvian courts, without requiring proof of bad faith on the part of the buyer, only on the part of the seller. According to the broad interpretation of labor judges, persecutory liability is triggered merely by workers proving:

- (i) the existence of a labor debt; and
- (ii) the transfer of fixed assets.

Labor courts have repeatedly interpreted that the conjunction of these objective elements implies bad faith on the part of the seller.

In a mining asset transfer, the **due diligence** process must be exhaustive to determine:

- a) which assets and contractual relationships are essential for the continuity of the mining business;
- b) which workers or officers are considered key to ongoing operations;
- c) restrictions on assigning rights, obligations, and contracts to the buyer, and the authorizations required to overcome them (including key workers' consent to the change of employer);
- d) environmental, mining and operational permits, licenses, and authorizations to be transferred to the buyer;



- e) risks posed by government or regional authorities in authorizing the transfer of essential permits (e.g., transferring water use rights in Cajamarca is not the same as in Lima);
- f) risks to the continuity of mining operations under new ownership (e.g., surface land-owning communities are particularly sensitive to changes in ownership of mining assets).

Although resistance to changes in controlling shareholders or operators may also arise in share transfers, this risk is significantly higher in asset transfers, mainly because the transfer or assignment of certain critical administrative permits, licenses, and authorizations for continued mining operations is neither automatic nor simultaneous. It requires prior and sequential (i.e., at different times) consent from the relevant government and regional authorities. Likewise, certain stakeholders or local communities within the area of influence of the target mining project may be more sensitive to the change implied by the sudden appearance of new owners and operators at the asset level in comparison to a change of control at the shareholder level seen in typical share deals.

Registration of the mining concessions transfer agreement in the Peruvian public registry is especially critical for mining concessions, as the transfer is only enforceable against the Peruvian Government (i.e. Ministry of Energy and Mines – MINEM, Mining Cadastre – INGEMMET and regulatory and environmental authorities such as SENACE, OEFA, SUNAFIL, etc.) if it is duly registered. Although the transfer of mining concessions and/or beneficiation concessions is sufficient to acquire the environmental certification and mine closure plan, such transfer must be registered for these instruments to be considered assigned and usable by the new owner.

Some communalities in asset and share deals in Peru is the need to clear, if applicable, Peruvian antitrust and merger controls with the competent regulatory authority (INDECOPI) and the need to replace the reclamation bond posted with the Government to secure the complete performance of the Mine Closure Plan. When acquiring operating mines, the reclamation bond must always be replaced by the acquiror if the acquisition is structured as an asset deal since the seller usually demands to be released from such obligations as a condition precedent to the transfer of the mining assets. If the acquisition is structured as a share deal, the reclamation bond would need to be replaced to the extent the parent company or an affiliate of the seller is granting a guarantee or security as part of the reclamation bond posted with the Government.

The need to assign the material contracts to the buyer in an asset deal is also a matter to be taken into account, especially in the context of mining concessions in Peru, which *per se* do not grant their holder the right to access and use the surface land in which the

mining concessions are located. If access and surface rights are granted by third parties or by the Government (i.e. over State owned land), the buyer must make sure that such access and surface rights are subject to be assigned to it in a smooth and easy manner. As a general rule, the assignment of material contracts requires the prior consent of the counterparty, unless such consent is already granted under the agreement. In a share deal, this would only be a problem if the acquisition triggers any change of control clauses at the shareholding level of the target company.

In addition, if -as part of the sale of assets- a seller intends to transfer a co-ownership interest over land to the buyer, such co-ownership grants (as a matter of law) the other co-owners a right of first refusal to acquire the interest over the land instead of the contemplated buyer. This is not a minor risk in Peru.

While asset transfers may seem more advantageous in isolating the buyer from the seller's burdensome liabilities and obligations (except for joint liability for certain tax and labor obligations), the complexity of ensuring the immediate continuity of mining operations as they were prior to the transfer may render asset transfers unfeasible in some cases. To avoid these issues and mitigate the risk of operational disruption, extensive legal work is required before, during, and after the acquisition of mining assets. As a starting point, all environmental, mining and operational permits will need to be assigned to the buyer. Some permits (e.g. explosives and mercury exports) are not assignable and will need to be obtained again from the competent Governmental agencies. In addition, water use license, permits and authorizations are difficult to be assigned in practice.

2. CONCLUSION

Structuring the acquisition of a mining business through an asset or share sale requires a detailed analysis of the advantages and disadvantages in the specific case. The **due diligence** process, negotiation of the sale agreement, allocation of responsibilities and indemnities typical of any sale transaction, and especially the post-closing implementation of the mining business acquisition must not be overlooked.

Even though both the transfer of assets and the transfer of shares occur regularly in Peru and are perfectly legal, it is quite uncommon that the sale of an operating mine be performed through an asset deal. The transfer of mining assets creates the problem of the “continuity of the business” during the time the transfer has been effected and the permits are being assigned to the buyer. In an asset deal, the assignment of the permits is not done immediately, and each individual permit has its own rules and standalone procedure to be assigned. In and all, the main advantage of an asset deal *vis-à-vis* a share deal is that the liability exposure of the buyer is significantly lower for

all matters, including but not limited to material contracts, obligations, general liability, tax, environmental, labour, litigation, etc. Notwithstanding, in an asset deal, the buyer will remain jointly liable with the seller, for any labour and tax liability of the seller. While asset deals offer lower liability, share deals are often preferred for operating mines due to smoother permit transitions and operational continuity.

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ARTICLE

MINING MERGERS
AND ACQUISITIONS
IN ARGENTINA:
TRANSACTIONS,
FINANCING, AND
REGULATORY
PARTICULARITIES

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MINING MERGERS AND ACQUISITIONS IN ARGENTINA: TRANSACTIONS, FINANCING, AND REGULATORY PARTICULARITIES

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1. INTRODUCTION

Argentina has a diverse and highly valued mineral endowment. It hosts large undeveloped copper deposits—particularly in the province of San Juan—along with significant

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lithium and uranium resources, which are increasingly important for low-carbon energy systems, secure global supply chains, and the global energy transition. The country also produces precious metals such as gold and silver, historically central to its mining industry.

Building on this resource base, Argentina's mining industry is undergoing one of its most significant transformations in decades. Over the past five years, the sector has also seen a marked rise in mergers, acquisitions, and financing transactions, driven mainly by multinational mining houses, underscoring Argentina's potential to scale production and attract long-term investment.

While lithium and copper concentrate most of the recent investment and transactional momentum, other segments of Argentina's mining industry are evolving along different paths. Rising global demand for nuclear fuel, supply concerns driven by geopolitical tensions, and Argentina's own plan to expand its nuclear fleet and reduce reliance on imported uranium are renewing both domestic and international interest in the country's uranium sector, which currently hosts around 18 projects at various stages of development (Barbuto, 2025; BNamericas, 2024).

This article briefly examines **(a)** Argentina's mining M&A from 2020 to 2025, highlighting landmark transactions, **(b)** financing in mining transactions, and **(c)** particularities of mining M&A in Argentina.

2. RECENT RELEVANT OPERATIONS IN ARGENTINA

A review of recent landmark transactions illustrates the strong momentum of Argentina's mining sector in recent years.

Between 2020 and 2025, lithium accounted for the bulk of mining M&A in Argentina. International groups dominated acquisitions, underscoring the strategic competition for battery materials. In December 2021, Rio Tinto agreed to acquire the Rincón lithium project in Salta from Rincon Mining (Sentient Equity Partners) for US\$825 million; the deal closed in March 2022 (Business Wire, 2021; 2022). In the same period, Zijin Mining acquired Neo Lithium's Tres Quebradas project for US\$770 million (Mining Technology, 2021). The lithium race intensified in 2022. Ganfeng paid US\$962 million to acquire Lithea from Pluspetrol in Salta (Reuters, 2022). In 2024, Eramet bought Tsingshan's remaining 49.9% of Eramine Sudamérica (the Centenario project) for US\$699 million, recovering its full ownership (Eramet, 2024); CNGR agreed to buy 90% of Solaroz from Lithium Energy Ltd. for US\$63 million (Lithium Energy Limited, 2024); and Austroil agreed to acquire

three non-core brine assets from Lake Resources for US\$9 million—as Lake refocused on Kachi (Lake Resources, 2024).

In parallel, some corporate combinations reshaped the lithium landscape and, although they did not target a single Argentine project but rather entire global companies with significant operations in Argentina, they have had a major local impact: Orocobre and Galaxy merged in 2021 to form Allkem, then one of the world's top five lithium producers (S&P Global Commodity Insights, 2021); Allkem and Livent announced their merger in May 2023 and completed it in January 2024, creating Arcadium Lithium, a leading integrated lithium chemicals company (Arcadium Lithium, 2023; 2024). In March 2025 Rio Tinto completed the acquisition of Arcadium, further consolidating its lithium presence in Argentina (Rio Tinto, 2025).

Regarding copper, in September 2022 Glencore agreed to acquire Newmont's 18.75% stake in Minera Agua Rica Alumbra (MARA) project for US\$124.9 million at closing plus up to US\$50 million deferred (capped, with interest), bringing its interest to 43.75% (Glencore, 2022). In July 2023, Glencore agreed to buy Pan American Silver's 56.25% for US\$475 million cash and a 0.75% life-of-mine copper NSR royalty; the deal closed on Sept 20, 2023, giving Glencore 100% ownership (Pan American Silver, 2023). The same year, Pampa Metals Corp. entered into an option and joint venture agreement with Compañía Minera Piuquenes S.A. to acquire up to 80% of the Piuquenes project in San Juan (Pampa Metals Corp., 2023). In 2024, South32 completed its earn-in agreement to acquire a 50.1% controlling stake in Minsud's Chita Valley copper project (Minsud, 2024). In January 2024, Teck Resources signed a definitive option and joint venture agreement with AbraSilver to earn up to an 80% interest in the La Coipita copper–gold project by funding US\$20 million in exploration over five years and making staged cash and equity payments, becoming operator during the earn-in period (AbraSilver Resource Corp., 2024). The headline transaction came in 2024–25, when BHP and Lundin Mining acquired Filo Corp. (Filo del Sol project) and combined it with Lundin's Josemaría project (BHP, 2025). BHP contributed about US\$1.4 billion for its share of the Filo acquisition and US\$690 million for a 50% stake in Josemaría. Both companies then created Vicuña Corp., a 50/50 Canadian joint venture to develop the Vicuña copper district across Argentina and Chile, contributing their respective 50% interests in Filo del Sol and Josemaría to the new vehicle.

The uranium segment has also seen some corporate transactions. In 2024, Jaguar Uranium acquired the Laguna Salada and Huemul projects from IsoEnergy for approximately US\$10 million (IsoEnergy, 2024). That same year, Blue Sky Uranium expanded its portfolio with the acquisition of the Corcovo and Chihuidos properties (Mining Technology, 2024). In early 2025, Blue Sky Uranium and Corporación América (COAM) executed an

agreement to explore the Ivana uranium–vanadium deposit in Río Negro (Blue Sky Uranium, 2025).

The gold and silver space has also seen some corporate moves. In 2025, AbraSilver exercised its option to acquire 100% of the Diablillos project (EMX Royalty, n.d.). In 2024, Astra Exploration entered into an option agreement to earn up to a 90% interest in Patagonia Gold’s La Manchuria property (Patagonia Gold, 2024). That same year, Unico Silver acquired the Sierra Blanca project from Austral Gold and New Dimension Guernsey Limited (Austral Gold, 2024).

These transactions reflect Argentina’s active role in the global competition for critical minerals, with diverse deal structures and growing interest beyond lithium.

3. FINANCING MINING M&A

Financing for mining M&A in Argentina has been shaped by the country’s macroeconomic volatility—including persistent currency controls, high inflation, and sovereign risk. Consequently, acquisitions have been driven mainly by multinational mining groups deploying their own balance-sheet capital to secure long-term resource supply and operational control. However, in the mining sector, financing considerations go well beyond the corporate acquisition itself: transforming geological potential into productive capacity requires substantial capital expenditures.

The industry combines traditional corporate funding—such as internal corporate capital, equity issuance, and bank debt—with alternative and hybrid instruments designed to overcome limited access to conventional capital, including royalty and streaming finance (see Seeger, 2023, cap. 4.2.8–4.2.9). In Argentina, most corporate acquisitions have been funded with companies’ own capital and, in the case of junior miners acquiring lithium assets, often through equity offerings. By contrast, bringing projects into production requires a distinct layer of project-level financing, which typically combines instruments such as private placements, bank debt, joint ventures, and staged earn-in agreements.

Argentina’s access to credit appears to have improved with the Large Investment Incentives Regime (RIGI), approved in 2024.

RIGI offers up to 30 years of tax stability, exemptions on import duties, FX access and stability, and recourse to international arbitration—elements specifically designed to reduce the risks associated with capital-intensive projects. Before its enactment, Argentina’s mining fiscal burden reached an effective government take of around 47%, compared to about 38–40% under the new regime (CRU, 2025; Minería Sustentable,

2024). With RIGI, Argentina's mining tax framework has shifted to a level of competitiveness comparable to Chile and Peru. RIGI also improves the tax stability regime originally established by the Mining Investment Law (Law 24,196) by correcting the shortcomings of that earlier framework—which had failed to deliver the predictability expected by the industry.

The regime is already shaping financing trends. In the energy sector, the *Vaca Muerta Oleoducto Sur* (VMOS) project, admitted under RIGI, obtained a US\$2 billion syndicated loan—an operation that signaled the return of international project finance to Argentina after years in which the country had been largely shut out of that market.

In the mining industry, RIGI is emerging but still in progress. Two of the three companies that have obtained RIGI approval are now actively seeking to finance their projects. In September 2025, Los Azules became the first copper project admitted to the regime and is currently pursuing financing for the estimated US\$2.7 billion required to bring the asset into production (McEwen Copper, 2025). Other international players are also explicitly linking RIGI approval to their investment timelines. On its Q2 2025 earnings call, First Quantum Minerals confirmed that it intends to submit its Taca Taca project for admission to RIGI by July 2026 (First Quantum Minerals, 2025).

This illustrates how RIGI is becoming not just a tax-stability tool but also a trigger for global miners' investment decisions. Its role in shaping access to capital markets and providing certainty over Argentina's cost structure positions it as a decisive factor in whether large-scale projects move forward to a final investment decision and advance into development.

Should macroeconomic indicators strengthen and political conditions stabilize, Argentina could significantly broaden its investor base—drawing not only multinational miners but also royalty and streaming funds, development banks, commodity traders, and other automakers—and accelerate the conversion of its geological potential into productive mining capacity.

4. PARTICULARITIES OF MINING M&A IN ARGENTINA

M&A transactions in Argentina follow a broadly standard corporate framework but present specific legal and regulatory features that can differ from other jurisdictions. These include issues related to the country's federal organization, land ownership rules, currency controls, and, in the case of mining deals, provincial control over natural resources and environmental permits. The following sections outline key aspects that investors

should consider when structuring and executing transactions in Argentina, with a focus on those especially relevant to the mining sector.

- **Mining rights and environmental authorizations: provincial and federal jurisdiction.**

Argentina is a federal state with a multilayered regulatory framework: both the federal and provincial governments—and, in certain limited matters, municipalities—issue rules relevant to mining activities. Under Article 124 of the Federal Constitution, natural resources, including mineral deposits, belong to the *original domain* (*dominio originario*) of the provinces. Nevertheless, the Constitution empowers the federal government to enact substantive mining legislation—most notably the Argentine Mining Code, which defines, among other aspects, the legal nature and scope of mining rights—and to adopt *minimum environmental standards laws* that set nationwide environmental baselines (Calonje, 2021, p. 246). Within this constitutional framework, provinces retain authority over the “*formal procedural*” aspects of mining law (Catalano, 1999, p. 33), and each has its own mining authority (*autoridad minera*, Catalano, 1999, p. 32) empowered, for instance, to grant and register mining concessions. Provinces also review and approve environmental impact assessments and issue key environmental permits (e.g., water use concessions and permits).

As a result, provincial and local authorities play a decisive role in mining transactions. Comprehensive due diligence therefore requires a detailed review of mining dockets, the obtaining of certificates from the provincial mining notary, and the examination of other permits and authorizations granted by local agencies. Moreover, certain federal regimes may also affect mining projects and, consequently, M&A processes—such as the National Glacier Protection Law (*Ley de Presupuestos Mínimos para la Preservación de los Glaciares y del Ambiente Periglacial*), which restricts activities in glacier and periglacial areas regardless of provincial concessions.

- **Stock transfer of companies holding mining properties vs. transfer of mining properties.** The transfer of shares in a company that holds mining property rights—or a change in its ultimate beneficial ownership—does not need to be reported to the local mining authorities. By contrast, the direct transfer of mining properties (mining concessions) must be notified to the competent provincial mining authority and comply with certain procedural requirements, which in some cases include execution before a public notary.
- **Citizen participation.** At the federal level, citizen participation in environmental matters is guaranteed by the General Environmental Law and the Escazú Agreement, both of which require prior public consultation before activities with potential significant environmental impact are authorized. The law grants every individual the right to

be consulted in administrative proceedings relating to environmental preservation and mandates the institutionalization of public hearings for projects with potentially adverse effects. While the outcome of these hearings is not binding, authorities must justify and publish any decision that contradicts them. Several provinces have further detailed participation mechanisms within their Environmental Impact Assessment processes—for example, Río Negro’s Community Engagement Protocol and guidelines adopted in Mendoza and Jujuy.

- **Indigenous communities.** Argentina has ratified International Labor Organization Convention No. 169, which requires consultation prior to exploration or exploitation of resources on their lands and provides for participation in benefits and compensation for damages. Domestically, Law 23,302 recognizes the legal personality of indigenous communities and entitles them to suitable land ownership, while Law 26,160 declared an emergency suspending evictions of traditionally occupied lands and mandating cadastral surveys (currently in force until November 2025). Provinces have adopted additional rules and, in some cases, conflicts have escalated to the courts. Notably, Río Negro’s Free, Prior, and Informed Consent Protocol requires hearings where mining projects overlap with indigenous territories; if consent is withheld, the authority must pursue further consultations and, should disagreement persist, may still decide on the project but must provide reasoned justification while considering the concerns raised.
- **Antitrust.** Under Article 9 of the Argentine Competition Law No. 27,442 (“ACL”), mergers and acquisitions must be notified to the Argentine Antitrust Commission (*Comisión Nacional de Defensa de la Competencia* – CNDC) and obtain clearance when **(a)** there is a change of control over a company or a business unit (e.g., main assets or a line of business) operating in Argentina; and **(b)** certain financial thresholds are met, including the combined turnover of the acquiring group and the target in Argentina and the value of the Argentine assets.

The ACL introduced a suspensory regime: in principle, reportable transactions would require *ex ante* clearance by an Antitrust Tribunal before closing. However, since the Tribunal has not yet been constituted, a transition rule applies. As a result, until the Tribunal begins operating, Argentina continues to apply an *ex-post* notification system:

- (i) Parties may close a reportable transaction before filing or clearance;
- (ii) The transaction must be notified within seven business days of closing; and
- (iii) The Antitrust Commission reviews the transaction after closing and may impose remedies or, in extreme cases, order the unwinding of a transaction if it raises significant competition concerns.

In practice, the regulatory risk associated with approval is usually borne by the buyer, who assumes the potential consequences if the Antitrust Commission challenges the deal after closing. This is typically reflected in risk allocation provisions of the share purchase agreement or analogous merger agreement.

In addition, the ACL provides for specific exemptions, the most common being the “First Landing” exception (Article 11(c)): a foreign entity that has no existing shareholding or assets in Argentina and has not made frequent or significant sales in the country in the previous 36 months is exempt when acquiring a single Argentine company or asset.

- **Rural Land Law.** Argentina has a specific foreign ownership regime for rural land established by Law No. 26,737 (the “Rural Land Law”) and its implementing decree. The regime limits foreign ownership and possession of rural land through aggregate national and provincial caps (no more than 15% overall, with additional limits by nationality and per-owner thresholds) and also restricts acquisitions of land near large water bodies or within the Border Security Zone. It applies to ownership and possession, but not to mining concessions, which are exploitation rights under the Mining Code and do not involve a transfer of land domain; therefore, transactions involving mining rights are not subject to this law. Although the Rural Land Law was formally repealed by Decree of Necessity and Urgency (DNU) 70/2023, the repeal is currently suspended by a precautionary measure confirmed by the Federal Court of Appeals of La Plata, and the case is pending before the Supreme Court (*Cámara Federal de Apelaciones de La Plata, Sala III, 2024*). As a result, the Rural Land Law remains in force and should be considered when acquiring rural property, but it does not restrict the transfer of mining concessions or the acquisition of companies holding them.
- **Border Security Zone.** In general, acquisitions of land located within Argentina’s Border Security Zones by foreign individuals or entities require prior authorization from the National Directorate of Technical Affairs of Borders. The procedure involves a notarial filing supported by an investment project, and approvals are typically conditioned on compliance with project milestones and shareholder funding commitments. Indirect transfers (e.g., shares of companies owning land) may also fall under the regime, though enforcement has not always been consistent.

For mining, however, Decree 815/1992 expressly excludes concessions and exploitation rights from the Border Security Zone regime. This means that mining permits are granted directly by the competent provincial authority without nationality-based restrictions, except for reciprocity with neighboring countries. Only ancillary assets involving surface land in restricted zones may trigger additional authorization requirements, making careful due diligence advisable.

- **Absence of general foreign investment controls.** Other than the specific restrictions previously mentioned (e.g., rural land ownership limits and border security zones), Argentina does not maintain a general regulatory framework limiting or screening foreign direct investment. There is no requirement to obtain prior governmental approval or sector-specific authorization for foreign investors to acquire companies or assets in most industries, including mining.
- **FX Controls.** Foreign exchange controls remain one of the most critical aspects shaping mining M&A and financing in Argentina. Currently, certain restrictions apply to both the inflows and outflows of funds through the official foreign exchange market in Argentina (the “FX Market”). These restrictions are set forth in various regulations issued by the Argentine Central Bank.

Regarding inflow of funds, the FX regulatory framework establishes, among other obligations, that proceeds from the export of goods must be entered into Argentina through the FX Market, converted into local currency at the official exchange rate, and deposited into local bank accounts within specific deadlines that vary depending on the tariff position of the exported goods. In addition, funds obtained by local companies from offshore financial indebtedness must be converted into local currency through the FX Market if the local company intends to make principal and interest payments through the FX Market.

Regarding the outflow of funds (e.g., payment of offshore services, payment of imports of goods, payment of dividends and earnings, repayment of loans), the framework establishes general and specific requirements that must be satisfied in order to access the FX Market at the official rate. The requirements vary depending on the nature of each transaction.

Recently, through Communication “A” 8226, dated April 11, 2025, the Argentine Central Bank authorized local companies to access the FX Market for the distribution of profits to foreign shareholders, applicable to fiscal years starting on or after January 1, 2025. This implies that the payment of profits and dividends can be made based on audited annual financial statements and, therefore, in practice, such payments can only be made in 2026 (i.e., once the company has audited the corresponding financial statements), provided that current regulations are not amended.

Notwithstanding the foregoing, please note that RIGI sets forth a series of foreign exchange benefits and incentives. Regarding inflow of funds, companies adhering to the regime will be exempted—up to a certain scale—from the obligation to repatriate and convert into local currency the proceeds of exports of goods through the FX Market. Regarding outflows of funds, access to the FX market for the payment of principal

and interest of external financial indebtedness (even before maturity), the repatriation of direct investments by non-residents, and the payment of profits and dividends to non-residents will be permitted as long as the related disbursements were originally entered into Argentina and converted into local currency through the FX Market. In addition, it is established that companies adhering to RIGI will benefit from FX stability with respect to the regulations in force as of the date of their adherence to the regime (such stability applies solely to the applicable regulations, and not the FX rate, which may vary from time to time).

Finally, in the context of M&A transactions, while inflows into Argentina are subject to the above-mentioned rules, it is important to highlight that purchase price payments can, in practice, be structured offshore, without being subject to Argentine FX regulations.

- **Mining Investment Law (Law 24,196).** Argentina has a federal investment promotion regime designed to attract risk capital and support the development of new mining projects. Law 24,196, passed in 1993, grants 30 years of stability regarding taxes, and provides key incentives such as the ability to deduct up to 100% of amounts invested in prospecting, exploration, special studies, and other work aimed at determining the technical and economic feasibility of a project from income tax; a special accelerated depreciation regime for income tax purposes on capital investments; refund of VAT paid on exploration expenses; the deduction of mandatory environmental provisions; and import duty exemptions for capital goods and specific equipment. As most metal mining companies are enrolled in this regime (Calonje, 2021, p. 257), it is advisable to review compliance with its requirements during due diligence.

5. CONCLUSION

Argentina combines one of the world's richest geological endowments with growing transactional momentum. Lithium and copper drive investment and deal activity; uranium is acquiring relevance. Financing is still heavily reliant on companies' own capital, complemented by instruments such as streaming, royalties, and offtake agreements, and is beginning to benefit from incentives like the RIGI.

If macroeconomic conditions stabilize and political predictability improves, Argentina is well positioned to attract a broader range of investors, including strategic acquirers and institutional capital, and to accelerate the conversion of its vast geological potential into productive mining capacity. For acquirers and financial institutions, success will depend not only on identifying high-quality assets, but also on navigating Argentina's foreign exchange regime, evolving incentive programs, provincial-level permitting and

environmental approvals, and growing demands around ESG and community relations, increasingly central to global mining investment.

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ARTICLE

BRAZILIAN MINING
SECTOR IN FOCUS:
STRATEGIC FOREIGN
INVESTMENT, M&A,
CHALLENGES, AND
OPPORTUNITIES

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BRAZILIAN MINING SECTOR IN FOCUS: STRATEGIC FOREIGN INVESTMENT, M&A, CHALLENGES, AND OPPORTUNITIES

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1. INTRODUCTION

In recent years, the Brazilian mining sector has become one of the main targets for mergers and acquisitions (M&A), driven by the growing global demand for critical minerals. The Ministry of Mines and Energy (MME) defines critical minerals as mineral resources that are essential to strategic sectors, such as technology, defense, and energy transition, whose supply faces scarcity risks or relies on a limited number of suppliers.⁴

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⁴ “Critical minerals are essential mineral resources for strategic sectors, such as technology, defense and energy transition, whose supply faces risks of scarcity or relies on a few suppliers.” MINISTÉRIO DE MINAS E ENERGIA. Updated on February 18, 2025.

Simultaneously, there has been a significant increase in foreign investor interest in the Brazilian market, reflecting a trend towards the internationalization of mining operations. This article examines the drivers behind the surge in M&A transactions within the Brazilian mining sector and the role of foreign investors in shaping this landscape.

2. GROWTH OF MERGERS AND ACQUISITIONS IN THE BRAZILIAN MINING SECTOR

In 2024, Brazil recorded 30 M&A deals in the mining sector, representing a 42.85% increase compared to 2023, according to a survey by KPMG. In the first quarter of 2025 alone, six transactions had already been closed—twice the number recorded in the same period of the previous year, as pointed out by Brazilian news outlet *Valor Econômico*⁵. This is the highest volume registered in two decades and is a direct reflection of global demand for minerals such as lithium, nickel, copper, niobium, and rare earth elements, inputs that are essential for sectors such as electric mobility, renewable energy, technology, and defense. Per UBS BB estimates in a survey commissioned by *Valor Econômico*⁶, M&A transactions in Brazil's mining sector could reach BRL 15 billion in 2025, while JP Morgan has flagged the year as a landmark for mergers among mining companies (*Minera Brasil*).⁷

The digitalization of systems by the National Mining Agency (ANM), alongside signs of improvement in the mining sector's legal and regulatory frameworks and the consolidation of projects at more advanced stages of exploration, have also fueled this trend, making Brazil an increasingly attractive destination for institutional investors.

3. BRAZIL'S STRATEGIC MINERALS AND THE RISE OF GLOBAL INDUSTRIAL SECTORS

Brazil's mineral competitiveness is directly tied to its abundance of resources essential to rapidly expanding industries. Although the country is among the world's largest producers of iron ore, its relevance extends well beyond that. Key highlights include:

⁵ Valor Econômico. *MERGERS AND ACQUISITIONS IN THE MINING SECTOR RECORD HIGHEST GROWTH IN 20 YEARS* | MINING | VALOR ECONÔMICO. Published on April 29, 2025.

⁶ Valor Econômico. *MINING M&AS COULD GENERATE R\$ 15 BILLION* | EMPRESAS | VALOR ECONÔMICO. Published on March 10, 2025.

⁷ Minera Brasil. *2025 COULD BE THE ERA OF MERGERS BETWEEN COMPANIES IN THE MINING SECTOR* – MINERA BRASIL. Published on January 21, 2025.

Nickel: Used in the production of batteries for electric vehicles (EVs), nickel remains critical to the energy transition. According to the Global EV Outlook 2024 by the International Energy Agency (IEA)⁸, approximately 38% of the total demand for high-purity nickel is already destined for battery production, with expectations of continued growth in the coming years as EV adoption accelerates. The report highlights that nickel, alongside lithium and cobalt, will be increasingly sought after, driven by the dominance of NMC (nickel-manganese-cobalt) batteries, particularly in longer-range vehicles. The IEA also projects that the global electric vehicle fleet could surpass 245 million by 2030, further straining the supply chain for these minerals.

Lithium: Essential for lithium-ion batteries used in electronics and, most notably, EVs, lithium remains the critical mineral with the highest proportional growth in demand. The IEA indicates that 95% of refined lithium is already used for battery manufacturing, up from 60% in 2018, a remarkable acceleration. The IEA further projects that lithium demand in 2030 will be nearly four times higher than current levels, driven by the expansion of electric mobility, particularly in China, Europe, and North America.⁹

Brazil, with significant reserves located mainly in Minas Gerais, is emerging as a strategic supplier outside the so-called lithium triangle (Argentina, Chile, and Bolivia), with expanding projects and growing interest from foreign investors.

Copper: Vital for electrification, green infrastructure, and power grid development. The energy transition, particularly through solar and wind sources, relies heavily on copper. Studies conducted by S&P Global¹⁰ indicate that global copper demand is expected to nearly double by 2035, reaching approximately 50 million metric tons. Even under an optimistic scenario of increased production and recycling, the supply will fall short, resulting in significant deficits and reinforcing the value of copper sourced in Brazil.

Niobium: Used as an alloying agent in special steels and defense technologies. Brazil has approximately 98% of the world's known commercial reserves and accounts for more than 80% of global production, with a particular concentration in Minas Gerais. Its applications are increasingly expanding to include electric vehicle batteries, turbines, and reactors (NASA – Jet Propulsion Laboratory).¹¹

⁸ International Energy Agency (IEA). *GLOBAL EV OUTLOOK 2024 – MOVING TOWARDS INCREASED AFFORDABILITY*. Published in March 2024.

⁹ International Energy Agency (IEA). *GLOBAL EV OUTLOOK 2024 – MOVING TOWARDS INCREASED AFFORDABILITY*. Published in March 2024.

¹⁰ S&P Global. *LOOMING COPPER SUPPLY SHORTFALLS PRESENT A CHALLENGE TO ACHIEVING NET-ZERO 2050 GOALS*. Published via PR Newswire. Published on July 14, 2022.

¹¹ NASA – Jet Propulsion Laboratory. *ARAXÁ MINE, BRAZIL*. Published on September 27, 2024.

Rare earth elements: Essential for the production of high-performance permanent magnets used in electric motors, wind turbines, and various high-tech devices. Brazil holds the third-largest global reserve of these elements, with significant deposits located mainly in the southernmost part of Minas Gerais and the Araxá region (*The Factor*).¹²

This combination of wealth of mineral resources and industrial megatrends positions Brazil as a strategic hub in global supply chains, enhancing its potential for partnerships and attracting foreign capital.

4. FOREIGN INVESTORS

The role of foreign investors is notable. Data from M&A boutique Seneca Evercore show that, as of March 17, 2025, cross-border deals totaled USD 4.8 billion, accounting for 85% of all M&A activity in the country and reflecting a 166% increase compared to the same period last year (*Valor Econômico*). Among the 20 largest transactions carried out during the year, 13 involved foreign investors (*Valor Econômico*)¹³. Specifically in the mining sector, global appetite for critical minerals—combined with the attractive valuation of Brazilian assets (boosted by the depreciation of the Brazilian currency) and the need for geographical diversification of portfolios—continues to drive this trend.

Among the key players are Canadian, American, Australian, and European funds, as well as Asian and Middle Eastern companies seeking direct access to mineral resources. For the United States, interest in Brazilian rare earth elements has surged as a way to counter its heavy reliance on China, which currently controls both the production and refining of these critical minerals. Amid rising geopolitical tensions between the US and China—and recent trade frictions with Brazil—the Brazilian mining sector has emerged as a relevant alternative for diversifying supply chains in strategic industries. Brazilian authorities have even suggested that the sector may receive differential treatment under the new US tariffs announced in July 2025, although this has not yet been officially confirmed (*Brasil Mineral*).¹⁴

With global operations and experience across multiple jurisdictions, these investors typically require a higher degree of legal certainty, high governance standards, and regulatory alignment, which naturally increases the complexity of transactions in Brazil. In this context, foreign investors often seek regulatory overviews and practical insights

¹² The Factor. *RARE EARTHS, NIOBIUM AND LITHIUM: MINING BECOMES THE FRONT LINE OF THE ENERGY TRANSITION*. Published on January 31, 2025.

¹³ Valor Econômico. *FOREIGNERS CALL THE SHOTS IN MERGERS AND ACQUISITIONS IN 2025*. Published on March 24, 2025.

¹⁴ Brasil Mineral. *RARE EARTHS ARE OF INTEREST TO THE US IN THE CONTEXT OF TARIFFS*. Published on July 25, 2025.

into how the Brazilian mining sector operates, from the legal framework governing mining rights and their use in structured transactions, to licensing procedures, socio-environmental obligations, and engagement with local communities.

Furthermore, such transactions often call for corporate structures designed for tax efficiency, within the bounds of Brazilian law, along with contractual instruments that ensure shared governance and ongoing monitoring of the project's regulatory development. Due diligence processes also tend to be more comprehensive, with a particular focus on the legal validity of mining titles, socio-environmental compliance, and land tenure, reflecting a more cautious approach to local regulatory and operational risks.

5. CHALLENGES IN FINANCING AND THE ROLE OF M&A

Junior mining companies face significant challenges in securing financing through traditional banking channels or initial public offerings (IPOs). The complexity of the regulatory environment and the slow pace of environmental licensing processes in Brazil contribute to these barriers. Moreover, it is worth noting that only a small portion of Brazil's territory has been mapped by the Geological Survey of Brazil (SGB), which limits knowledge about the country's mineral potential while simultaneously reinforcing the sector's significant room for growth (*IBRAM*).¹⁵

The government's focus on strategic minerals is so evident that, in January 2025, MME opened a public consultation to regulate the issuance of incentivized and infrastructure debentures intended for mining projects, granting favorable tax treatment to either the investor or the issuer, as the case may be¹⁶. The proposal, which remains at an early stage of development, seeks to broaden the range of funding sources for projects associated with energy security, energy transition, and sensitive industrial supply chains. However, the initial scope of the draft regulation covers only a small subset of mineral substances compared to the list of strategic minerals already recognized by Resolution 2/2021 of the Interministerial Committee for the Analysis of Strategic Minerals Projects (CTAPME). This underscores the need for greater alignment between regulatory initiatives and the federal government's mineral policy guidelines, especially to ensure that financing tools truly benefit the full range of minerals deemed strategic for Brazil and the global economy.

¹⁵ IBRAM. *IBRAM AND CCBC DISCUSS OPPORTUNITIES AND TRENDS FOR THE BRAZILIAN AND CANADIAN MINING SECTORS*. Published on April 13, 2023.

¹⁶ Gov.br | *MME OPENS PUBLIC CONSULTATION ON REGULATION OF DEBENTURES WITH TAX INCENTIVES FOR THE MINING SECTOR*. Published on January 23, 2025.

In this still-developing regulatory landscape, M&A transactions and private capital have emerged as viable alternatives for financing and implementing expansion projects for these companies. Hybrid financing structures, including royalties (remuneration linked to a percentage of the project's future revenue), streaming (the right to purchase a portion of the production in advance at pre-agreed prices), and convertible debt, have also been used to enable projects that would otherwise stall under traditional credit restrictions. These strategies offer greater flexibility and improved access to the resources needed to move mining projects forward.¹⁷

6. RECENT M&A TRANSACTIONS IN THE BRAZILIAN MINING SECTOR

In 2024, the Brazilian mining sector witnessed significant transactions underscoring rising foreign investor interest. CSN Mineração sold an 11% stake to Japan's Mitsui for BRL 4.4 billion (*Money Report*)¹⁸, highlighting the appeal of Brazilian assets to international investors.

In 2025, transaction activity remains strong. Anglo American sold its nickel operation to MMG Limited for up to USD 500 million (*International Mining*)¹⁹, as part of its portfolio simplification strategy. The acquisition of Mineração Serra Grande, located in Crixás (Goiás), by Aura Minerals also garnered attention. The USD 76 million deal involves a gold mine located in one of Brazil's main greenstone belts, with potential for increased productivity and extended mine life (*Brasil Mineral*)²⁰. In addition, CSN Mineração expanded its logistics presence in the mining sector by acquiring 70% of Tora Transportes Group for BRL 742.5 million, aiming to strengthen integrated infrastructure across its mining, steel, cement, and energy operations and boost operational efficiency throughout its business (*Diário do Comércio*).²¹

Another relevant transaction was the March 2025 acquisition of the Araxá Project's mining rights by Canadian company St. George Eco Mining. These rights were previously held

¹⁷ For an in-depth analysis of the financing challenges and the role of M&A in the Brazilian mining sector, see "Mining, Hybrid Financing and M&A: Challenges and Opportunities in Brazil", published in Volume V of the e-book *MINING AND SUSTAINABLE DEVELOPMENT: TRANSVERSAL PRACTICES IN MINING LAW*, by Hugo Vidal, Alice Brandão, João Raso and Vinícius Mascarenhas (2024).

¹⁸ Money Report. *CSN AND CADE APPROVE THE SALE OF 11% OF CSN MINERAÇÃO FOR R\$4.4 BILLION*. Published on November 6, 2024.

¹⁹ International Mining. *ANGLO AMERICAN TO SELL NICKEL BUSINESS TO MMG SUBSIDIARY*. Published on Feb. 18, 2025.

²⁰ Brasil Mineral. *GOLD | AURA MINERALS ACQUIRES MINERAÇÃO SERRA GRANDE, FROM ANGLOGOLD ASHANTI | BRASIL MINERAL*. Published on June 2, 2025.

²¹ Diário do Comércio. *CSN CONCLUDES ACQUISITION OF 70% OF TORA TRANSPORTES*. Published on April 2, 2025.

by Itafos. Located in Araxá (Minas Gerais), the project is believed to host a significant deposit of niobium, rare earth elements, and phosphate, positioning itself as one of the most promising assets in Brazil within the strategic minerals segment. This deal marks St. George Eco Mining's entry into the Brazilian market, targeting critical resources for the energy transition and advanced technologies (*Minera Brasil*).²²

These are just a few examples of notable recent transactions. As legal advisors active in the sector, we can attest that several other mining transactions and strategic initiatives involving foreign investment in the Brazilian mining sector are currently underway.

7. OPPORTUNITIES AND CHALLENGES

Brazil's appeal lies in its abundant natural resources, a growing market, and opportunities for consolidation. Small and medium-sized assets with favorable prospects for technical advancement and regulatory alignment tend to become acquisition targets for more capitalized players. In addition, the rise of ESG has also driven the acquisitions of assets with stronger environmental and social practices, creating space for more sustainable initiatives.

In turn, the challenges are equally significant: socio-environmental and land-related risks, uncertainties in concession and licensing processes, and the need for continuous engagement with affected communities. Successful transactions require careful legal assessment, sector-specific technical knowledge, and regulatory awareness.

It is also important to highlight the risks associated with socio-environmental responsibility in the transfer of mining rights. Under article 6-A of the Mining Code and article 256 of the National Mining Agency (ANM, formerly, DNPM) Ordinance 155/2016, the assignor remains liable for all obligations arising from the mining title until the assignment is officially registered with ANM, including any environmental liabilities. Once registration is complete, liability passes on to the new holder. Due to these rules, transactions such as the assignment or lease of mining rights require careful contractual structuring, clearly defining obligations, guarantees, and mechanisms for allocating responsibility. This approach helps mitigate potential joint and several environmental liability between assignor and assignee, especially with regard to the management of pre-existing liabilities and the execution of mine closure plans.

Another relevant aspect of M&A transactions and corporate structuring in the mining

²² Minera Brasil. *ST GEORGE COMPLETES ACQUISITION OF ARAXÁ PROJECT AND ENTERS THE NIOBIUM AND RARE EARTHS MARKET*. Published on March 5, 2025.

sector involves the restrictions on foreign entities operating in areas within Brazil's border strip, as established in the Federal Constitution and Law 6,634/79. These regions, comprising a 150 kilometer-wide strip along the country's land borders, are subject to restrictions on the direct or indirect participation of foreign individuals or legal entities, including through investment vehicles, in activities such as mineral research, mining, or the acquisition of rural real estate, all of which require prior approval by the National Defense Council (CDN). The acquisition of rural real estate by foreigners anywhere within Brazilian territory is also governed by specific legal provisions, which in certain cases require prior authorization. These limitations require that corporate structures comply with Brazilian law and underscore the importance of prior analysis of the location of the mining and real estate assets involved. Failure to do so may render the deal null or later subject to operational restrictions.

Engaging legal advisors who are well-versed in both the dynamics of the mining sector and the structuring of M&A deals is essential, particularly in cross-border scenarios. It is increasingly common for these transactions to involve elements such as **(i)** legal and technical due diligence, often encompassing the assessment of mining and socio-environmental liabilities that may impact representations and warranties; **(ii)** call or put options linked to the regulatory progression of the project; **(iii)** staggered compensation mechanisms or escrow accounts tied to socio-environmental compliance milestones; **(iv)** corporate reorganizations addressing tax matters, mining operations, and the acquisition of real estate and mining rights within the border strip, aimed at risk segregation; **(v)** leasing of mining rights as an interim structure for M&A implementation; **(vi)** negotiation of access rights to surface properties overlapping the mining title or related areas; and **(vii)** other elements that are, by nature, highly case-specific and tailored to the particularities of each transaction.

An integrated understanding of these fronts allows for effective risk mitigation, preservation of value, and implementation of efficient structures from a contractual, corporate, tax, mineral regulatory, environmental, and real estate perspectives. In today's increasingly sophisticated market, this is a decisive competitive advantage.

8. CONCLUSION

The Brazilian mining sector is experiencing a unique moment, where its wealth of critical natural resources meets a favorable international environment marked by geopolitical tensions, the pursuit of energy security, and the restructuring of global supply chains. This scenario positions Brazil not only as a provider of raw materials but as a

strategic hub for mining investments, particularly in assets linked to the energy and technological transition.

As the volume and complexity of transactions increase, so do the legal, regulatory, and structural challenges. Factors such as socio-environmental obligations in mining succession, restrictions on foreign investors in border strip areas, limitations on the acquisition of rural real estate, local regulatory requirements, and the need for sophisticated corporate, tax, and contractual structures make specialized legal advisors indispensable.

In today's environment, the intersection between mineral expertise, regulatory legal intelligence, and M&A capability is no longer a competitive advantage, but a fundamental requirement to ensure legal certainty, feasibility, and successful outcomes in transactions within an increasingly strategic sector, for both domestic and international players.

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ARTICLE

BRAZIL IN THE GLOBAL RACE FOR RARE EARTHS

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BRAZIL IN THE GLOBAL RACE FOR RARE EARTHS

EVEN THOUGH BRAZIL HOLDS AN ESTIMATED 23% OF THE WORLD'S RESERVES, IT CURRENTLY ACCOUNTS FOR JUST 1% OF GLOBAL OUTPUT

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About two months ago, when the U.S. government announced sanctions against Brazil, particularly 50% tariffs on several Brazilian products, a previously secondary issue gained traction: Washington's growing interest in Brazil's rare earth reserves. Why is that?

Rare earth elements (REE), such as cerium, lanthanum, and neodymium, have become central to the global geopolitical chessboard. They are strategic, for example, for actions aligned with the energy transition agenda, including the production of wind turbines,

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electric cars, batteries, magnets, and various types of electronic equipment, as well as military uses.

China currently dominates this market, which, according to *Fortune Business Insights*, reached USD 13 billion in 2023 alone. The same source estimates an annual growth of approximately 12%, with revenues expected to exceed USD 25 billion by 2030.

The advancement of energy transition policies—driven by decarbonization goals, technological innovation, and the replacement of fossil fuels with clean energy sources—is stimulating unprecedented global demand for REE. Despite holding an estimated 23% of the world's reserves, Brazil currently accounts for just 1% of the global output, according to data from the Geological Survey of Brazil (CPRM).

The *2025 U.S. Mineral Commodity Summaries* estimates that Brazil possesses roughly 21 megatonnes (Mt) of rare earth reserves, representing approximately 23% of known global reserves. CPRM studies highlight significant potential, especially in the Amazon region and in the states of Minas Gerais and Bahia.

One of the main reasons for the underdevelopment of this market in Brazil is the challenge of tapping into these reserves, particularly given how difficult it is to locate deposits with concentrations high enough for technically and economically viable extraction. Nevertheless, considering Brazil's well-recognized geological potential, the country could become a key player in this sector.

Foreign governments and private companies are increasingly interested in investing in rare earth mining and processing projects in Brazil. These initiatives could boost the development of a domestic industry and strengthen the country's position within the global rare earth market.

The renewed momentum surrounding rare earths is no coincidence; it is one of the defining geopolitical imperatives of the 21st century. In recent years, the United States and its allies have intensified efforts to diversify supply sources, which are heavily concentrated in China. The *2025 U.S. Mineral Commodity Summaries* show that China accounts for 69% of global rare earth production and controls around 85% of the global refining capacity, manufacturing 90% of magnets using these elements.

China's market dominance was not a given, nor did it happen overnight. Since the 1980s, the Chinese government has been strategically investing in mining and refining rare earth materials. The United States sees the high concentration of separation and refining activities in Chinese hands as a sensitive issue, which drives American interest towards partnerships with other countries to develop these resources.

Brazil, a major monazite exporter throughout much of the 20th century, gradually lost ground by exporting raw minerals without adding value. Against this backdrop, Brazil now has an opportunity to re-establish itself as a strategic partner, offering an important alternative for diversifying global supply chains and reclaiming the role it once played.

Currently, industrial operations exist only for one rare earth mine in the country. It is located in Minaçu, state of Goiás. There are other projects in the early stages of development and exploration in various locations, such as Araxá (Minas Gerais), Caetité (Bahia), Catalão (Goiás), and different areas of the states of Amazonas and Rondônia, but none have yet reached industrial-scale production.

Some initiatives are underway to attract financing for ventures aimed at the production and processing of rare earths and other critical and strategic minerals. One of these was the creation, in early September, of the Parliamentary Front in Defense of Brazilian Rare Earths, which aims to draw up a strategic plan for the sector.

It is important to note that Brazil already has a regulatory agenda and relevant financing instruments in place. On the investment side, one example is the Private Equity Investment Fund (FIP) in Strategic Minerals launched in 2024 by the National Bank for Economic and Social Development (BNDES) and the Ministry of Mines and Energy (MME). This investment vehicle could draw investments of up to BRL 1 billion.

In addition, BNDES and the Brazilian Innovation Agency (Finep) have launched a call for proposals for business plans for investments of up to BRL 5 billion. It focuses on projects in the early and advanced stages of research, production, and processing of minerals that are strategic for energy transition and decarbonization goals.

Advances in research and technology are essential so that, aside from exploring these minerals, Brazil can also become a global player in the separation and refining stages. These stages add significant value to minerals. Today, Brazil's shy presence in this global industry is still limited to the export of mineral concentrate for processing overseas, primarily in China and India.

According to virtually all projections, this market is expected to grow in the coming decades. Thus, organizing the rare minerals production chain and including universities and the private sector in the discussion is essential for Brazil to expand its relevance in this industry.

This entire legislative and regulatory framework, coupled with the creation of financing instruments, represents not only a step forward but also unlocks a potential market, consolidating a truly transformative path of economic, technological, and social development in the Brazilian rare earths market.

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ARTICLE

THE ROLE OF
BRAZIL FOR CRITICAL
AND STRATEGIC
MINERALS:
CHALLENGES
FOR M&A

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NATHALIA ANDRADE

THE ROLE OF BRAZIL FOR CRITICAL AND STRATEGIC MINERALS: CHALLENGES FOR M&A

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1. INTRODUCTION

The relentless pursuit of technological advancement and the imperative of a global energy transition have propelled critical and strategic minerals to the forefront of international geopolitical and economic agendas. They are essential for technologies such as electric vehicles, renewable energy systems, electronics, and defense, and play a central role in national security and sustainable development (IBRAM, 2024; Brasil Mineral, 2025b). Their supply chain vulnerabilities, often concentrated in a few geographical areas, elevate their geopolitical importance, prompting nations to secure reliable access (IBRAM, 2024; Brasil Mineral, 2025b).

Brazil, a country of immense natural resources, holds a pivotal position in this evolving scenario. With its vast geological potential, the nation possesses significant reserves of various critical and strategic minerals, including rare earth elements, nickel, lithium, and niobium (IBRAM, 2024). Brazil is reported to hold approximately 23% of the world's rare earth reserves (Brasil Mineral, 2025a). This natural endowment positions Brazil as a crucial player in meeting the escalating global demand for these essential inputs, which are vital for the energy transition and advanced manufacturing (Brasil Mineral, 2025c).

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Mergers and Acquisitions (M&A) operations in the mining sector, especially those involving critical and strategic minerals, face a unique set of challenges in Brazil. These challenges span regulatory frameworks, environmental licensing, social considerations, and the inherent complexities of corporate structuring and financing within a dynamic global market (IBRAM, 2024; Brasil. Ministério de Minas e Energia, 2023a; Brasil. Congresso Nacional, 2024). Brazil is witnessing a “race” for these minerals, with projections of over R\$ 100 billion in investments by 2029 (CNN Brasil, 2025). This indicates a growing recognition of Brazil’s strategic importance and an active movement towards securing mineral assets.

This article aims to analyze Brazil’s role in the global supply of critical and strategic minerals, focusing on the challenges and opportunities within the M&A landscape. It will evaluate the recent movements and policy developments in the Brazilian mineral sector that specifically target these crucial resources. By examining relevant legislation, governmental initiatives, and industry trends, this paper seeks to provide insights into how Brazil is navigating the global “race” for critical minerals and the implications for both domestic and international stakeholders.

To achieve its objectives, this study employs a qualitative, descriptive approach, relying on the analysis of official documents, including national mineral policy drafts (Brasil. Ministério de Minas e Energia, n.d.), governmental ordinances (Brasil. Ministério de Minas e Energia, 2023b), proposed legislation (Brasil. Congresso Nacional, 2024; Brasil, 2021, 2022), and industry reports (IBRAM, 2024; IPEA, 2022). Additionally, recent news articles and industry insights will complement the analysis to capture contemporary trends and investment movements (CNN Brasil, 2025; Brasil Mineral, 2025a, 2025b, 2025c, 2025d).

2. OVERVIEW OF CRITICAL AND STRATEGIC MINERALS IN THE BRAZILIAN CONTEXT

The escalating global demand for advanced technologies, renewable energy systems, and defense applications has thrust certain raw materials into a spotlight, categorizing them as “critical” or “strategic.” These classifications reflect their indispensable role in industrial and technological processes and the risks associated with supply disruptions (IBRAM, 2024). Generally, a mineral is deemed critical if its supply is vulnerable to disruption and its absence would have significant economic or national security impacts. A mineral is considered strategic due to its importance for a nation’s sovereignty, defense, or economic development, often encompassing minerals considered critical (Brasil, 2021; Brasil. Congresso Nacional, 2024).

Brazil, leveraging its vast geological diversity, holds a significant position in this global landscape. The country's legal and policy frameworks, such as the National Policy for Strategic Minerals (Law No. 14,204/2021, derived from Decree No. 10,657/2021) and the proposed National Policy for Critical and Strategic Minerals (PL 2780/2024), aim to delineate and promote the development of these essential resources (Brasil, 2021; Brasil. Congresso Nacional, 2024). These policies reflect a concerted effort to align Brazil's mineral agenda with global sustainability and technological trends, emphasizing the nation's role in the energy transition (IBRAM, 2024; Brasil. Ministério de Minas e Energia, n.d.).

The Brazilian mineral portfolio includes a substantial array of critical and strategic minerals vital for current and future technologies. Among these, the most prominent include niobium, rare earth elements (REEs), lithium, graphite, nickel, and copper (IBRAM, 2024). Brazil is a global leader in niobium production and possesses significant, largely untapped, reserves of REEs, holding approximately 23% of the world's rare earth reserves (Brasil Mineral, 2025a). The increasing global interest in electric vehicles and battery storage solutions also highlights Brazil's potential in lithium and graphite. Furthermore, minerals like cobalt, titanium, and phosphate, though perhaps less discussed, also feature in the Brazilian strategic mineral agenda due to their industrial importance (IBRAM, 2024).

In June 2025, the Brazilian Development Bank (BNDES) and the Brazilian Studies and Projects Financing Agency (Finep) released a list of companies selected in a public call for proposals for business plans focused on the transformation of strategic minerals, with a focus on the energy transition and decarbonization of the economy. These minerals are considered essential for applications in batteries, electric motors, solar panels, electronics, and technologies related to the green economy and low-carbon industry. After selection, the selected plans will receive financial instruments from BNDES and Finep that can be used to support the implementation of their projects.

The strategic importance of these minerals transcends their industrial application, encompassing geopolitical considerations. Securing access to reliable sources of critical minerals is a priority for major industrial economies, fostering a "race" for mineral assets worldwide (Brasil Mineral, 2025b). Brazil's rich endowment thus positions it as a key player capable of contributing significantly to the global supply chain, potentially attracting substantial foreign investment and fostering domestic industrial growth (CNN Brasil, 2025). Realizing this potential depends on effective policy, sustainable practices, and efficient project development.

3. POLICY AND REGULATORY FRAMEWORK GOVERNING THE MINING SECTOR IN BRAZIL

Brazil's mineral sector operates under a complex framework of laws, decrees, and regulations, reflecting the country's rich geological endowment and the strategic importance of mining. This regulatory environment is currently undergoing significant adjustments, particularly in response to the global demand for critical and strategic minerals and the imperative for sustainable development. Understanding this framework is crucial for any entity considering investments, including Mergers and Acquisitions (M&A), in the Brazilian mining landscape.

Historically, the Brazilian mining code and related legislation have aimed at fostering mineral exploration and production while ensuring environmental protection and social responsibility. However, the increasing prominence of critical and strategic minerals has prompted specific governmental initiatives to streamline processes, attract investment, and enhance the national supply chain resilience. Key among these initiatives is the National Policy for Strategic Minerals (PNM), established by Decree No. 10.657/2021 and subsequently converted into Law No. 14.204/2021 (Brasil, 2021; Brasil, 2022). Despite signaling governmental commitment, implementation faces bureaucratic hurdles and demands inter-agency coordination, which M&A investors monitor closely.

Complementing the PNM, the Ministry of Mines and Energy (MME) has been actively developing the National Mining Plan 2050 (PNM2050), a long-term strategic vision for the sector (Brasil. Ministério de Minas e Energia, n.d.). The PNM2050's focus on fostering an attractive environment for private capital is a direct signal to potential acquirers and investors, indicating a governmental push for growth that could lead to increased M&A opportunities as projects mature and seek consolidation or expansion capital.

More recently, the legislative agenda has seen the introduction of the Bill of Law (PL) 2780/2024, which proposes a National Policy for Critical and Strategic Minerals (Brasil. Congresso Nacional, 2024). This PL, if approved, aims to further consolidate and expand the existing frameworks, explicitly addressing the unique characteristics and challenges of critical minerals. Its provisions could include simplified licensing for certain projects, tax incentives, or mechanisms to support exploration and beneficiation. Such legislative clarity and incentives are paramount for M&A, as they reduce regulatory uncertainty, enhance project viability, and potentially increase the attractiveness of target assets for both domestic and international investors.

Furthermore, governmental bodies are actively engaging the industry to shape these policies. The Ministry of Mines and Energy's Public Consultation AIR MME 180 (Brasil.

Ministério de Minas e Energia, 2023a) and the Public Call for Transformation of Strategic Minerals (Brasil. Ministério de Minas e Energia, 2024a) exemplify efforts to gather industry input and stimulate specific projects. These initiatives not only demonstrate a proactive stance by the government but also highlight specific areas where investments, potentially via M&A, are desired.

Despite these positive signals, the regulatory environment in Brazil can still present challenges for M&A. Complex and often lengthy environmental licensing processes can delay project development, increase costs, and introduce significant uncertainty into deal timelines and valuations (IPEA, 2022). Potential acquirers must undertake extensive due diligence to assess the regulatory compliance and licensing status of target assets, as non-compliance can lead to substantial financial and reputational risks.

The recently enacted Law 15.090/2025, which establishes the rules for environmental licensing at the federal level, may represent a simplification of the process. However, its effects will likely take time to be seen.

Social and environmental governance (ESG) considerations are increasingly paramount. Local communities and environmental groups wield significant influence, and projects lacking a strong social license to operate face considerable resistance, delays, or even cancellation. M&A deals must therefore go beyond traditional financial and operational due diligence to thoroughly evaluate a target's ESG performance, community relations, and Indigenous land claims, ensuring alignment with global best practices and investor expectations. These challenges also present opportunities for companies committed to best practices, potentially attracting impact investors or strategic partners.

Financing remains another challenge, especially for early-stage exploration projects. While large-scale producing assets attract significant capital, the inherent risks and long lead times of mineral exploration can deter some investors. This creates a gap that often requires a combination of venture capital, private equity, and strategic partnerships, potentially via M&A, to advance projects to a stage where they become attractive to larger mining houses or institutional investors.

Finally, geopolitical factors and commodity price volatility also influence M&A strategies. The “race” for critical minerals is intrinsically linked to global supply chain security and national interests. This can lead to increased competition for assets, but also introduces an element of political risk, including potential for resource nationalism or policy shifts that could impact foreign ownership or export restrictions. Buyers must evaluate these broader geopolitical dynamics when assessing potential M&A targets in Brazil.

4. CHALLENGES AND OPPORTUNITIES FOR MERGERS AND ACQUISITIONS (M&A) IN BRAZIL'S CRITICAL AND STRATEGIC MINERAL SECTOR

The global imperative for energy transition and technological advancement has ignited a fierce “race” for critical and strategic minerals, positioning Brazil as a key player in the supply chain (Brasil Mineral, 2025b). This heightened interest has created a dynamic environment for Mergers and Acquisitions (M&A) in the Brazilian mining sector, presenting both significant opportunities for investors and distinct challenges that require careful navigation.

4.1. Opportunities for M&A

Brazil's inherent geological wealth is the primary magnet for M&A activity in its critical and strategic mineral sector. The country's vast reserves of minerals such as lithium, rare earth elements, nickel, graphite, and niobium make it an attractive target for companies seeking to secure long-term supply or expand their mineral portfolios (IBRAM, 2024). Brazil's estimated 23% share of global rare earth reserves underscores its strategic importance (Brasil Mineral, 2025a).

Beyond geological endowment, the evolving policy and regulatory landscape, as discussed in Section 3, creates a more favorable environment for investment. The National Policy for Strategic Minerals (Brasil, 2021) and the proposed National Policy for Critical and Strategic Minerals (Brasil. Congresso Nacional, 2024) signal a clear governmental intent to prioritize and support the development of these resources. This includes potential for simplified licensing, tax incentives, or governmental backing for projects, all of which can enhance the attractiveness of Brazilian mining assets for potential acquirers.

Opportunities are particularly prevalent for *brownfield expansions* or *acquisitions of junior explorers* with significant proven reserves, while *greenfield ventures* still face higher risks tied to prolonged environmental licensing processes. The projected R\$ 100 billion in investments by 2029 highlights the financial momentum in the sector (CNN Brasil, 2025). This influx of capital suggests a robust pipeline of projects moving from exploration to development, creating opportunities for strategic partnerships, joint ventures, and outright acquisitions.

This supportive environment is already attracting significant capital; for instance, Lundin Mining's recent US\$100 million investment exemplifies the growing confidence in developing Brazilian projects for critical minerals (Brasil Mineral, 2025d), showcasing a clear pathway for M&A as a growth strategy. Furthermore, the drive for value-added

processing within Brazil, encouraged by policies like the Public Call for Transformation of Strategic Minerals (Brasil. Ministério de Minas e Energia, 2024a), can stimulate M&A focused on downstream assets and technologies, moving beyond mere extraction.

4.2. Challenges for M&A

Despite the clear opportunities, M&A in Brazil's critical and strategic mineral sector is not without significant hurdles. The regulatory environment, while improving, remains complex. Lengthy and often unpredictable environmental licensing processes can delay project development, increase costs, and introduce significant uncertainty into deal timelines and valuations (IPEA, 2022). Potential acquirers must undertake extensive due diligence to assess the regulatory compliance and licensing status of target assets, as non-compliance can lead to substantial financial and reputational risks.

Social and environmental governance (ESG) considerations are increasingly paramount. Local communities and environmental groups wield significant influence, and projects lacking a strong social license to operate face considerable resistance, delays, or even cancellation. M&A deals must therefore go beyond traditional financial and operational due diligence to thoroughly evaluate a target's ESG performance, community relations, and Indigenous land claims, ensuring alignment with global best practices and investor expectations.

Financing remains another challenge, especially for early-stage exploration projects. While large-scale producing assets attract significant capital, the inherent risks and long lead times of mineral exploration can deter some investors. This gap often requires venture capital, private equity, and strategic partnerships (potentially via M&A) to advance projects to maturity.

Finally, geopolitical factors and commodity price volatility also shape M&A strategies. The race for critical minerals is intrinsically tied to global supply chain security and national interests. This dynamic can intensify competition for assets, while also introducing political risks—such as resource nationalism or policy shifts that may affect foreign ownership and export regulations. Buyers must carefully assess these broader geopolitical dynamics when evaluating potential M&A targets in Brazil.

5. CONCLUSIONS AND FUTURE PERSPECTIVES

Brazil stands at a pivotal moment in the global race for critical and strategic minerals. The dual transitions toward a low-carbon economy and advanced technological societies have heightened the demand for essential raw materials. With vast geological

reserves of minerals vital for batteries, renewable energy, and high-tech applications, Brazil is positioned as a key player in meeting this growing global need (IBRAM, 2024; Brasil Mineral, 2025a).

The Brazilian government has taken concrete steps to strengthen the sector's regulatory and policy framework. Initiatives such as the National Policy for Strategic Minerals and the proposed National Policy for Critical and Strategic Minerals (Brasil, 2021; Congresso Nacional, 2024) aim to attract investment, streamline processes, and reinforce Brazil's role in global supply chains. This evolving landscape presents compelling M&A opportunities, especially for strategic investors seeking long-term supply security and portfolio expansion (CNN Brasil, 2025).

To fully unlock this potential, Brazil must continue improving regulatory predictability, accelerating licensing procedures, and promoting strong ESG standards to reduce investment risks and enhance M&A attractiveness. Investors, in turn, should prioritize partnerships with local stakeholders and commit to sustainable practices.

Despite the opportunities, challenges persist. Regulatory uncertainties—particularly around environmental licensing—and increasing ESG scrutiny require thorough due diligence and a deep understanding of the local context (IPEA, 2022). Success in M&A will depend on the ability to navigate these complexities, integrate ESG principles, and build trust with communities.

Looking ahead, Brazil's role in the global supply chain will depend on its capacity to offer not only abundant resources but also a stable and sustainable operating environment. This includes refining its regulatory framework, enabling efficient project development, and fostering value-added processing and innovation within the country.

Ultimately, Brazil's ability to capitalize on its mineral wealth through M&A and foreign investment hinges on balancing economic growth with environmental and social responsibility. By embracing these principles, Brazil can solidify its position as a strategic global partner in the energy transition and technological advancement, while promoting inclusive and sustainable development at home.

Limitations and Future Research

This analysis primarily relies on publicly available data and focuses on policy and M&A aspects over specific geological details. Future research could delve into detailed economic modeling of specific mineral supply chains and conduct impact assessments of new policies to provide a more comprehensive understanding of Brazil's critical minerals sector.

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ARTICLE

FINANCING INSTRUMENTS
FOR STRATEGIC
MINING PROJECTS:
INFRASTRUCTURE
DEBENTURES AND
INITIATIVES TO
FOSTER THE VALUE
CHAIN IN ENERGY
TRANSITION

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FINANCING INSTRUMENTS FOR STRATEGIC MINING PROJECTS: INFRASTRUCTURE DEBENTURES AND INITIATIVES TO FOSTER THE VALUE CHAIN IN ENERGY TRANSITION

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1. INTRODUCTION

Energy transition and decarbonization are driving the search for new financing models in the mining sector on a global scale. Strategic minerals have taken center stage both as industrial inputs and as key resources for achieving climate targets, notably those in the Paris Agreement. The shift towards renewable sources and cleaner technologies poses significant financial challenges to the mining value chain. Given these demands, it is important to explore financing tools for mining projects linked to the energy transition.

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In this sense, Brazil has made an effort to structure legal and economic instruments to foster investments in the sector, such as Law 14,801/2024, providing for the issuance of infrastructure debentures, and Decree 11,964/2024, governing projects aimed at transforming strategic minerals for decarbonization purposes as a priority. In addition, Ordinance 825/2025, from the Ministry of Mining and Energy (MME), currently under public consultation, seeks to establish rules for the application of these instruments in the mineral sector. From an economic point of view, the Public Call for Proposal by the National Bank for Economic and Social Development (BNDES) and the Brazilian Innovation Agency (Finep) stands out, as it selected business plans to raise financial resources for the transformation of strategic minerals in the country.

This article critically examines the main regulatory and economic frameworks recently introduced in Brazil to support the transformation of strategic minerals for the energy transition. We begin by reviewing the legal and regulatory context of infrastructure debentures and their relevance to the mineral sector. Next, we analyze the rules governing their issuance, with special attention to regulatory inconsistencies and opportunities for improvement. We then assess the structure and results of the BNDES/Finep Public Call for Proposals, highlighting its strategic role in driving investments in sustainable production chains. Finally, we discuss the challenges of aligning the technical and legal criteria of the different instruments in place, especially with regard to delimiting which minerals are, in fact, considered strategic for energy transition.

2. THE ROLE OF STRATEGIC MINERALS AND BRAZIL'S LEADERSHIP IN THE GLOBAL ENERGY TRANSITION

Global concern over climate change and its potential effects is now well established.

In December 2015, during the 21st Conference of the Parties (COP-21), the 195 signatory countries of the United Nations Framework Convention on Climate Change (UNFCCC) approved the Paris Agreement. This agreement, among other measures, establishes targets for the reduction of greenhouse gas emissions (GHG) with a view towards sustainable development. It also provides for actions to respond to and deal with the possible consequences of climate change.

Fulfilling the commitments made by the countries that ratified the Paris Agreement requires a transition in the energy matrix to reduce greenhouse gas emissions. This involves shifting to cleaner energy sources, enabled by the development of new technologies.

The high-tech industry produces green energy solutions, including wind turbines and photovoltaic cells, hybrid electric cars, and remote communication tools. Strategic

minerals are crucial inputs for these technologies, supporting the shift to cleaner energy and the greenhouse gas emissions reduction targets of the Paris Agreement.

In line with the above, in 2020, the European Commission issued a communiqué to reaffirm the importance of strategic minerals in making the energy transition viable. According to the communiqué, 10% (ten percent) of the bauxite, 12% (twelve percent) of the graphite, 13% (thirteen percent) of the tantalum, and 85% (eighty-five percent) of the niobium supplied to the European Union came from Brazil.

These figures align with the recommendations of the National Mining Plan 2030 (PNM-2030), which calls for special attention to minerals essential to the high-tech industry, such as lithium and rare earth elements (BRAZIL, Ministry of Mines and Energy, 2010).

This reinforces Carlos Luiz Ribeiro's observation that almost all human activities rely on mining (RIBEIRO, 2005, p. 334), highlighting the relevance of mining, given the heavy dependence on mineral resources.

3. INFRASTRUCTURE DEBENTURES AS A FINANCING TOOL FOR STRATEGIC MINERAL MINING PROJECTS

In March 2024, Decree 11,964/2024 was published, recognizing projects for strategic mineral transformation in the energy transition as a priority sector eligible for the infrastructure debentures under Law 14,801/2024.

Infrastructure debentures are securities that can be issued under current regulations to finance projects considered to be a priority in Brazil. The aim is to boost the credit market and reduce dependence on banks to finance these projects.

To foster issuance of infrastructure debentures, Law 14.801/2024 established significant tax benefits for issuers, streamlined the bureaucratic process, and removed the need for ministerial approvals, making the procedure faster and more efficient.

Under Decree 11,964/2024, MME, through the National Secretariat for Geology, Mining and Mineral Transformation, intends to issue its own regulation setting out the criteria and conditions for issuing debentures to finance priority projects in the strategic mineral transformation chain for the energy transition.

On January 23, 2025, Ordinance 825/2025 was published, through which MME made the proposed regulations on the subject available for public consultation. Although the work undertaken by MME to make the Ordinance available for public consultation is of great importance, there is still room for improvement.

This is because article 2 of the Ordinance limits strategic minerals for the energy transition to cobalt, copper, lithium, nickel, and rare earth elements. However, MME, through Regulation 02/2021, listed several other minerals as essential for high-tech products and processes, closely tied to the energy transition, namely aluminum, tin, graphite, manganese, platinum group metals, molybdenum, niobium, silicon, tantalum, titanium, tungsten, uranium, vanadium, and zinc.

It is worth noting that Regulation 02/2021 was issued under Decree 10,657/2021, which created the Pro-Strategic Minerals Policy to coordinate public bodies and prioritize government efforts to implement projects for the production of strategic minerals essential to Brazil's development.

It is therefore important for MME to align the strategic minerals eligible for infrastructure debentures with those provided for by Regulation 2/2021 under the Pro-Strategic Minerals Policy.

This alignment is essential to create financing mechanisms for ventures across the production chain that are directly or indirectly linked to the transformation of strategic minerals essential to the energy transition, as well as to advancing a low-carbon economy.

Article 3 of the Ordinance reveals the goal to direct financing instruments towards specific transformation projects identified in the Regulatory Impact Analysis that guided MME's work. However, this narrow focus risks excluding other very important projects in the strategic minerals chain, including innovations in their application for energy transition.

In fact, MME's survey carried out in preparation for the Regulatory Impact Analysis shows that Brazil still has few enterprises operating in transforming strategic minerals for the energy transition. This reinforces the need to create financing instruments that apply to projects across the production chain, including research, development, and innovation in the prospecting and mining of mineral assets.

It is important to point out that the Ordinance rightly provides for the possibility of allocating the funds raised from infrastructure debentures for mine development and mining. However, since Decree 11,964/2024 prioritizes only transformation projects, article 4 limits expenditures on mine development and mining to no more than 49% of funds raised.

In view of this, it is important for MME to define mine development in such a way as to include the various stages essential to the implementation of a mining project. This involves, for example, work related to mineral research and licensing, which are vital for the development of mining activities.

Otherwise, if the regulation does not allow project financing for stages prior to mineral processing, it could hinder support for the entire supply chain that is essential to the energy transition and the transition to a low-carbon economy.

At the same time, other possible improvements to the Ordinance concern the information and documents required by MME to issue securities. These issues are essentially bureaucratic and will not be explored in depth in this article, but it should be noted that, with regard to the project implementation schedule, it is essential that MME allows for revisions to the project implementation schedule to make the development of the projects feasible.

In any case, although there is room for improvement, the Ordinance currently available for public consultation reflects MME's commitment to aligning the criteria and conditions for issuing infrastructure debentures to priority mineral transformation projects for the energy transition.

4. PUBLIC POLICIES AND REGULATIONS – BNDES/FINEP PUBLIC CALL FOR PROPOSALS: STIMULATING INNOVATION AND THE PRODUCTION CHAIN

To strengthen the sustainable materials chain—essential for Brazil's energy transition and decarbonization—BNDES and Finep launched a Public Call for Proposals on January 7, 2025.⁴ The initiative seeks to finance Business Plans (PN) aimed at boosting research, development, and production capacity for the transformation of strategic minerals in Brazil.

This Public Call for Proposals was part of Mission 5—focused on bioeconomy, decarbonization, and energy transition, and securing resources for future generations—under the New Industry Brazil Policy, of January 2024, to promote neo-industrialization.

According to BNDES and Finep representatives, the initiative's goal is to engage players across the production chains, promoting partnerships among mining, technology, and manufacturing companies, while providing access to financing that supports the sustainable development of the Brazilian mining sector. The strategy also seeks to leverage the potential for clean energy generation—solar and wind—and the domestic market for electric vehicles, increasing the demand for high-value-added components.

⁴ Public Call for Business Plans for Investments in the Transformation of Strategic Minerals. Accessed on 27/07/2025. Partnerships for sustainable development – BNDES

The Public Call for Proposals⁵ included projects ranging from large industrial plants to pilot plants and feasibility studies, with the potential to attract investments from five to ten times the initial allocation (BRL 5 billion, credit lines, equity participation in companies, and non-reimbursable resources). The minerals of interest include aluminum, cobalt, copper, tin, graphite, lithium, manganese, platinum group metals (PGMS), molybdenum, niobium, nickel, silicon, tantalum, rare earths, titanium, tungsten, uranium, vanadium, and zinc.

The Public Call for Proposals outlined the conditions for participation, targeting *“companies operating in the mineral production chains for energy transition and decarbonization or that carry out research, technological development, and innovation activities to develop technologies and undertake production and/or commercialization activities for transformed materials or manufactured products based on the minerals defined in this call”*².

Submissions could be made individually or in consortia, which are encouraged to include companies that supply inputs, equipment, technologies, or that demand the final product, which is considered a key advantage in the evaluation. Each proposal had to present a single Business Plan, with a credit request of over BRL 20 million using the available financial instruments, and be sent via Finep’s proposals page between January 13 and April 30, 2025.

According to Finep, the Public Call for Proposals received one hundred and twenty-four (124) proposals from companies and consortia interested in developing technological and industrial solutions to meet the growing demand for critical materials. The list of selected companies was released on June 12, 2025, and included fifty-six (56) Business Plans for the next phase of drawing up the Joint Support Plan (PSC), totaling BRL 45.8 billion.⁶

⁵ Public Call for proposals of business plans for investments in the transformation of strategic minerals for energy transition and decarbonization. Accessed on 27/07/2025. Public Call for Strategic Minerals Transformation

⁶ Finep and BNDES conclude evaluation of proposals from the Public Call for Proposals for the transformation of strategic minerals (56 projects followed – BRL 45.8 billion). Published on June 12, 2025. Accessed on 27/07/2025. Finep and BNDES conclude evaluation of proposals for the call for proposals for the transformation of strategic minerals (56 projects followed – BRL 45.8 billion)

List of proposals selected for the PSC*

***Source:** Finep Inovação e Pesquisa. Accessed on 27/07/2025. FINEP AND BNDES CONCLUDE EVALUATION OF PROPOSALS FOR THE CALL FOR PROPOSALS FOR THE TRANSFORMATION OF STRATEGIC MINERALS (56 PROJECTS FOLLOWED – BRL 45.8 BILLION)

Filing number	Company
5B76036E-51E6-4ABC-82B4-ACEE5F07B114	ACLARA RESOURCES MINERACAO LTDA.
86530CA2-71CF-4698-B03E-8E4A96B23E97	AMG BRASIL S.A.
0EDE799D-0C76-466B-BD25-30DBDCB1A2FA	AMG BRASIL S.A.
17AED9B8-66B9-4F57-A41C-95E5B67A7172	ANODOX AMERICAS HOLDING
AD3EA2BD-ABC5-4941-81BE-8CD6947E03AA	ATIVA MINERAÇÃO SPE S/A
DAD0F76A-5C2D-465C-BAA3-21C7355FA493	BELO LITHIUM MINERAÇÃO LTDA
675BA353-70D6-4C7F-B64A-6D1A61AC192D	BEMISA HOLDING S.A.
BB5FBF04-7A76-4460-A5D1-FDA66154A031	BORBOREMA RECURSOS MINERAIS LTDA
59A35505-37F4-4907-8117-395EB257D266	BOZEL BRASIL S.A.
E8E205A4-15CF-4E11-9433-B5E4F2AC95D4	BRAZIL GRAFITE MINERADORA LTDA (SOUTH STAR BAT
02C30F27-38CD-445B-ACFD-6D8F2E28ED6C	BRASTORNO LTDA
B64FE86A-20C7-4F39-ABA2-4EEAA135DE73	BRAVO MINERACAO LTDA
779FA0DA-A732-4DAB-ADE2-534F366D5BDB	BRAVO MOTOR COMPANY BRASIL ENERGY S.A.
00535FC7-4799-4808-B01A-3FC707222816	COMPANHIA BRASILEIRA DE LÍTIO S.A.
F0659A7A-2FE0-4916-A75F-48F793409F1F	COMPANHIA BRASILEIRA DE METALURGIA E MINER- ACAO
3EFE959A-9C55-40DE-9A23-CE942F317796	BRAZILIAN METALLURGY AND MINING COMPANY
3EB4DDD6-FD9D-4DC1-8CD0-F377730A6CF4	COOPERATIVA DOS FUNDIDORES DE CASSITERITA DA A
075043A1-8D37-4824-9B77-CB1932F36A61	D S DE FRANCA LTDA
8C717B4C-EA46-45E2-BD75-2A3E58108466	ECOMET METAIS SUTENTAVEIS LTDA
DDE038CC-72B5-49F5-A6D9-2E2B8AD9F2A9	FERMAVI ELETROQUIMICA LTDA
E6058DD9-2FC3-4964-A48F-CCC07EA38643	FUSÃO COMÉRCIO E INDÚSTRIA LTDA.
9624F9F4-5342-48A2-9B64-B13C23EDEAD3	GRAPH MAIS MINERAÇÃO LTDA
404AA96B-E8C5-4804-9669-35B127919EE0	GREENPAR TECNOLOGIA EM ENERGIA LTDA

Continues

2F74F093-49EE-4EB5-BA43-35E2A96CB8A8	HOMERUN BRASIL MINERACAO LTDA
152C6052-0A26-4DAE-94BE-0073288F79BE	IBIRÉ COMÉRCIO E SERVIÇOS EMPRESARIAIS LTDA
D5594E6C-7016-4986-A7F3-75FC63DAC520	KEMPETRO ENGENHARIA LTDA
6CD021D2-2831-4E3D-B50D-768C5D034E0D	LORENE IMPORT AND EXPORT LTDA
3689241B-0A96-480B-8512-2A157E972BB3	M P DE MEDEIROS LINHARES IMPORTAÇÃO E EX- PORTAÇ
D180B2E8-B5EE-408F-AA4E-25759E2AA570	METEORIC CALDEIRA MINERACAO LTDA
932E4267-95A5-4C77-B821-66EBFA033CEA	MINASLIGAS S.A.
AC134982-0EB7-450F-BA25-912BFFD48F70	MINERAÇÃO TABOCA SA
A965C163-F3B0-44A8-85E2-0673849D6886	MINERAÇÃO TABOCA SA
0E39FD20-B191-4E01-B378-4D1871A7C46E	MINERCAL METALURGIA LTDA
99C0B779-D765-407C-B747-989CDB26CF21	MOSAIC FERTILIZANTES P&K LTDA.
724EBBA3-7311-4DC3-B7C9-7FF22067D56F	NEWPOWER COMÉRCIO DE SISTEMAS DE ENERGIA E DE
A941839C-424A-4916-A50E-8C7142FA2EF2	PIAUI NÍQUEL METAIS S.A.
DA6C2DAE-F7A4-42BE-863E-C3C60E8ECA78	PIONEIRO ECOMETAIS INDUSTRIAL LTDA
C0CDA5A3-8E42-419E-80BC-448850A1575A	QTECH TECNOLOGIA DE MATERIAIS LTDA
8537EF2B-6391-45ED-B1A4-3C6110B0D518	RECICLA ENGENHARIA E GESTÃO AMBIENTAL LTDA
6410F437-C4CE-4EEA-B6F3-EB8790692588	RECURSOS MINERAIS DO BRASIL S/A – RMB
82264ABD-84CD-4EB6-9ADD-5D55587365ED	REFERENCIAL GEOLOGIA MINERACAO E MEIO AMBI- ENTE
BF0E5D97-BADF-4A8A-B285-0B7A53CD0F48	RODOIL DISTRIBUIDORA DE COMBUSTÍVEIS S.A.
0B51F35E-9F0A-42AE-A415-4C830EA7BAB1	SERRA VERDE PESQUISA E MINERAÇÃO LTDA
B03A4233-0620-48A9-A6D3-0825F23F8279	SK METAIS LTDA
37331387-343E-4775-A2D3-4CA5A73DB102	SPE CASA GRANDE MINERAÇÃO LTDA.
9FCE9B12-5585-42D9-A4E6-02697639F6F9	STELLANTIS AUTOMOVEIS BRASIL LTDA
CAD76E6C-0302-42F1-B189-0E9AB7B4AB4C	SUDAMIN NORDESTE LTDA
03DC616C-CAB8-4457-AF5E-6E33161E8064	TECNOSINTER TECNOLOGIA EM MINERAIS LTDA
2590B6A7-E50A-4A83-8454-AF456FEF1AD1	TIROS MINERAIS ESTRATEGICOS MINERACAO LTDA
17816C59-D23E-4656-82B0-484C82F9BEEA	TOR PARTICIPAÇÕES S/A
3B4BE589-815D-4C43-BAC4-D39A3F2B5768	TRASHIN GESTAO E COLETA DE RECICLAVEIS S.A.

Continues

0F810B90-25CE-4EE4-B3AE-3366FDF43287	TRONOX PIGMENTOS DO BRASIL S/A
FA4ED058-0FF1-41EF-AC88-802DCA5CDA93	UNIMETAL INDÚSTRIA, COMÉRCIO E EMPREENDI- MENTOS
DD35FF0F-62CF-45B0-8776-D9D1A76EABEA	VALPA MINERACAO E TERRAPLENAGEM LTDA EPP
130499B1-8FEB-4229-A704-F51DED2C7582	VIRIDIS MINERAÇÃO LTDA.
1C487468-9D28-4ED2-93B5-54FBCE36A827	WEG EQUIPAMENTOS ELÉTRICOS S.A.

In a note³, Finep pointed out that the selected projects include rare earths, with 10 (ten) projects, as well as lithium, graphite, copper, silicon, nickel, titanium, and minerals from the platinum group. In addition, per a report⁷ by Agência Brasil, there were regional highlights, with the Northeast leading the investments, accounting for 41% of the total, with thirteen (13) projects, and, together with the North, represented 56% of the total approved funding, potentially demonstrating a positive impact on the decentralization of economic development.

Minas Gerais accounted for 20 (twenty) projects and 35% of the investments, while Bahia had 9 (nine) projects and 25% of the investments, reinforcing Brazil's ability to combine mineral wealth with technological advances. These figures, published by Agência Brasil, show Brazil's commitment to sustainable growth, fostering jobs and innovation, and strengthening strategic regions, reinforcing Brazil's role at the forefront of the global green economy.

Once the Business Plans are selected, it will now be up to Finep and BNDES, through a working group, to structure the Support Plans, identifying the most suitable financial instruments to develop the businesses and their corresponding ventures.

With world-class mineral reserves, Brazil has the resources to stand out in the current global demands for sustainability, including the shift toward a low-carbon industry and a green economy. BNDES' and Finep's initiative to support innovative projects focused on these minerals marks a milestone in establishing Brazil as a relevant global producer of sustainable technologies. These resources drive the energy transition through diverse projects that add value and promote a robust production chain.

The initiative not only highlights Brazil's potential for technological innovation but also reinforces the country's competitive advantage as a strategic supplier to the global

⁷ BNDES and Finep select 56 projects for strategic minerals. Published on June 12, 2025. Accessed on 27/07/2025. BNDES and Finep select 56 projects for strategic minerals | Agência Brasil

market. By promoting projects that explore multiple minerals, it paves the way for Brazil to consolidate its position as a leading player in the strategic minerals chain, generating wealth and sustainability. The initiative strengthens the low-carbon economy and projects the country as an example of how to combine natural resources with technological advances, building a greener and more prosperous future.

5. CONCLUSION

As this article has shown, the Brazilian legal framework has been evolving to create instruments to foster the financing of strategic mining projects linked to the energy transition. The enactment of Law 14,801/2024 and the publication of Decree 11,964/2024 underscore the recognition of mining, and especially strategic minerals, as key drivers in the global decarbonization effort. Likewise, the joint initiative by BNDES and Finep, with the publication of the Public Call for Proposals of business plans focused on mineral transformation, marks a relevant milestone in the search for more sustainable solutions for the industry.

A critical review of Ordinance 825/2025 reveals a number of inconsistencies and limitations that, if not addressed, could compromise the effectiveness of the proposed instruments. Narrowing the definition of strategic minerals to a limited number of substances disregards parameters already defined by MME in Regulation 02/2021, and risks distorting the allocation of public and private resources. In addition, limiting the use of funds to specific stages of the production chain—notably mineral transformation—may exclude essential projects in the early stages of mining, such as research, compromising dynamism and technological innovation in the sector.

In turn, the BNDES/Finep Call for Proposals demonstrated that the link between financing, innovation, and regional development is not only possible but desirable. The diversity of projects selected, their geographical spread, and their potential for economic leverage indicate that there may be a pent-up demand for well-structured financing instruments. However, for these instruments to become effective public policy tools, there must be alignment between the regulatory frameworks and the sector's development strategies. While the measures adopted by the government represent important progress, there are still gaps and regulatory inconsistencies that limit their full impact.

We therefore conclude that Brazil has the legal, economic, and institutional foundations to position itself as a global player in strategic minerals for the energy transition. To do so, it will be necessary, among other measures, to improve the regulatory framework and public policies, to guarantee legal certainty and predictability in financing mechanisms.

Only then can the goals of economic growth, technological innovation, and sustainability, which are the hallmarks of the new mining paradigm, be fully realized.

The connection between regulation, incentives, and industrial public policies will therefore be decisive in consolidating Brazil's role as a protagonist in the energy transition.

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ARTICLE

CRITICAL MINERALS.
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CRITICAL MINERALS. REGULATION DISPUTE AMONG CENTRAL COUNTRIES TO SECURE SUPPLY. ALTERNATIVE ANSWERS FROM PRODUCING COUNTRIES. RIGI IN ARGENTINA

Saul Feilbogen¹

Abstract: Countries rich in critical minerals have been caught up in a global dispute by central countries to secure their supply for the transition to cleaner energy sources. To this end, countries such as the United States, Canada, the United Kingdom, the European Union, and the People's Republic of China (we will call them “central countries”) have developed a series of regulations and alliances aimed at securing their supply chains through a range of subsidies, financing lines, and other benefits. Forced to choose between the various adversaries in this geopolitical race, they have offered different responses and models to maximize their resources and needs. This article briefly analyzes the regulations regarding critical minerals in the aforementioned countries, the experiences of Bolivia, Chile, and Argentina in developing the lithium industry, and details of the Large Investment Incentive Regime (RIGI) adopted by Argentina.

1. INTRODUCTION

The energy transition process has been embraced by the vast majority of countries around the world with the goal of achieving Net-Zero emissions by 2050, or close to that date, and thus counteracting the climatic effects of global warming.

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This process is complex and broad, encompassing energy generation, transportation, conservation, and use of energy; seeking to opt for cleaner alternatives to replace the use of solid fossil fuels. This process is often linked to one of its most visible manifestations: the replacement of internal combustion engines and the adoption of electric vehicles.

The various clean alternatives involve the use of minerals that have been classified as critical (with differences in the composition of the list by countries) facing a potential shortage scenario in the frantic search to accelerate this replacement.

How have countries and central regions responded? ² By regulating this process, seeking to ensure the production and/or supply of these minerals.

However, many of these countries are not rich in the resources they seek to secure, and while the regulations are only valid within their respective jurisdictions, they have extraterritorial effect.

The International Energy Agency's Critical Minerals Policy Tracker has identified nearly 200 policies and regulations from 25 countries and regions around the world ³.

It is interesting to contrast this situation with what happened in the 1970s during the so-called "oil crisis". At that time, there was a quasi-monopoly formed primarily by oil-producing countries in the Middle East, which controlled 80% of global production⁴. At that time, the scarcity of resources was managed from the supply side through the introduction of price increases, production quotas, and embargoes; which, logically, had an impact on the price of a barrel of oil. It took many years for the central countries to develop their own resources or alternatives to avoid being trapped by these policies.

This time, the scarcity is intended to be managed from the demand side. Through a host of regulations, including tax breaks, financing lines, and subsidies; barriers are placed on mineral-rich countries that must apply to receive preferential membership and thus be able to sell their products to this exclusive club of buyers.

There are differences between the aforementioned regulations, but they all have one thing in common: a lack of consideration of the interests and needs of mineral-producing countries.

² When we refer to zones, this is mainly the case of the European Union where decisions are taken by centralized authorities despite the strategy of their member countries

³ For more details, see: <https://www.iea.org/reports/introducing-the-critical-minerals-policy-tracker>

⁴ OPEC (Organization of the Petroleum Exporting Countries) was formed at that time by Saudi Arabia, Kuwait, Iraq, Abu Dhabi (integrated then to United Arab Emirates), Algeria, Libya, Nigeria, Qatar y Venezuela. OPAEC (Organization of Arab Petroleum Exporting Countries) was formed by its Arab members

The truth is that the international geopolitical situation is much more complex today.

This is because, except in the case of cobalt, the rest of the critical minerals exist in many countries, and talking about supply control would require extensive agreements.

From our perspective, and at the risk of generalization, we see three centers of interest: China, the core countries of the Western bloc, and countries rich in critical minerals. In some cases, these latter characteristics coincide (such as Australia and the United States).

The differences found between the policies implemented by central countries and their experiences relate to implementation times, availability of financing, and ESG and Rule of Law standards requirements.

2. THE MAIN ASPECTS OF INTERNATIONAL REGULATIONS

The legislation of central countries and regions includes common objectives in their strategies regarding critical minerals. Among them, we can mention:

- **Exploration and Development:** Incentives for domestic mining and processing.
- **Supply Chain Diversification:** Reducing reliance on specific countries or companies.
- **Recycling:** Promoting the recovery of critical minerals from waste.
- **International Cooperation:** Agreements with other countries on supply chain security.
- **Research and Development:** Funding for research into new technologies and materials.
- **Sustainability Standards:** Environmental and social regulations for mining and processing.

The Mineral Security Partnership (MSP) falls within these policies, which brings together a large number of Western countries, although it still lacks a permanent structure capable of coordinating the strategies of its members. We can also mention the ERMA (European Raw Material Alliance) of European countries and the large Road and Silk Initiative, at the request of the People's Republic of China.

Let's go through the main aspects of the central countries regulations:

2.1 People's Republic of China.

China is far ahead in this positioning, as it not only has considerable mineral resources but has also expanded its investments in Latin America, both in critical mineral projects and in the development of the largely needed local infrastructure. This has been done quickly and effectively.

Furthermore, 90% of the country's rare earth refining is located in China, as well as 65% of the lithium complex, 74% of cobalt, and 100% of graphite.

China's negotiating power is evident when we see that restrictions on rare earth exports from China led to the temporary closure of production plants, and automobile suppliers like the case of Nissan and Suzuki.

We can mention the Belt and Road Initiative, CELAC-China relations, and the financing provided by the BRICS New Development Bank, which provides for investments not only in critical minerals but also in much-needed infrastructure projects in the region, with 102 projects announced by 2024 and average investments of USD 6.8 billion annually starting in 2020, according to ECLAC⁵.

The difference lies in the fact that the companies implementing these policies belong to the Chinese state itself (State-Owned Enterprises SOEs), at its various administrative levels. This results in a shorter time to implement centrally defined policies compared to the system in Western countries where regulatory frameworks are defined but then mostly private companies carries out the various transactions.

Another difference is financing. The large number of Chinese companies operating in Africa and Latin America have access to seemingly endless sources of financing and have not hesitated to engage in costly transactions and commit significant investments funded by their own governments⁶.

These companies, unlike Western ones, do not need to resort to capital market financing, where compliance with environmental, social, and governance standards is more stringent.

Another important element we have identified is the principle of the "rule of law." To the fundamental concepts that explain the rule of law⁷, such as fair laws, accountability, open government, and an accessible, independent, and impartial judicial system, economic aspects have been added, ranging from the absence of capital or exchange rate controls, restrictions on capital inflows and outflows, an independent central bank, and a long list of others.

⁵ See: www.bloomberglinea.com/latinoamerica/china-acelera-su-influencia-en-latinoamerica-mas-que-en-cualquier-otra-región-emergente/

⁶ Zijin Mining Group acquired 3 Quebradas Project (lithium, Catamarca) of Canadian Company Neo Lithium for USD 770 m. Shandong Gold Mining acquired 50% of Veladero (gold) for USD 960 m. Ganfeng Lithium acquired and invested in lithium Projects Cauchari-Olaroz, Mariana and Pozuelo Pastos Grandes (to Lithea S.A. for USD 962) for a total of USD 1,5 billions.

⁷ We follow the definition of the World Justice Project at <https://worldjusticeproject.org/about-us/overview/what-rule-law>

In the case of Latin American countries, very few can be considered at the level of the intended benchmarks in some of the categories. Achieving a full rating will take a long time. This absence of the “rule of law” (in its broadest sense) prevents (or is used as an explanation that prevents) many western countries’ companies from conducting business or investing in the region.

Chinese companies do not undertake such a detailed analysis of these categories, which explains the lead they have already taken in many countries and resources considered “critical.”

2.2 European Union: Critical Raw Material Act, 2023

In addition to the shared objectives already mentioned, this regulation pursues the following goals:

- At least 10% of the EU’s CRM demand through domestic mining by 2030, currently estimated at around 1%.
- 40% of domestic processing by 2030, currently estimated at around 3%.
- 15% of the EU’s annual CRM consumption from recycled sources by 2030.
- **Accelerated permits:** 24 months for extraction, 12 months for processing or recycling projects.
- **Strategic projects:** priority access to public funding and ERMA (European Raw Materials Alliance).
- Regulation to limit dependence on a single external supplier (<65%).
- Each member state has sought bilateral agreements with certain countries to ensure preferential access and relationships.

2.3 United States

Subsidies and benefits were originally incorporated by the Inflation Reduction Act, which was recently amended by the One Big Beautiful Bill. Key provisions include:

- **45X Credit. Critical Minerals:** 10% of the production cost of critical minerals mined and processed locally, with no phase-out and compatible with other benefits.
- The OBBBA imposes a phase-out eliminating the credit for wind components sold after December 31, 2027, and for critical minerals its phase-out begins in 2031, with a likely full expiration in 2033.

- **Section 30D:** EV Tax Credit: up to US\$7,500 per electric vehicle if batteries use minerals from the U.S., or from countries with which the company has a Free Trade Agreement, with “foreign entity of concern” restrictions; This last requirement prohibits the use of minerals from China, Russia, or others.

The OBBBA is set to expire on September 30, 2025.

- **Price Floor:** mechanisms to guarantee a minimum price for domestic producers against competitors backed by Chinese subsidies.
- **Public Financing:** \$500M for production, \$40B in loan guarantees for refining.
- **Clean Energy Credits:** solar, wind, efficiency. A “built or in service” rule is implemented with strict deadlines:
 - a. Solar and wind projects must begin construction by mid-2026 and be operational by December 31, 2027
 - b. Other projects (hydro, geothermal, nuclear, and storage) maintain extended permits, until 2033–35
- New FEOC (Foreign Entity of Concern) restrictions

OBBBA expands the universe of prohibited entities: not only China, Russia, the US, Iran, etc., but also third parties influenced by them (FIEs) with a stake of $\geq 10\%$ can invalidate the credit

2.4 Canada (Critical Minerals Strategy)

Among its main provisions, we can mention:

- **CTM Credit:** 30% repayable on investments in the extraction, processing, and recycling of lithium, nickel, cobalt, graphite, among others, until 2031, then disposal between 2032–34
- **CMEITC:** 30% credit for retail investors in flow-through shares for critical mineral exploration
- **Exploration and infrastructure:** C\$80M in geosciences, C\$1.5M in infrastructure, C\$500M in Critical Minerals Infrastructure Fund, plus METC extensions
- **Controls on foreign investors:** Under the Investment Canada Act, notifications and freezes are required for SOEs of “non-sympathetic governments” (e.g., Chinese companies)

2.5 United Kingdom (Critical Minerals Strategy, 2022/23)

- **Public Funding:** Funding from funds such as the ATF (£850M) for refining and R&D (Green Lithium, Cornish Lithium), the IETF (£350M), the UKIB (£22M), the DER (£80M), and the NICER (£30M)
- Active watchlist: monitoring of strategic minerals with potential for shortages, Promoting domestic production (Cornwall, Devon)
- Mining diplomacy: bilateral agreements with Canada for research, traceability, and stockpiling

2.6 Australia (Critical Minerals Strategy 2023–2030/ Future Made Australia)

- Federal funding: A\$2 million in loans, A\$200 million in CMAI grants, A\$244 million MMI for critical projects
- Future Made in Australia Act: from 2025, includes:
- 10% tax incentive for critical minerals processors/refineries.
- Dual subsidy for hydrogen and critical minerals
- Critical Minerals Strategic Reserve: A\$1.2 million for strategic stockpiling: A\$185 million for initial stockpile, A\$1 million in Critical Minerals Facility, covering Ti, Ni, Li, and Co, to enter operation mid-2026

3. THE LITHIUM TRIANGLE: THE DIFFERENT PATHS FOLLOWED

3.1 Bolivia

Bolivia is home to one of the world's largest world lithium reserves, with 21 million cubic tons. Seventeen years after its nationalization was announced, only one industrial plant exists, from which approximately 2,000 tons of LCE extracted in 2024.

Over the years, various attempts to develop its production have unfortunately failed.

The mentioned pilot plant in the town of Llipi (Potosí) began construction in 2018 but only began operating in 2024 at 13% of its capacity. Of the 20 pool lines at the plant, only 12 are waterproofed; the rest have deteriorated and are no longer operational.

In 2021, the Executive Branch launched an international competition to incorporate Direct Lithium Extraction (DLE) system with expectations of producing between 45,000 and 100,000 TLE per year by 2024 and 2025.

The Chinese consortium CBC and the Russian company Uranium One were announced as winners of the competition. Contracts with these companies were signed in 2023.

New agreements have recently been announced with Australian, Argentine, and French companies.

3.2 Chile

Consolidated as the world's second-largest producer and exporter of lithium for several years, Chile has seen its growth slowed due to prolonged negotiations with the current companies that exploit the resource and the changes introduced in its lithium policy.

Sociedad Química y Minera Chile (SQM) and the US-based company Almermarle have signed Leases Agreements with CORFO for the Salar de Atacama, the first of which is valid until 2030, and the second until 2043.

In April 2023, President Boric's administration announced its National Lithium Strategy, seeking to increase state participation in the mineral value chain and foster innovation.

The creation of a national lithium company was anticipated, but this has not yet occurred.

Thus, two strategic salt flats were defined: Atacama and Maricunga, where the projects would be developed by the State through Codelco (Stated owned company), with a minority private stake.

Another group of areas are those included in the Salar de Pedernales and the Salares Norte Andinos, the former to be developed by Codelco and the latter by Enami through public-private partnerships.

Finally, lots were defined for 26 salt flats to be developed by private investors selected through bidding processes for special lithium operating contracts (CEOL). These processes have already begun.

The truth is that these changes generated uncertainty among mining companies, which, while not doubting the government's ability to manage these new schemes, prevented them from moving forward with new projects, and the growth chain has been interrupted or delayed.

3.3 Argentina

Perhaps it would be presumptuous to say that the development of the lithium industry in Argentina was due to a carefully conceived planning. It simply continued with existing policies and took advantage of the current situation in the countries of the region. This yielded very good results.



We must therefore highlight, among the main attractions, the existence of a liberal and federalized system in the Argentine mining industry. The following stand out among the principles of the system:

a. Non-discrimination. Exclusive and perpetual rights

Companies and investors found free and easy access to file their claims, obtaining exclusive and perpetual property rights through a concession system. There were (and are) no restrictions based on the origin of the companies or ownership of controlling shares. Searches and/or discovery statements (Cateos and Manifestaciones de Descubrimiento) are granted based on the priority of the claim. First to come, first to be granted a claim.

On the other hand, the permits and concessions granted do not have an expiration date as long as the activities required by law are carried out for a project to move forward and are not considered mere speculation.

Provincial procedural laws are in line with international standards and do not differ among the different provinces in the Lithium region.

b. Risk of nationalization

As established by the 1994 National Constitution, mineral resources belong to the provinces where they are located, and the procedures for exploration and exploitation rights are determined by them⁸.

The Argentine provinces that are part of the so-called lithium triangle—Jujuy, Salta, and Catamarca—have formed the so-called Lithium Roundtable to harmonize their procedures and regulations and reaffirm, among its main objectives, respect for private property and initiative.

In our experience, we have seen an open-door policy for listening to companies and seeking solutions to any problems that may arise. This decision has largely mitigated the risk of nationalization presents in Argentina stemming from past experiences (the case of oil company YPF -Yacimientos Petrolíferos Fiscales-, partially nationalized in 2012).

I believe that the expectations regarding the lithium mining sector from 2015 onward, combined with the aforementioned characteristics, explain the interest of foreign investors in developing Argentina's mineral resources. This is despite the fact that

⁸ This is why the Fraser Institute prepares its mining ratings splitting Argentina on its Provinces as individual jurisdictions.

during most of these time, Argentina was experiencing a period of severe economic instability characterized by high inflation, capital controls, exchange market controls, restrictive labor laws, etc.

Even so, these expectations and the subsequent period of high prices were enough to mitigate the mentioned risks.

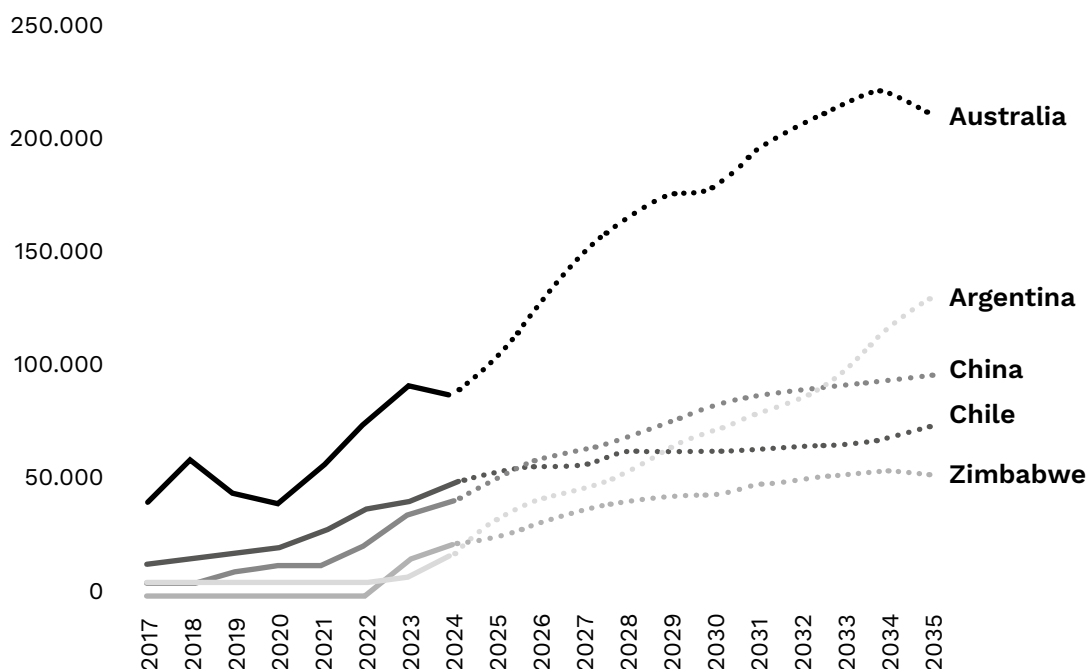
With only one project in production (Fenix in the Province of Catamarca), in a very short time, a true lithium rush began, with claims covering virtually all potential areas.

At the time of this article, there are already 6 Projects in production as follows:

Project	Shareholders	Province	Capex	Installed Cap
Olaroz	Rio Tinto / Toyota Tsusho / JEMSE	Jujuy	USD 229m	43,000 tn LCE
Fenix	Rio Tinto Group	Catamarca	USD 110m	60,000 tn LCE
Sal de Oro	Posco Holding Inc.	Salta / Catamarca	USD 830m	21,990 tn HL
Cauchari Olaroz	Ganfeng Lithium / Lith.Argentina	Jujuy	USD 741 m	40,000 tn LCE
Mariana	Ganfeng Lithium Co.	Salta	USD 243 m	17,500 tn LCE
Centenario Ratones	Eramet	Salta	USD 595 m	24,000 tn LCE
Total			USD 2,748m	206,490 tn LCE

On the other hand, there are currently 15 projects in advanced stages, 5 of them in Construction, 4 in Feasibility, 6 Pre-feasibility 6, and 3 in Preliminary Economic Assessment. Except for the first 5 mentioned, we expect most of the others will be delayed until lithium prices rise again.

4. LITHIUM MARKET PRODUCTION AND FORECASTS IN THE REGION



Source: Subsecretaría Minería de la Nación upon data from USGS and S&P

5. THE LARGE INVESTMENT INCENTIVE REGIME (RIGI).

At the beginning of his administration, President Milei's passed a law to attract large investments Argentina needs to develop its resources.

We must point out that this is not the first time this has happened. All previous governments have had their own RIGI.

The reason for the frequent granting of extraordinary benefits to certain sectors of the economy (generally oil & gas and mining) is that Argentina faced recurring economic crises that impeded planning and decision-making for large investments.

Therefore, the goal was to isolate these types of projects so that they would not be affected by unstable economic conditions (inflation, capital controls, various exchange rates, etc.).

The goal was simply to offer what other countries naturally have.

The difference with the current RIGI is that it was sanctioned through a federal law and then the regime was ratified by the provincial governments.

This provides greater certainty of compliance since, as I have pointed out, the ownership and management of natural resources correspond to the provinces, and it is important to secure their commitment to comply with these guidelines beyond a mandatory national law.

Projects submitted under the new regime must have a minimum investment of USD 200 million, with 40% to be disbursed during the first two years. The main benefits include:

Income Tax	Withholding Tax	Dividend Tax
• From 35% to 25% • Amortization term lower to 60% • Transfer of tax losses with no time limit	• Exempted after 3 years from approval • Large Term Strategic Exports, after 2 years	• 7% at current regulations but after 7 years from approval will be reduced to 3.5%.
VAT	Import Taxes	Bank Transfer
• Creation of fiscal certificates to replace VAT payments	• Plants, Machinery, spare parts, components, etc. are exempted • Free imp./exp.	• 100% of payments to be deducted from Income tax

At the same time, free disposal of export receivables was allowed along a scheduled term to be 100% available when Projects were starting to produce and export.

6. CONCLUSION

Countries rich in critical minerals, as is the case in the region, find themselves in the middle of a geopolitical dispute between countries and commercial zones seeking to secure their supply by competing among them with a series of subsidies, benefits, and trade alliances. These strategies, organized around market demand, have generally not taken into account the needs of the producing countries.

Furthermore, the situation of most of them and the allure of taking advantage of an extraordinary opportunity window deprive them of using political ideological parameters to accept or exclude investments.

It is important to mention that the successful experiences in the Region were carried out within the framework of a liberal market economy where companies, including those controlled by governments, operated within the free play of supply and demand.

The cases where total state control has been privileged to develop mining resources have not been successful.

In their competition to attract investments, producing countries must apply a reasonable balance in their demands for incorporating industrial processes to add value to the extracted minerals. The distance from the main production centers, the existence of small local or regional markets, and the lack of all necessary inputs all conspire against the dream of transforming mineral resources into final products.

It remains to be seen whether the consideration of local needs should be included in the agenda of the central countries in dispute. Among others:

- Avoid granting privileges only to certain countries disrupting the level playing field of free competition in the supply of resources,
- Incorporation of environmental compensation mechanisms,
- Development of the value chain for critical minerals with technology transfer,
- Financing for the incorporation of international ESG (Environmental, Social and Governance) standards

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ARTICLE

THE USE OF PROFIT-
SHARING DEBENTURES
AS A PARTIAL PRICE
COMPENSATION
MECHANISM IN
ACQUISITIONS OF
MINING ASSETS

FREDERICO VIANA RODRIGUES

THE USE OF PROFIT-SHARING DEBENTURES AS A PARTIAL PRICE COMPENSATION MECHANISM IN ACQUISITIONS OF MINING ASSETS

Frederico Viana Rodrigues¹

1. ABSTRACT

One of the key challenges in mining M&A transactions lies in agreeing on a price that adequately reflects the assets' value. Mining asset valuation often relies on estimates of ore reserves, which creates tension: sellers tend to overestimate based on optimistic reserve expectations, while buyers adopt a conservative stance, wary of overstatement. In this context, Profit-Sharing Debentures (*Debentures Participativas*)—Brazilian perpetual bonds that grant holders a share in the future financial results of the acquired asset—represent a flexible and strategic mechanism to reconcile these divergent expectations. This article explores the legal and practical dimensions of using Profit-Sharing Debentures as partial price compensation in mergers and acquisitions involving mining assets.

2. KEYWORDS

Profit-Sharing Debentures; Mergers and Acquisitions of Mining Assets; Valuation; Transaction Structuring

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3. INTRODUCTION

The mining industry remains a cornerstone of Brazil's economic development, heavily reliant on asset-intensive operations and long-term investment. Acquisitions of mining assets are particularly complex due to the speculative nature of resource valuation. Traditional cash-based compensation models may fail to adequately accommodate the uncertainty surrounding the actual mineral reserves. This article introduces the concept of Profit-Sharing Debentures—hybrid instruments blending fixed-income with profit-sharing features—as an adaptive solution to bridge the valuation gap between buyers and sellers.

4. M&A USES OF PROFIT-SHARING DEBENTURES

The mining industry stands as one of Brazil's most vital economic pillars, contributing significantly to the country's GDP and employment. Characterized by capital-intensive projects and long gestation periods, mining projects are inherently exposed to considerable risks and uncertainties. These stem largely from fluctuating commodity prices, the unpredictable nature of geological reserves, and the significant upfront investments required.

Traditional mergers and acquisitions (M&A) in mining often face substantial hurdles, especially when it comes to establishing a fair asset valuation and bridging the resulting gap between buyers and sellers. Profit-Sharing Debentures may be used as a sophisticated tool to overcome this obstacle. At their core, these instruments are hybrid securities, blending classic fixed-income features with performance-linked profit participation. They offer a flexible alternative to conventional cash-based compensation models by introducing conditional pricing mechanisms that can adapt dynamically to the realized value of the underlying mining asset. Thus, they allow parties to structure deals that distribute risk and reward more equitably over time.

Although mechanisms such as earn-outs and contingent payments are used in M&A to address valuation disagreements, their effectiveness in the mining sector is often constrained by the lengthy timelines required to realize mining project outcomes. By shifting the variable component linked to operational performance into a marketable security, such as a tradable Profit-Sharing Debenture, the seller gains flexibility.

This structure also allows the seller to either sell the instrument on the secondary market for earlier liquidity or retain the debenture and await the project's results to receive additional compensation tied to the asset's actual performance.

This adaptability helps align the interests of buyers and sellers and introduces an outstanding mechanism for addressing risk management and value realization in mining M&A transactions.

The legal foundations for Profit-Sharing Debentures in Brazil are well-established. Law 6,404/76 (Brazilian Corporations Law) expressly permits the issuance of such instruments by corporations, and the Brazilian Securities and Exchange Commission (CVM) provides further oversight and regulation.

This strong legal framework not only confers vital legitimacy and enforceability to these instruments but also reassures both local and foreign investors of the integrity and transparency of Brazilian capital markets, since legal certainty is of paramount importance in mining, where project cycles can span decades and involve numerous stakeholders, from government agencies to private investors and local communities.

What sets Profit-Sharing Debentures apart from standard debt securities is their flexibility. In addition to (or instead of) offering a fixed coupon or interest payment, these debentures can be structured to provide holders with remuneration linked to defined project outcomes, such as production volumes, EBITDA, net income, or even specific financial ratios.

This alignment of interests encourages both parties to maximize operational efficiency and resource exploration, fostering a spirit of partnership rather than simple creditor-debtor relationships.

The practical application of Profit-Sharing Debentures can be particularly effective in mining M&A deals, where future earnings are inherently uncertain. When asset owners and investors disagree on the projected value of mineral reserves or the long-term viability of a deposit, Profit-Sharing Debentures serve as a bridge. Sellers can benefit from baseline payment while preserving the potential to share in future upside, especially if the asset's performance exceeds initial forecasts. Conversely, buyers avoid the risk of overpaying for underperforming assets since the final outlay is partly contingent on actual results.

Although reserve estimation methodologies such as the Australasian Code for Reporting of Exploration Results, Mineral Resources, and Ore Reserves (JORC Code) and the Canadian NI 43-101 Standards of Disclosure for Mineral Projects provide technical frameworks for resource evaluation, valuation challenges remain a defining feature of mining transactions. Even the most rigorous assessments are subject to revision as geological, operational, capital and operational expenditure investments, and market conditions evolve constantly. Market volatility further complicates the matter, as commodity prices often experience sharp swings over short periods.

In this uncertain economic scenario, Profit-Sharing Debentures can be indexed to different metrics, introducing performance-based triggers and thresholds that refine the risk-sharing mechanism.

5. FLEXIBILITY OF PROFIT-SHARING DEBENTURES AS TRADABLE ROYALTY INSTRUMENTS

Profit-Sharing Debentures may also be used to offset exploration risk: payments to the seller are indexed to the volume and quality of reserves confirmed by subsequent drilling campaigns.

In a gold mining transaction, this structure may allow the seller to retain exposure to potential upside through indexed payments without maintaining an equity stake or direct operational involvement. Similarly, in a lithium asset acquisition, debenture payouts may be linked to the EBITDA margin and output volume over a certain period, aligning both parties' interests in the operational success of the project.

Furthermore, Profit-Sharing Debentures require careful attention to key contractual structures. These include the precise definition of performance milestones, the frequency and method of payment, rights to audit and inspect project data, and provisions for adjustment in the event of regulatory changes.

In some benchmarking cases, a recurring shortcoming has been the lack of precise criteria for determining the performance results used to calculate remuneration for debenture holders. Without clear and objective standards for measuring outcomes, such as production volumes, profit margins, and financial ratios, the structure becomes vulnerable to ambiguity, disputes, and misaligned incentives. This lack of definition undermines the effectiveness of the Profit-Sharing Debentures structures, particularly within the mining sector, where performance measurement is inherently complex due to geological, operational, and environmental uncertainties.

To address such issues, debentures' indentures must establish transparent and detailed performance criteria calculations. Clearly defined parameters for outcome measurement, combined with effective auditing and reporting mechanisms, help ensure that all parties share an understanding of how returns will be calculated and distributed.

In mining M&A transactions, ensuring that the structure and terms of Profit-Sharing Debentures are clear is fundamental not only for protecting the interests of buyers and sellers but also for enhancing their credibility and marketability as a form of payment.

Once issued as partial compensation for a purchase, the seller may retain the debentures or trade them on the secondary market. As tradable instruments, Profit-Sharing Debentures must be precise enough so that any potential secondary market buyer—not involved in the original negotiation—can clearly understand both the amount and conditions of payment it is entitled to receive.

Additionally, over time, the issuer (i.e., the debtor responsible for the debentures) may change, and since the new mining entity was not involved in the M&A transaction, the relationship between the issuer and the debenture holder—central to capital markets—must be grounded in predictability, objectivity, and certainty.

By prioritizing transparency and well-defined terms, Profit-Sharing Debentures may serve as effective and accessible royalty instruments in the form of tradable financial securities. This approach supports the needs of all parties directly involved in the transaction and increases the attractiveness of these debentures for investors who may wish to acquire them on the secondary market, ultimately fostering greater liquidity and confidence in the mining sector's capital-raising mechanisms.

6. EXPANDING INVESTOR PARTICIPATION THROUGH PROFIT-SHARING DEBENTURES

Investors who acquire Profit-Sharing Debentures on the market have the opportunity to share the financial results of mining operations without being directly exposed to the operational risks typically faced by mining companies, such as environmental, compliance, regulatory, and community relations risks, among other business-intrinsic risks, including tax and labor matters.

This royalty-like participation enables investors to benefit from the potential upside of resource extraction without active involvement in day-to-day management or liabilities tied to operational challenges.

This approach not only broadens financing options for mining ventures but also promotes greater efficiency and alignment of interests between all parties, promoting a more resilient and attractive investment environment within the mineral sector.

7. CONCLUSION

In conclusion, Profit-Sharing Debentures represent a forward-thinking approach to structuring M&A deals within Brazil's dynamic mining industry. Their legal soundness,



financial flexibility, and ability to align incentives between buyers and sellers address some of the most persistent challenges in mining dealmaking.

As the demand for strategic minerals continues to grow and global market conditions remain unpredictable, these hybrid instruments are likely to play an increasingly prominent role in facilitating investment and driving the long-term development of Brazil's mineral resources.

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ARTICLE

MERGER CONTROL
IN THE MINING
SECTOR: INSIGHTS
FROM CADE'S
CASE LAW

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MERGER CONTROL IN THE MINING SECTOR: INSIGHTS FROM CADE'S CASE LAW

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Abstract: This article offers an in-depth look at how the Brazilian Antitrust Authority (CADE) reviews merger control cases in Brazil's mining sector, focusing on key regulatory trends. The article covers CADE's methods for defining relevant markets — considering both product and geographic dimensions — as well as its assessments of market power, transactional efficiencies, and the potential application of remedies. Finally, it highlights the importance of CADE's role in maintaining a competitive environment in a sector characterized by economic relevance, significant growth and structural challenges.

Keywords: Merger control; Mining; CADE; Competition law.

1. INTRODUCTION

The mining sector is fundamental to the Brazilian economy and stands among its oldest and most traditional industries, with historical roots dating back to colonial times. In addition to driving regional development, the sector draws scrutiny from the Brazilian Competition Defense System (SBDC) due to the high levels of market concentration in

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certain areas and the wide-reaching influence on the production chain of several other sectors, including steel production, civil works, which are largely dependent on the use of minerals as inputs.

SBDC comprises the Secretariat for Economic Monitoring (SEAE) and the Brazilian Anti-trust Authority (CADE), responsible for preventing and sanctioning violations of the economic order. Their actions are guided by the constitutional principles of freedom of enterprise, free competition, social function of property, consumer protection (article 170), and repression to abuse of economic power (article 173, paragraph 4).

SEAE⁵, under the Ministry of Economy, primarily advocates for competition policy in Brazil. In contrast, CADE — an agency under the structure of the Ministry of Justice — performs educational, preventive and enforcement roles. More specifically, CADE is responsible for repressing violations against the economic order, exercising preventive control over certain transactions (merger control), and promoting a culture of free competition in the country.

In terms of preventive control of merger transactions, identified as “structural control⁶,” CADE evaluates the potential impacts of certain transactions — including mergers and acquisitions, asset acquisitions, and transfers — on the market and from the competition perspective. These transactions require CADE’s approval, subject to fines and transaction annulment.

This article examines the intersections between Competition Law and the mining sector, providing a panoramic view of CADE’s role in reviewing transactions that are essential to the economy. It underscores how important it is that companies in the sector remain attentive to CADE’s stance to plan and improve their commercial strategies.

To this end, the article begins with an overview of the mining sector and its significance to the Brazilian economy. It then offers a brief analysis of CADE’s merger control precedents to point out emerging trends in mining-related cases.

⁵ In 2023, SEAE was closed by Provisional Measure No. 1,154/2023, which was later converted into Law No. 14,600/2023. SEAE’s attributions were transferred to the Subsecretariat for Economic Monitoring and Regulation.

⁶ In addition to structural control (merger reviews), CADE acts against violations against the economic order, that is, unilateral or collective conduct (cartels) which, under article 36 of Law 12,529/11, aim to or result in the following potential or actual effects, regardless of fault: limiting, distorting, or in any way harming free competition; arbitrarily increasing the profits of the economic agent; dominating a relevant market for goods or services; or when such conduct means that the economic agent is exercising its market power in an abusive manner.

2. THE MINING SECTOR IN BRAZIL

As highlighted, the mining sector plays a fundamental role in the Brazilian economy. According to a joint study by the Ministry of Mines and Energy (MME) and the Applied Economic Research Institute (IPEA)⁷, between 2000 and 2019, the sector's contribution to the Brazilian GDP oscillated between 2.5% and 4%, and is estimated to have reached BRL 340 billion in 2021.

In 2024, Brazil's mining sector received significant investments, expanding the investment forecast for projects in the 2024-2028 period from USD 50 billion to USD 64.5 billion. Iron ore stood out, accounting for 62% of the sector's revenue (BRL 80.1 billion) and 71.6% of exports: 179.5 million tons of iron were exported (USD 169.6 billion) in the first half of 2024, showing an increase over the same period in 2023 of 5.8% in tons and 12.9% in dollars⁸.

The industrial mineral sector recorded a 9.1% increase against 2023, reaching BRL 270.8 billion in 2024⁹, standing out as one of the main sources of revenue for the Brazilian economy. The sector's growth is notable, especially in minerals such as iron, copper, and nickel, which have seen substantial increases in both investments and production¹⁰.

Mining remains an essential pillar for Brazil's trade balance. In 2024, mineral exports reached USD 43.43 billion, with a mineral trade surplus of USD 34.95 billion, equivalent to 47% of Brazil's trade surplus (USD 74.55 billion)¹¹. The main destination for Brazilian exports is China (69.7%)¹². In turn, imports came mainly from the USA (19.8%), Russia (16%), Australia (13.3%), and Canada (12.2%).

The mining sector is also an important source of employment in Brazil, generating approximately 221,000 direct jobs, including 8,703 new positions between January and November 2024¹³. The country's prominent position is also due to its great diversity of mineral resources.

⁷ LEAO, Rafael; RABELO, Rodrigo. **A extensão da cadeia produtiva da economia mineral no PIB brasileiro**. Rio de Janeiro: Ipea, 2023.

⁸ PANORAMA de Mineração do Brasil 2024. **Brazilian Mining Institute (IBRAM)**, 2024. Available at: [HTTPS://PANORAMAMIN-ERACAO.COM.BR/PMB2024/](https://panoramamin-eracao.com.br/pmb2024/) . Access on: July 08, 2025.

⁹ Idem. MINERAÇÃO EM NÚMEROS 2024. **Brazilian Mining Institute (IBRAM)**, 2024. Available at: [HTTPS://IBRAM.ORG.BR/PUBLICACOES/](https://ibram.org.br/publicacoes/). Access on: July 08, 2025.

¹⁰ SETOR Mineral 2024. **Brazilian Mining Institute (IBRAM)**, 2024. Available at: [HTTPS://IBRAM.ORG.BR/PUBLICACOES/](https://ibram.org.br/publicacoes/) . Access on: July 08, 2025.

¹¹ Ibidem.

¹² Ibidem.

¹³ Ibidem.

A survey by KPMG shows that, in 2024, there were 30 M&A transactions among mining companies in the country, marking a 42.85% increase from 2023¹⁴. These mergers are viewed as strategic moves to strengthen the positioning of mining companies in the energy transition.

This is due to the expectation of a significant increase in demand for certain minerals in the coming years. According to the 2024 Brazil Mining Panorama, published by the Brazilian Mining Institute (IBRAM), several minerals are considered critical for the development of technologies that shorten the path to a low-carbon economy. Thus, the country is well-positioned to play a leading role in the global supply of these essential minerals¹⁵. Copper, in particular, stands out in this scenario for being a highly conductive metal that is crucial for electric vehicles, wind turbines, solar panels, and energy storage systems.

The risks and costs associated with starting new mining projects (greenfield) have been compelling companies towards mergers and acquisitions as a faster and more efficient way of expanding operations. Companies seek to optimize operations and reduce costs through the integration of assets and technologies, but these moves can also lead to market concentration.

The sector also faces considerable environmental, social and governance challenges,¹⁶ which have sparked a growing debate on more sustainable practices and a more rigorous stance from regulatory bodies. The goal is to ensure that mineral exploration is conducted on a sustainable way, with greater social and corporate responsibility.

The Brazilian mining industry is governed by the Federal Constitution, the Mining Code (Decree-Law 227/1967), Decree 9,406/2018 — which regulates the Mining Code — and Law 13,575/2017, which established the National Mining Agency (ANM). ANM serves as the regulatory body overseeing mineral policies and mining operations. Other relevant statutes are Law 7,805/1989, which provides for the mining permit regime and regulates the exploration by prospectors, and Law 12,334/2010, which establishes the National Dam Safety Policy (PNSB).

¹⁴ See <https://valor.globo.com/empresas/noticia/2025/03/18/em-2024-numero-de-fusoes-e-aquisicoes-no-setor-de-mineracao-brasileiro-foi-o-maior-em-20-anos.ghtml>

¹⁵ PANORAMA de Mineração do Brasil 2024. **Brazilian Mining Institute (IBRAM)**, 2024. Available at: [HTTPS://PANORAMAMINERACAO.COM.BR/PMB2024/](https://panoramamineracao.com.br/pmb2024/) . Access on: July 08, 2025.

¹⁶ DELOITTE. **Tracking the trends 2023**: The indispensable role of mining and metals. 2023. Available at: [HTTPS://WWW2.DELOITTE.COM/CONTENT/DAM/DELOITTE/GLOBAL/DOCUMENTS/ENERGY-AND-RESOURCES/GX-TRACKING-THE-TRENDS-2023-DIGITAL-V2.PDF](https://www2.deloitte.com/content/dam/deloitte/global/documents/energy-and-resources/gx-tracking-the-trends-2023-digital-v2.pdf). Access on: July 8, 2025; SARTORIO, Afonso; BALBI, Bruno; BRITO, Joao. Riscos e Oportunidades de Negócios em Mineração e Metais no Brasil em 2023. **Ernst & Young**, 2023. Available at: [HTTPS://WWW.EY.COM/PT_BR/MINING-METALS/RISCOS-OPORTUNIDADES-MINERACAO-METAIS-BRASIL-2023](https://www.ey.com/pt_br/mining-metals/riscos-opportunidades-mineracao-metais-brasil-2023) . Access on: July 8, 2025.

Moreover, like other economic sectors, mining is also subject to competition regulation and structural control by CADE. Indeed, the sector's relevance in the Brazilian economy is reflected in the number of transactions historically submitted to CADE.

3. CADE'S MERGER CONTROL CASES INVOLVING THE MINING SECTOR

Law 12,529/2011 — the Brazilian Competition Law — outlines the transactions that require prior approval from CADE through a merger filing when the parties and their economic groups meet certain criteria.

As a rule, a transaction is subject to mandatory merger filing if **(i)** it has effects in Brazil; **(ii)** the economic groups involved meet the revenue criteria (i.e., BRL 75 million on one side and BRL 750 million on the other side, both relating to the year before the deal and to gross revenue or business volume recorded in Brazil¹⁷); and **(iii)** it involves mergers and acquisitions, control acquisition, minority shareholding and assets, associative contracts, joint ventures, etc. These three criteria must be met concurrently for the transaction to be subject to mandatory filing to CADE—a condition precedent for closing deals.

Therefore, mining players must be mindful of CADE's stance due to the managerial, commercial, and financial impacts on merger filings and, by extension, on their businesses.

Over the years, several mining transactions have been submitted to CADE. Between 1999 and 2021, mining transactions accounted for 254 merger control cases, involving approximately 31 types of minerals¹⁸. In turn, from 2021 to June 2025, CADE reviewed at least 30 additional cases involving the sector.

These numbers show that mining is a recurring topic at CADE, highlighting the need for sector-specific studies that consider the timing of the decisions, the magnitude of the transactions, and the global reach of the players involved. For greater precision, the case law analysis conducted in this article and the identified trends center on: **(i)** the types

¹⁷ According to article 4, paragraph 1, of CADE Regulation 33/2022: for the purposes of calculating the abovementioned turnovers, an economic group is formed, cumulatively, by: **(i)** companies under internal or external common control; and **(ii)** companies in which any of the companies referred to in item I holds, directly or indirectly, at least twenty percent (20%) of the share capital or voting capital. In the case of investment funds, there are specific rules to determine the composition of the economic group, per article 4, paragraph 2, of the Regulation.

¹⁸ The data presented was obtained from the publication 'CADE Notebooks: mining markets' (BRAZIL. Brazilian Antitrust Authority. *Cadernos do CADE: mercados de mineração*. Brasília: CADE, 2022.) and from online research conducted through available public tools, such as the 'CADE Advanced Search' platform and 'SEI'.

of minerals that led to more merger filings to CADE (*i.e.*, iron, copper, alumina/bauxite, and gold); (ii) merger control cases involving the mining sector notified to CADE from January 1, 2021 to June 30, 2025; and (iii) relevant discussions arising from these merger control cases, such as on the dismissal without analysis on the merits.

This study will highlight CADE's stance on the products and geographic dimensions of the relevant markets, as well as other variables, including the likelihood of market power being exercised, the efficiencies generated by the transaction, and the application of competition remedies.

It is important to stress that CADE usually treats different types of minerals as specific relevant markets for analytical purposes. Thus, based on the defined methodology, this section will examine the most relevant merger control cases involving iron ore and crushed stone, copper, alumina/bauxite, and gold, since these were the mineral types that accounted for the majority of merger control cases in the mining sector¹⁹.

Regarding iron ore, CADE's publication — Notebooks: Mining Markets — reported that between 1999 and 2021, 55 transactions out of a total of 72 were unconditionally cleared. Only nine were subject to conditional clearance through the imposition of remedies, and eight were blocked. CADE emphasized that the definition of the relevant market remained largely unchanged during this period, reflecting consistency in its analysis. However, attention continues to be directed towards detailing the iron ore production process to better grasp the specific market dynamics.

In Merger Filing 08012.000501/2006-62²⁰, concerning the acquisition by Minerações Brasileiras Reunidas S.A. — then part of the CVRD Group, now Vale S.A.—of the iron ore business of Rio Verde Mineração S.A. and its affiliates, CADE found that market segmentation based on products derived from iron ore (lump, sinter feed, pellet feed, and pellets) is appropriate where horizontal overlaps exist. By contrast, where the transaction entails vertical integration along the extractive or productive chain, the authority considers it more suitable to define the relevant market more broadly, as encompassing the iron ore market as a whole.

From a geographic standpoint, CADE defined the relevant market as regional when pertaining to domestic iron ore extraction systems and the proximity of railways to supply

¹⁹ BRAZIL. Brazilian Antitrust Authority. *Cadernos do CADE: Mercados de Mineração*. Brasília: CADE, 2022. p. 29. Available at: https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/cadernos-do-cade/Cadernos-do-Cade_Mineraacao_final.pdf. Access on: July 8, 2025.

²⁰ BRAZIL. **Merger Filing 08012.000501/2006-62**. Applicants: Minerações Brasileiras Reunidas S.A. and Rio Verde Mineração S.A. Decision on December 13, 2006.

sources, including logistics channels and access points. Alternatively, it was deemed international in view of the relevance of iron ore exports and the global dynamics of demand and pricing in this segment.

The examination of the likelihood of market power exercise, in turn, considers elements such as competition levels and entry conditions within the sector. In this case, CADE determined that price increases in the segment, triggered by the transaction, could hinder the entry of new competitors, creating incentives for the unilateral exercise of market power by the acquiring group, especially in the lump (granulated iron) and sinter feed (fine iron) markets. Nevertheless, in addition to the particularities of the case, CADE also analyzed the level of horizontal market concentration (competition levels), access to iron ore extraction, the volume of resources to promote new investments, and the possibility that environmental and sectoral laws would constitute a barrier to entry.

CADE concluded that the efficiencies alleged by the applicants (e.g., percentage reduction in average costs) were insufficient to prevent CVRD from exercising market power, which led to the imposition of remedies to ensure that interested parties located in Brazil would have access to iron ore under reasonable commercial conditions.

In turn, regarding the crushed stone market, between 1999 and 2021, 27 merger control cases were notified, of which 18 were unconditionally cleared, seven were cleared with remedies, and two were blocked. In most cases, CADE recognized the integration between the crushed stone production unit and concrete plants, which led the authority to consider the distinction between crushed stone — a product that has no close substitutes — and concrete services, in the product dimension of the relevant market.

As to the market's geographic delimitation, CADE generally considers the operating radius of crushing centers, namely, the maximum distance within which the center could serve its customers, given restrictions in terms of transportation and product distribution costs. For the authority, if the transaction involves only the crushed stone market, the geographic dimension corresponds to 75 kilometers from the production unit. However, if there is vertical integration with concrete services, the center's operating radius would be only 50 kilometers.

In Merger Filings 08012.001875/2010-81²¹ and 08012.001879/2010-69²², involving asset transfers by Votorantim to Lafarge in exchange for shareholding in Cimpor, the three companies operated in the crushed stone, concrete, and cement segments. On that occasion, CADE blocked the transactions on the grounds of: **(i)** barriers to entry, **(ii)** low level of competition, and **(iii)** concerns about strengthening Votorantim's position amid existing coordinated power between Votorantim and Cimpor, another relevant player.

Although the crushed stone market does not involve high barriers to entry, the strong vertical integration in the case, combined with concentration in the concrete and cement segments and the possibility of collusion between agents, led CADE to conclude that no net effects of the transaction were capable of ensuring market welfare. More specifically, CADE ruled that this merger control case would only increase Votorantim's unilateral market power in the cement segment.

Between 2021 and 2025, at least 30 cases in the mining sector were submitted to CADE, containing important signals to the market. In the first half of 2025 alone, at least seven cases were submitted, involving gold and silver production, aluminum and its alloys in primary forms, and iron ore extraction²³.

By way of example, transactions involving the partial lease of mining rights over iron ore deposits by Vale S.A. to third parties were submitted to CADE²⁴. Those were analyzed and promptly approved without restrictions, given the absence of competition concerns.

It is worth highlighting CADE's ruling in Merger Filing 08700.006739/2024-25²⁵, involving Suez RV Recyclage, Renault S.A.S., and The Future is Neutral (TFIN). The deal comprised two interconnected acts: **(i)** the acquisition by Suez of a minority stake (over 20%) in TFIN, controlled by Renault, and an indirect acquisition (less than 10%) in BCM; and **(ii)** the acquisition by TFIN of a stake in holding company RIH, controlled by Renault and Suez.

²¹ BRAZIL. Merger Filing **08012.001875/2010-81**. Applicants: Votorantim Cimentos S.A. and CCB – Cimpor Cimentos do Brasil Ltda. Decision on July 4, 2012. Available at: [HTTPS://SEI.CADE.GOV.BR/SEI/MODULOS/PESQUISA/MD_PESQ_PRO-CESSO_EXIBIR.PHP?KOXI3EEQJC73DCC3G_MH5W73G76IVTXYDDG65JR7VK4FHNNDRNNFDGAFJTIFRN8_YWCUDV1GCM-GRQINGXFACNSIQONHH2OZCUJC9ZM9KTIUSEHOJT5RJM7WDX4L4D8R6](https://sei.cade.gov.br/sei/modulos/pesquisa/md_pesq_processo_exibir.php?koxi3eeqjc73dccc3g_mh5w73g76ivtxyddg65jr7vk4fhnndrnnfdgafjtifrn8_ywcudv1gcn-grqingxfacnsiqonhh2ozcujc9zm9ktiusehojt5rjm7wdx4l4d8r6) . Access on: July 8, 2025.

²² BRAZIL. Merger Filing **08012.001879/2010-69**. Applicants: Votorantim Cimentos S.A. and Companhia Nacional de Cimento Portland (Lafarge). Decision on July 4, 2012.

²³ See Merger Filings 08700.005906/2025-00, 08700.004560/2025-14, 08700.000877/2025-81, 08700.001583/2025-77, 08700.000794/2025-92, 08700.010600/2024-86, and 08700.010599/2024-90.

²⁴ See Merger Filings 08700.004560/2025-14, 08700.001583/2025-77, and 08700.010600/2024-86.

²⁵ BRASIL. Merger Filings 08700.006739/2024-25. Applicants: Suez RV Recyclage, Renault S.A.S., and The Future is Neutral. Decision on October 1, 2024.

Although the economic groups involved exceeded the revenue criteria provided for by the competition laws, CADE understood that the criteria applicable to minority shareholding acquisition, established in articles 9 and 10 of CADE Resolution 33/2022, were not met, in light of the territoriality principle²⁶.

Under CADE's interpretation of the territoriality principle, the entity involved in a merger control case must carry out its own economic activities — operational or not, current or potential — in a way so that it may produce effects in Brazil, justifying the application of Brazilian competition laws. In the absence of such activities, the company is deemed irrelevant for competition examination, as there are no markets or economic impacts to be evaluated.

In the case above, most of the companies operated in Brazil, and the only subsidiary with local presence in the metal scrap collection and processing market (Metalimpex do Brasil) was already controlled by Suez, through BCM. Therefore, there were no relevant changes in corporate control or additional impacts on competition. As to RIH, CADE understood that neither the holding company nor its subsidiary, Indra, operated in the Brazilian territory, and that the metal scrap market — the main affected segment — is traditionally defined as having national scope.

Thus, for CADE, the effects of the transaction were limited to the international market, and there would be no competition impact in Brazil. Consequently, it dismissed the merger filing without a merits review. This reaffirms CADE's interpretation of the limits of applying competition laws under the territoriality of effects principle.

The cases above lead to the conclusion that CADE takes into account the unique characteristics and structures of each segment within the mining sector. It examines entry barriers and competition level conditions, which vary significantly between different types of minerals, depending on their production process and distribution dynamics, among other factors.

The transactions submitted to CADE over the past four years were reviewed under the fast track procedure, as the applicants' combined participation in the relevant markets did not raise competition concerns. The diversity of markets reviewed in recent months is also noteworthy, reinforcing stakeholders' perception of an increased demand for transition minerals. At the same time, the importance of iron ore remains unchanged, alongside continued diversification efforts through brownfield acquisitions, that is, acquisitions of existing mining assets or operations.

²⁶ Per article 2 of Law 12,529/2011: "Art. 2. *This Law applies, without prejudice to conventions and treaties to which Brazil is a signatory, to acts performed, in whole or in part, in the Brazilian territory or that have or may have effects therein.*"

4. CONCLUSION

This article presented an overview of how CADE has been reviewing merger control cases in the mining sector in recent years.

As indicated above, CADE has already examined over 200 transactions involving diverse types of minerals. Given that each mineral represents a different relevant product market with unique characteristics, CADE accounts for these particularities in assessing the relevant competition conditions, including different forms of production processes, distribution channels, varied barriers to entry, and regulatory barriers, among other variables. Additionally, recent precedents reinforce CADE's consistent interpretation of the limits of the competition laws enforceability vis-à-vis the territoriality of effects principle.

The most recent precedents also reveal a growing diversity of markets, reflecting the increased demand for transition minerals — without prejudice to the continued relevance of iron ore — and the strategic movement towards companies' diversification through acquisitions. Due to the risks and costs involved in opening new greenfield projects, M&A transactions emerge as an agile and efficient alternative for expansion, as demonstrated by the increase in mining deals submitted to CADE.

Given this context, players in the mining sector must closely follow upcoming developments in CADE's merger control policies, considering the strategic role of mining for the economy and the energy transition.

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ARTICLE

FACILITATING
ACCESS TO THE
CAPITAL MARKET:
THE *FÁCIL REGIME*

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FACILITATING ACCESS TO THE CAPITAL MARKET: THE FÁCIL REGIME

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ABSTRACT

This article introduces the FÁCIL Regime and explains its application to smaller mining companies. It addresses the main possibilities and the expected benefits of FÁCIL, highlighting the challenges for changes to gain market acceptance, as well as the core points of concern for mining companies.

KEYWORDS: CVM. FÁCIL regime. Financing. Mining. Publicly held companies.

1. INTRODUCTION

Brazilian market regulators have turned their attention to the mining sector to expand financing alternatives for its development⁴.

Some examples of these initiatives are:

- Public Consultation 180, of January 23, 2025, issued by the Ministry of Mines and Energy (MME)⁵, on the regulation of debentures with fiscal incentives in the mining sector, focusing on strategic minerals for energy transition. These debentures are regulated by

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⁴ Available at: <https://eixos.com.br/politica/politica-de-mineracao-para-a-transicao-energetica-tera-incentivos-para-em-presas-de-menor-porte/>. Accessed on: July 28, 2025.

⁵ Available at: <https://consultas-publicas.mme.gov.br/home>. Accessed on: July 28, 2025.

Law 12,431, of June 24, 2011⁶, and Law 14,801, of January 9, 2024⁷. This public consultation was concluded, but the resulting ordinance has not yet been disclosed;

- In the State of Minas Gerais, the initiative by Invest Minas, a State investment agency, offers “an array of services for companies interested in investing or expanding in Minas Gerais, including guidance on tax incentives, support in searching for land and facilities, and assistance in obtaining necessary licenses and authorizations⁸.” Mining is among the strategic sectors encompassed by this initiative, particularly given the State of Minas Gerais’ role in global production⁹;
- Especially in the case of strategic minerals for energy transition, the Federal Government has other initiatives, such as financing through the National Bank for Economic and Social Development (BNDES), the Brazilian Innovation Agency (FINEP), and the Strategic Minerals Investment Fund in Brazil, a partnership between BNDES and MME¹⁰.

In July 2025, the Brazilian Securities and Exchange Commission (CVM) issued two resolutions regulating the Facilitation of Access to Capital and Incentives for Listings (FÁCIL) regime. It is not specifically aimed at the mining sector, but rather at any companies that qualify as Small Companies (CMP), meeting the following main requirements:

- have an annual gross revenue of up to BRL 500 million;
- be listed on an organized securities market;
- be an operating company; and
- obtain prior consent from shareholders or debt-securities holders, if already registered with the CVM.

Junior mining companies have played a fundamental role in the development of the Brazilian and global mining industry. In general, they focus on the exploration and discovery of mineral deposits, from prospecting and initial exploration to the completion of preliminary economic evaluations and feasibility studies.

⁶ Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12431.htm. Accessed on: July 28, 2025.

⁷ Available at: https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2024/lei/l14801.htm. Accessed on: July 28, 2025.

⁸ Available at: A Invest Minas. Accessed on: July 28, 2025.

⁹ According to Invest Minas. Available at https://investminas.mg.gov.br/setores_estrategicos/mineracao/?_gl=1*16jeq3y*_ga*MTg1ODY2MzUzNy4xNzUzNzA2OTc1*_ga_5JF94HG0PH*czE3NTM3MDY5NzQkbzEkZzEkdDE3NTM3MDkzNDckajYwJGw-wJGgw. Accessed on: July 28, 2025.

¹⁰ According to “Guia para o Investidor Estrangeiro em Minerais Críticos para a Transição Energética no Brasil”. Available at GUIDE FOR FOREIGN INVESTORS 24FEB2025 V3.PDF. Accessed on: July 28, 2025.

With the FÁCIL initiative, “CVM continues the measures to reduce regulatory compliance costs that have been implemented in recent years” (BRASIL, 2024, p. 2).

This regulatory effort by CVM aligns with international regulatory trends. In Canada, TSX-V serves emerging issuers through a sponsorship system, in which previously qualified entities (sponsor advisors) monitor and supervise issuance processes, ensuring compliance with exchange rules. TSX-V has already enabled more than CAD 70 billion in capital raises, with more than 1,700 listed companies¹⁴.

2.1 What is FÁCIL

FÁCIL is a regulatory environment established specifically for CMPs, providing lower requirements for such companies to access the Brazilian capital market.

With this regulatory regime, CVM (2024) aims to encompass companies that are in an intermediate range between investment crowdfunding (up to BRL 40 million in gross revenue and public offerings of up to BRL 15 million) and the traditional securities market, which is complex and has high entry costs, despite having no value limits. The FÁCIL regime was conceived as a regulatory alternative to fill this gap, offering a simplified model for capital raises between BRL 15 million and BRL 300 million, a range frequently neglected by the previous framework.

Below are some examples of the flexibility that can be adopted:

- Automatic securities issuer registration by CMPs;
- Public offerings of debt-related securities aimed at professional investors¹⁵ without requiring a financial institution as intermediary (underwriter);

¹⁴According to data from the stock exchange itself. Available at: <https://www.tsx.com/listings/listing-with-us>. Accessed on: May 17, 2025.

¹⁵As defined in CVM Resolution 30, the following are considered professional investors: I – financial institutions and other institutions authorized to operate by the Central Bank of Brazil; II – insurance companies and capitalization companies; III – open and closed supplementary pension entities; IV – individuals or legal entities with financial investments exceeding ten million reais (BRL 10,000,000.00) and that, in addition, to a written certification of their status as professional investors by means of a specific instrument, in accordance with Annex A; V – investment funds; VI – investment clubs, provided that their portfolio is managed by a securities portfolio manager authorized by CVM; VII – investment advisors, securities portfolio managers, securities analysts, and securities consultants authorized by CVM, in relation to their own resources; VIII – non-resident investors; and IX – equity funds. In addition, social security regimes established by the Federal Government, States, the Federal District, or municipalities are only considered professional investors if recognized as such under specific regulations of the relevant federal agency. Available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol030.html>. Accessed on July 28, 2025.

- Presentation of accounting information on a semi-annual, not quarterly, basis, as required of all publicly held companies;
- Simplified regulatory requirements, such as replacing the Reference Form 16 with a simpler one (FÁCIL Form);
- Some quorum facilitations and waiver of contracting certain service providers in case of registration cancellation.

Each CMP may select the regulatory waivers to be adopted from the FÁCIL options by drafting a Regulatory Obligations Waiver Report. This report may be updated at most once per fiscal year, and the obligations reported must be complied with (and those waived may not be complied, even voluntarily).

For public offerings, registered CMP issuers may choose among three modalities, and the smaller their volume, the more waivers are provided. A separate modality is available for unregistered issuers:

	Traditional Public Offering (CVM Resolution 160)	Equity or debt offerings to the general public (part of CVM Resolutions 160 and 161)	Debt offering to professional investors (part of CVM Resolutions 160 and 161)	Direct Offering
CVM offering registration	Yes	Yes	Yes	No
CVM issuer registration	Yes, considering the possibility of automatic registration for CMPs	Yes, considering the possibility of automatic registration for CMPs	Not mandatory. The only requirement is the annual gross revenue up to BRL 500 million	Yes, considering the possibility of automatic registration for CMPs

Continues

¹⁶ The Reference Form (FRE) is an electronic document, submitted periodically and occasionally to CVM through the Empresas.NET System, as provided for in article 22, item II, of CVM Resolution 80/22. The Reference Form for Publicly Traded Companies gathers all information related to the issuer, such as activities, risk factors, management, capital structure, financial data, comments from managers on this data, securities issued, and related party transactions. Available at: https://dados.cvm.gov.br/dataset/cia_aberta-doc-fre. Accessed on July 29, 2025.

Mandatory documents	All those indicated in CVM Resolution 160, including reference form, quarterly information, prospectus, and information sheet	FÁCIL Form ¹⁷	All documents indicated in article 89 of CVM Resolution 160 ¹⁸	FÁCIL Form
Offering value limit	N/A	BRL 300 million (every 12 months)	BRL 300 million (every 12 months)	BRL 300 million (every 12 months)
Lead underwriter required	Yes	Yes	No, but the issuer assumes some of the underwriters' regulatory obligations	No

Continues

¹⁷ The FÁCIL Form is a simplified form that replaces the Reference Form, prospectus, and information sheet, consolidating information about the issuer and the offering into a single, more concise document. Available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol232.html>. Accessed on July 29, 2025.

¹⁸ The obligations established in article 89 of CVM Resolution 160 must be observed by issuers and are related to the preparation and disclosure of year-end financial statements and, if applicable, consolidated financial statements. Those must be audited by an auditor registered with CVM, relating to the last three (3) fiscal years ended, except when the issuer does not have them because it did not start its activities before that period, as well as the disclosure of subsequent financial statements. In addition, the issuer is required to disclose material facts as defined in the specific CVM regulations, disclose the annual report and other communications sent by the Fiduciary Agent, as well as corporate acts approving the Offerings. Available at: <https://conteudo.cvm.gov.br/legislacao/resolucoes/resol160.html>. Accessed on July 29, 2025.

			In offerings by issuers not registered with CVM, the issuer's financial statements need not be audited, provided that investors sign a specific acknowledgment term Participation of (i) Special Social Security Regime (RPPS), (ii) Closed Supplementary Pension Entity (EFPCs), and (iii) investment funds whose resources come predominantly from RPPS or EFPC is prohibited	
Notes	N/A	The following are prohibited: (i) supplementary lot distribution (Hot Issue); and (ii) distribution to related parties		The offering will occur under a special procedure.

Table: Cescon, Barrieu, Flesch & Barreto (CBFB, 2025)¹⁹

2.2 FÁCIL Disqualification

After adhering to the FÁCIL regime, if the company fails to meet its requirements, it will have to comply with the complete informational regime of the CVM regulation.

Disqualification from the CMP category occurs in the following circumstances: **(i)** consolidated annual gross revenue equal to or exceeding BRL 500 million; **(ii)** expiration of the deadline for disclosure of year-end financial statements without them having been disclosed; and/or **(iii)** expiration of the deadline for holding the annual shareholders' meeting without approval of year-end financial statements.

Other disqualification cases are: **(i)** voluntary disqualification, upon notification to the organized market entity administrator in which it is listed; **(ii)** if it ceases to be listed

¹⁹ Available at: CVM cria o regime FÁCIL – Facilitação do Acesso a Capital e de Incentivo a Listagens – Cescon Barrieu – Centro de Inteligência Jurídica. Accessed on: July 24, 2025.

on an organized market; (iii) if it fails to conduct a public distribution offering within 24 months after obtaining its initial registration.

Disqualification for exceeding the gross revenue threshold takes effect after one year. In other cases, it takes effect after 90 days.

3. POTENTIAL APPLICATIONS AND CHALLENGES OF THE FÁCIL REGIME FOR MINING COMPANIES

Given the above, attention is drawn to the potential application of the FÁCIL regime for smaller mining companies that hold mining rights or are in partnerships with larger companies, holders of mining rights, to carry out projects that the latter choose not to develop for various reasons.

What is observed in the market is that smaller mining companies still resort to the traditional banking financing system to raise capital, and one of the main benefits that CVM expects through FÁCIL is precisely to make the capital market an alternative to traditional bank credit for smaller companies, allowing them to reduce their financing cost (BRASIL, 2024, p. 2).

However, there are two crucial points for understanding how the FÁCIL Regime will impact the mining sector, and they should be considered by the market from now on.

The first is that this regime can only be used by operating companies according to CVM criteria, that is, those with operating revenue recognized in financial statements. Thus, the mineral prospecting and research stages are not covered, leaving out a range of companies with demand for resources. Despite this current restriction, in the Public Consultation Analysis Report, CVM highlighted that *“considering that FÁCIL makes numerous duties to which issuers are ordinarily subject more flexible and that even isolated cases of serious irregularities can have unfavorable repercussions under the regime, especially in its initial stage, CVM does not consider it appropriate at this time to admit the participation of pre-operational issuers²⁰.”* This means that as confidence in this regime increases, this restriction may be reviewed by CVM.

The second point, considering mining companies in the operational stage, is to understand for how long the resource window allowed by the FÁCIL Regime will be convenient, given the capital raising limitation of BRL 300 million every 12 months, as well as the maximum annual gross revenue of BRL 500 million to classify as CMP. This second

²⁰ Available at: RELATORIO_DE_ANALISE_SDM0124 (2).PDF, Accessed on: July 28, 2025.

issue should be analyzed by each company, considering the transition regime to be adopted if additional resources are needed and if the company no longer meets FÁCIL's revenue limitations, as detailed above.

4. CONCLUSION

This is a moment when companies in the mining sector should develop studies and analyses on the FÁCIL Regime.

Undoubtedly, FÁCIL presents an array of regulatory challenges to be considered by CVM, especially the balance between flexibility and supervision to avoid abuses or market failures. As well pointed out by Borges and Oliboni (2024), *“it is crucial, in the search for market dynamization, that the integrity and confidence that sustain it are not compromised.”* This will be essential for investors to have confidence when investing in companies with a simplified informational regime. However, this seems to be on CVM's radar and, according to its former president (NASCIMENTO, 2025), the relation between innovation and governance is at the heart of the FÁCIL framework.

While easing access, CVM emphasizes that the new environment will maintain high standards of safety and transparency. This gain in confidence will be important even for the regime to be expanded to encompass more companies, such as pre-operational ones.

Furthermore, the educational aspect will be of utmost importance for the success of the new regime, especially so that companies become aware of this new capital raising option and its benefits. In the mining market, still very traditional in its financing sources, this effort will be essential for mining companies to learn that they can adopt this regime to finance ongoing projects.

Considering the requirements and flexibilities of FÁCIL, as well as the increasing incentive for the growth of small and medium-sized mining companies, it will be up to the market, starting in 2026, to test this new capital raising model.

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ARTICLE

CORPORATE
GOVERNANCE IN
MINING MERGER
AND ACQUISITION:
FIDUCIARY DUTIES
AND DIRECTORS'
LIABILITY

GUILHERME LIMA DE MOURA SALES

RODRIGO BINDER LAS CASAS

CORPORATE GOVERNANCE IN MINING MERGER AND ACQUISITION: FIDUCIARY DUTIES AND DIRECTORS' LIABILITY

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Rodrigo Binder Las Casas²

Abstract: This article analyzes the fiduciary duties and liability of directors in merger and acquisition transactions, focusing on the mining sector and emphasizing corporate governance. It addresses legal aspects, environmental and regulatory risks, and highlights practical cases that demonstrate the importance of diligence and loyalty from directors.

1. INTRODUCTION

Merger and acquisition transactions in the mining sector draw attention, either due to the significant value many of these deals represent or because mining remains a sensitive topic that still generates distrust among part of the population. Nevertheless, these transactions are on the rise. In Brazil, known for its strong extractive activity, mining merger and acquisition transactions increased by 40% in 2024 compared to 2023 (Brasil Mineral, 2024).

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A merger and acquisition transaction can take years to complete. Most of the transactions – both in terms of time and tasks – consist of planning, identifying target companies (or potential buyers), valuation, due diligence, and negotiations, and are usually a confidential process known only to a small group of people. Often, not even the company’s shareholders are aware of the potential transaction at this stage.

The company’s key directors are part of this select group with knowledge of the ongoing negotiations. These directors face the challenge of working toward the success of the transaction and must always operate in accordance with their fiduciary duties.

This article analyzes the fiduciary duties and liability of directors in mining merger and acquisition processes, focusing on the principles of diligence, loyalty, and transparency. Based on practical cases and regulatory frameworks, it seeks to understand how these duties shape the conduct of directors in a sector marked by environmental, social, and regulatory risks.

2. DUTIES AND RESPONSIBILITIES OF DIRECTORS

A company’s management bodies include the Board of Directors and the Board of Officers, with the former being optional depending on the applicable legislation and the company’s corporate type. In Brazil, publicly traded corporations – those listed on stock exchanges – are required to have a Board of Directors, while privately held corporations may choose whether to have one. Limited liability companies may also have a board of directors through the subsidiary application of Corporations Law, although this is uncommon.

Simply put, we can distinguish a director from an officer by stating that the former is responsible for setting the company’s direction, while the latter is responsible for executing actions to ensure the company’s operation. Hence, the common use of the term “Executive Officer,” referring to the role that executes the activities directed by a director (or more precisely, the Board of Directors).

Both directors and officers – *collectively can be referred to as managers, but, for the purposes of this article, and for didactic clarity, the term “directors” will be used to refer to both board members and executive officers* – have legal and ethical obligations to always act in the best interest of the company and its shareholders, in compliance with existing legal and statutory limitations. These are their fiduciary duties.

Various legal systems explicitly outline the main duties of directors due to their importance. Some of these duties, such as avoiding conflicts of interest and not accepting benefits from third parties, even survive the end of the director’s term. For example,

the UK Companies Act 2006 outlines in Sections 171 to 177 the general duties owed by a company director. Similarly, the Brazilian Corporations Law also sets out the duties and responsibilities of directors, specifically in Section IV of Chapter XII, Articles 153 to 158.

Under the duty of diligence, a director must perform their duties with the same care, prudence, and diligence that any honest person with a reasonable degree of knowledge expected for the position would apply in managing their own businesses. This is one of the most fundamental and important duties governing the relationship between the company and its directors. After all, the company – and ultimately its shareholders – places trust in its directors to manage it in the best possible way.

However, the director's actions are limited and must be carried out only in accordance with the company's constitutive acts and solely for the purposes for which their powers were granted. Failure to comply with these obligations constitutes a deviation of purpose or abuse of power.

Directors also owe a duty of loyalty to the company, meaning they must not act for their own benefit or that of third parties to the detriment of the company's interests. They must also refrain from participating in decisions and transactions where their personal interests' conflict with those of the company.

Although directors are required to comply with their fiduciary duties throughout their term – and sometimes even thereafter – certain transactions, such as mergers and acquisitions, tend to intensify the application and relevance of these duties and principles, making them even more evident and critical. The duty of confidentiality is crucial in these transactions, and directors must maintain the confidentiality of all company business not yet disclosed to the market. A breach of this duty may lead to the premature termination of the transaction, potentially harming the company and its shareholders.

Despite their professional experience, knowledge, and expected seniority, directors do not possess expertise in every subject. Therefore, it is essential that they rely on qualified and specialized professionals for proper guidance during the transaction. This principle is known in the market as “the right to rely on others.”

Other relevant duties include the prohibition of gratuitous acts at the company's expense; the duty to inform, by providing relevant, transparent, and complete information to shareholders, enabling them to exercise critical judgment about the risks and merits of their investment; and the protection afforded to directors, who are not personally liable for obligations incurred on behalf of the company through regular management acts.

3. RELEVANT CASES AND RECENT TRENDS

It is increasingly common for shareholders to challenge merger and acquisition transactions, alleging that officers violated their fiduciary duties during the transaction process. In some cases, even the acquiring company is challenged by shareholders on the grounds that it was complicit in the officers' fiduciary breaches.

In 2016, TC Energy Inc. ("TC Energy") acquired Columbia Pipeline Group Inc. ("Columbia") for \$25.50 per share. Due to the change-of-control transaction, Columbia's executives were set to receive significant compensation. TC Energy's initial offer was \$26 per share, but this was reduced after Columbia's Board of Directors opted for a quick sale to avoid a negative market reaction following a leak about the transaction (Casey et al., 2025).

Some Columbia shareholders sued the CEO, CFO, and several former directors for breaching their fiduciary duties of loyalty, care, and transparency during the negotiation process. They also sued TC Energy, arguing it aided and abetted these breaches. Columbia's executives settled the case for USD 79 million, while TC Energy was initially ordered to pay USD 199.2 million. However, in a June 2025 decision, the Delaware Supreme Court reversed the ruling, stating that due to TC Energy's lack of actual knowledge of Columbia executives' misconduct, it was not liable for aiding and abetting the fiduciary breaches (Casey et al., 2025).

In the mining sector, the tailings dam collapse from Vale S/A, in Brumadinho, Minas Gerais, Brazil, on January 25, 2019, gained national and international attention due to its severe environmental, social, and human consequences.

The U.S. Securities and Exchange Commission ("SEC") filed a lawsuit against the company in 2022, alleging that its public sustainability reports and other filings falsely stated that all its dams were certified as stable, following internationally recognized dam safety standards (Davison, 2023). The SEC and the company reached a settlement in 2023, with the company agreeing to pay USD 55.9 million to resolve the case (U.S. Securities and Exchange Commission, 2023).

In a case like that, for didactic purposes only, if proven that the company's directors were aware that the collapsed dam did not meet the stated international standards or even that they were negligent on chosen and relying on a non-credible expert, this could constitute a breach of their fiduciary duties in managing the company with the required level of care and to provide accurate, transparent information to shareholders and the market.

It must be said that the right to rely on an expert goes beyond the simple advice of a technical person but also requires the directors to take the necessary steps to ensure the quality of the advice and obtain the best available reasonable knowledge. As ruled by the Brazilian Securities Commission (2018), although directors are not required to have deep technical knowledge of all company matters, they must ensure they are properly advised by qualified experts in areas where they lack expertise. The director must select a competent advisor, ensure they have access to all relevant information, understand and consider their opinion, and be able to critically evaluate the content to identify any red flags. Depending on the reach of the effects of a director's behavior, the responsibility may cross company's national borders and attract individual liability overseas.

4. ROLE OF DIRECTORS IN A MINING MERGER AND ACQUISITION

Directors play a crucial role in a merger and acquisition transaction. As discussed, they have a fiduciary duty to act in the best interest of the company and its shareholders, prioritizing those interests over any personal ones. A breach of this duty constitutes a failure of loyalty (Egan, 2009).

Throughout the process, the director must answer key questions to determine whether the transaction is on the right track and beneficial to the company. They must assess whether the transaction aligns with the company's strategy; whether strategic advisors are qualified for their roles; whether all due diligence risks have been identified and properly understood; whether antitrust rules have been respected, with proper protection and management of sensitive information; and whether the transaction truly serves the interests of the company and its shareholders (Wist, 2024).

However, in a mining merger and acquisition transaction, directors must be even more attentive due to the environmental and regulatory risks involved. This is especially true in countries like Brazil, where mining can generate significant economic resources but is also met with public and regulatory skepticism due to recent dam collapse incidents.

Directors of a company seeking to be sold must be transparent and loyal during the sale process. Environmental and regulatory information must not be withheld from the counterparty. There is a duty to inform, enabling the acquiring company to conduct a precise and accurate analysis and ultimately make an informed decision about the transaction terms.

Conversely, the acquiring company's directors must, as previously mentioned, be properly advised by professionals specialized in mining, environmental, and regulatory matters. While the selling company is responsible for disclosing relevant information in

detail, the obligation to analyze and form a judgment about that information lies solely with the acquiring company.

Directors must understand that the absence of an environmental license or a mining right at risk of expiration, among other potential risks, may be insurmountable or, even if solvable, may render the project unsustainable. These factors significantly and directly influence the economic, legal, and contractual terms negotiated in the transaction. Therefore, the due diligence process must emphasize and detail environmental and regulatory aspects.

The acquiring company's director must also understand the market they are entering. Each jurisdiction has its peculiarities, and understanding the market is a strategic advantage. Understanding how regulatory and environmental agencies operate; the deadlines for compliance with local rules; regulations concerning traditional communities; land use rules; and tailings dam regulations are all factors that will determine the future and success of the negotiated project.

5. CONCLUSION

Regardless of jurisdiction or company size, the fiduciary duties of directors in merger and acquisition transactions remain essential pillars of corporate governance and are, in essence, quite similar across jurisdictions.

Directors are expected to act loyally, in good faith, avoiding conflicts of interest, and seeking the best interests of the company and its shareholders. They must also act with care and diligence, relying on trustworthy reports and overseeing the transaction as expected of an honest and prudent director, with impartial judgment focused on the company's interests.

In the mining sector, these duties become even more critical due to the environmental, social, and reputational risks involved. The knowledge and active participation of directors in the transaction are fundamental to ensuring the integrity of the deal and the sustainability of the project. Beyond technical and legal knowledge, sensitivity to environmental, social, and reputational risks is required. Therefore, directors must continuously and rigorously fulfill their fiduciary duties – loyalty, diligence, transparency, and confidentiality.

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ARTICLE

COMPLIANCE DUE
DILIGENCE IN M&A
TRANSACTIONS:
ATTENTION TO FREQUENT
INTERACTIONS
WITH GOVERNMENT
AUTHORITIES

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COMPLIANCE DUE DILIGENCE IN M&A TRANSACTIONS: ATTENTION TO FREQUENT INTERACTIONS WITH GOVERNMENT AUTHORITIES

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1. INTRODUCTION

Mergers and acquisitions (M&A) represent strategic opportunities for business expansion but carry significant legal and reputational risks, particularly in regulated sectors such as mining.

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Compliance due diligence has become an indispensable tool not only to map potential liabilities, but also to uncover structural weaknesses in the target company's interaction with public authorities. More than looking into relevant administrative or judicial proceedings from the compliance perspective (e.g., matters involving corruption, money laundering, administrative improbity, etc.), the company's institutional culture must be understood in terms of transparency and regulatory governance, in addition to the integrity of the information provided to the authorities.

Law 12,846/2013 (Anti-Corruption Law) provides for the administrative and civil liability of legal entities for acts against national or foreign public administration, and expressly states that *"The legal entity remains liable in the event of an amendment to the corporate documents, conversion, incorporation, merger, or spin-off"* (article 4). In other words, aspects related to compliance with the Anti-Corruption Law by the target company are fundamental in compliance due diligence.

In practice, its application has evolved to cover conducts connected to companies' interactions with public entities more generally, even where no corrupt act is implicated; this includes circumstances characterized as interference or difficulty raised in relation to inspection and control activities by public bodies.

In this expanded context, this article analyzes the risks associated with interacting with public authorities from a compliance perspective, highlighting the precautions that should guide compliance due diligence in M&As in the mining sector, with special attention to regulatory obligations, the involvement of third parties, and the strict liability provided for in the Anti-Corruption Law.

The regulatory complexity of the Brazilian mining sector requires a tailored approach to compliance due diligence, considering that mining companies maintain a continuous and multifaceted relationship with various public bodies. In addition to the National Mining Agency (ANM), these companies interact regularly with other authorities, such as the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), state environmental agencies, the Federal Revenue Service (RFB) for sector-specific tax issues, and municipal authorities for local licensing. This multiplicity of regulatory interfaces exponentially increases compliance-related risk points, so the due diligence methodology must consider not only formal compliance but also the quality and consistency of these multiple institutional interactions.

2. STRICT LIABILITY AND RISKS IN INTERACTIONS WITH PUBLIC AUTHORITIES

The Anti-Corruption Law establishes strict liability for legal entities, allowing sanctions to be applied even in the absence of intent or fault. This significantly increases the risk in interactions with public authorities, especially in regulated sectors of high technical complexity.

Acts considered harmful to public administration, listed in article 5 of the Anti-Corruption Law, go beyond the traditional corruption provided for in item I⁵. Items IV and V of the article include defrauding public tenders and contracts, in addition to hindering investigation or inspection activities carried out by public bodies, entities, or agents.

Depending on the context, operational failures, omissions, or technical inconsistencies can be interpreted as violations of these provisions, even if there is no intent.

This scenario gets worse considering indirect risks arising from the actions of third parties—such as service providers, consultants, brokers, or outsourced companies—who act on behalf of or in the interests of the legal entity. The strict liability can be triggered by acts of these third parties, especially when there are no effective control, training, or supervisory mechanisms.

In the mining sector in particular, the continuous obligation to report technical information to agencies such as ANM and environmental bodies exposes companies to a constant assessment of their institutional integrity. Thus, inconsistencies in the data submitted, incomplete information, or even poorly structured routines for dealing with public entities can be interpreted as obstruction of the state's supervisory function—regardless of the company's original intention.

There are court precedents on the enforcement of the Anti-Corruption Law in cases that did not involve direct financial corruption, but rather alleged obstacles faced by the regulatory body due to possible failures by private companies when submitting technical information. Thus, non-compliance with formal duties towards the public administration can be sufficient to characterize breaches of the anti-corruption legislation.

The administrative case law of the Comptroller General's Office (CGU) has shown particular attention to cases in which mining companies submit allegedly inconsistent or incomplete technical information to regulatory bodies, even when there is no evidence of fraudulent intent. In this context, due diligence should assess not only the existence

⁵ “I – directly or indirectly promising, offering, or giving an undue advantage to a public official or a third party related to them;”

of compliance policies but also their effective implementation and the target company's ability to maintain consistent standards of technical communication with the authorities, including the analysis of environmental monitoring reports, economic exploitation plans, and annual mining reports, among others.

This demonstrates how important it is for compliance due diligence in M&A deals to consider not only the administrative and judicial background of the target company, but also its internal regulatory control and governance mechanisms, as well as the conduct and risks associated with third parties acting on its behalf — as detailed below.

3. COMPLIANCE DUE DILIGENCE: BEYOND CORRUPTION

Compliance due diligence goes beyond the limits of merely documentary or formal practices. Simply checking for clearance certificates or inquiring about ongoing court or administrative proceedings is not enough to adequately measure risks.

An in-depth analysis of how the target company structures and conducts its institutional relationship with authorities is essential. This should include the existence and effectiveness of internal policies that regulate communication procedures with regulatory bodies, training technical managers to act in regulatory contexts, the behavior of legal control bodies concerning sensitive documents, as well as the clarity and traceability of the flows for preparing, approving, and sending information to regulatory bodies.

The due diligence methodology should include both quantitative and qualitative analyses of data reported by the target company to regulatory bodies over the past years. This should involve cross-referencing information submitted to different authorities, assessing the consistency of reported data over time, verifying compliance with regulatory deadlines, and evaluating the technical quality of the submitted documentation. Special attention should be given to any rectifications, supplements, or amendments made after the initial submission, as these may indicate deficiencies in the internal technical validation processes before the communication with public authorities.

A critical aspect is environmental compliance. In the mining industry, high-impact operations are subject to stringent environmental regulations, with severe penalties under Law 9,605/1998 (Environmental Crimes Law) for non-compliance. Accordingly, compliance due diligence should include a comprehensive assessment of the target company's potential environmental liabilities. This encompasses reviewing licenses and permits, analyzing notices of violation and fines issued by competent authorities (such as IBAMA and state agencies), and identifying potentially contaminated areas or pending settlements (TACs). Specific assessments—such as audits of tailings dams and waste

management practices—have become a crucial tool to prevent environmental disasters. The early identification of such risks protects the acquiring company from significant remediation costs, fines, and potential reputational and legal damage resulting from ecological incidents.

The target company's institutional culture must also be assessed, especially its attitude towards government inspection activities. Aspects such as a background of resistance to inspections, its responses to notices of infraction, or any modifications to documents following requests from public authorities should be carefully analyzed.

The institutional culture's assessment should be complemented by structured interviews with managers at different hierarchical levels, especially those responsible for technical, legal, and institutional relations areas. These interviews should explore formal procedures, employees' perceptions of the importance of regulatory compliance, the existence of internal pressures that could compromise the quality of the information reported, and the clarity of approval flows for sensitive documents. The identification of significant divergences between perceptions of different managers can reveal inconsistencies in the implementation of compliance policies or gaps in internal communication about regulatory responsibilities.

Where typically illicit conduct is not identified, institutional patterns that reveal opacity, reluctance, or negligence in dealing with regulatory bodies can represent relevant indications of risk. This type of conduct—even if unintentional—tends to be interpreted as a possible obstruction of government actions, especially when there are recurring failures in documenting inspections, technical reviews, or communications with bodies such as ANM, IBAMA, and other inspection bodies.

Therefore, as detailed above, well-conducted compliance due diligence should include the analysis of reports sent to the authorities, interviews with managers responsible for technical and institutional areas, and cross-checking formal statements against operational data. The aim is not only to avoid future surprises, but also to identify patterns of conduct that may constitute, in the eyes of the public administration, interference in the inspection process, i.e., a potential violation of the Anti-Corruption Law.

4. CONTRACTUAL STRATEGIES, COMPLIANCE PROGRAM, AND POST-ACQUISITION RESPONSIBILITIES

The identification of risks related to the relationship with public authorities should have a direct impact on the contractual modeling of the deal. Contracts should include, for example, specific liability clauses for hidden regulatory liabilities, representations and

warranties regarding the accuracy of documents sent to public bodies, escrow mechanisms or holdbacks (ways of withholding part of the value of the transaction), either by depositing it in a linked account or by directly postponing payment, tied to the outcome of ongoing investigations. It is also advisable to expressly provide for a right of recourse in the event of sanctions arising from any conduct before the acquisition that violates the anti-corruption legislation.

The compliance analysis should not stop with the closing of the acquisition. Post-M&A integration must align the internal controls of the acquired company with the practices of the acquirer, especially regarding interaction with public agents. Reviewing regulatory registrations, standardizing technical documents, implementing double validation instances, training staff in areas exposed to greater risks, and updating internal policies are all measures that reinforce the prevention of new liabilities and demonstrate good faith towards authorities.

Compliance programs that are limited to combating financial corruption or formally complying with legal requirements may not be considered sufficient in regulated sectors. In the mining industry, compliance practices must directly align with engineering, process safety, and environmental responsibility, among other areas, to ensure that regulatory obligations are strictly observed and that the information provided to the government is accurate, timely, and verifiable.

CGU regulations, notably Decree 11,129/2022, establish parameters for evaluating these programs' effectiveness. Where there are robust written procedures, regular training on regulatory reporting, internal technical audit bodies, and specific channels for communicating operational risks to the authorities, the sanctioning body may consider applying more lenient sanctions.

In countries such as the United Kingdom and the United States, the logic of accountability also includes technical compliance failures. Deferred Prosecution Agreements (DPAs), for example, consider the company's ability to demonstrate that it has corrected flawed processes that resulted in omissions before public bodies. Brazil is still moving in this direction, but there are already CGU decisions that mitigate penalties upon evidence of corrective efforts.

International experience shows that effective compliance programs in regulated sectors must incorporate continuous monitoring mechanisms and specific performance indicators related to interactions with public authorities. These systems allow for the early identification of deviations and the implementation of corrective measures before they constitute formal violations of anti-corruption legislation, demonstrating to the authorities the company's genuine commitment to transparency and institutional collaboration.

5. FINAL CONSIDERATIONS

The expanded application of article 5, item V, of the Anti-Corruption Law marks a significant shift in corporate accountability, extending to conduct that, although not constituting direct corruption, undermines the supervisory functions of public authorities. In sectors such as mining, this accountability is even more sensitive, given the technical complexity of the obligations and the severe consequences of non-compliance.

In this environment, compliance due diligence becomes an instrument not only for legal protection, but also for strategically anticipating risks that could compromise the transaction value, the company's image, and operational continuity.

Carefully analyzing corporate interactions with public authorities—especially in inspection and technical processes—should be part of the due diligence strategy, alongside contractual measures that mitigate hidden responsibilities and integration mechanisms that reinforce the post-acquisition culture of integrity. Ultimately, a company's institutional solidity, evidenced by its ability to interact with the government in a transparent, structured, and collaborative way, is a valuable asset in any corporate deal in Brazil.

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ARTICLE

ENCUMBRANCE
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00063/2025/
PFE-ANM/PGF/AGU

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ENCUMBRANCE OF MINING RIGHTS: A CRITICAL ANALYSIS OF LEGAL OPINION 00063/2025/PFE-ANM/ PGF/AGU

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1. INTRODUCTION

Mining is essential to Brazil's socio-economic development, generating employment, tax revenues, and contributing to fiscal stability. It plays a strategic role in sustaining the country's trade surplus, particularly through mineral exports.

It requires substantial investment and involves significant risks throughout all phases, from mineral exploration to extraction. Consequently, developing financing mechanisms and security forms that protect investors is key to the sector's expansion.

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Brazilian mining laws have undergone significant modernization in recent years, introducing measures designed to stimulate private financing.

Since 2017, following the creation of the National Mining Agency (ANM, previously, DNPM), several rules have been introduced to modernize and stimulate the mining sector. These include the revision of the Mining Code Regulation, the enactment of the new general law on regulatory agencies, and Decree 10,139/2019—which provides for the review and consolidation of all normative acts below decree level.

Among the enacted acts, ANM Regulation 90/2021, addressing the encumbrance of mining titles, and the 2022 inclusion of article 92-A in the Mining Code, explicitly allowing broad encumbrance of all mining rights, are particularly relevant to this discussion.

Before these regulations, there was considerable debate over the use of mining rights as collateral due to regulatory ambiguities. Mining laws contained gaps and failed to objectively specify the circumstances under which such collateral was permissible, creating legal uncertainty that discouraged both financial institutions and mining operators.

Despite the regulatory changes in 2021 and 2022, the mining sector continues to face considerable challenges in securing financing for large-scale projects due to the significant capital requirements and inherent risks. Access to credit is generally restricted and subject to strict conditions, limiting companies' ability—particularly small and medium-sized enterprises—to expand operations or develop new deposits.

In 2025, in response to an inquiry from ANM's Regional Office in Paraná, the Specialized Federal Attorney General's Office (PFE) at ANM issued Legal Opinion PFE 00063/2025 (*Parecer PFE nº 00063/2025*). This opinion stemmed from a company's consultation about the feasibility of registering a security deed⁵ on mining rights with ANM, even though ANM Regulation 90/2021 did not expressly provide for it.

PFE based its response on two primary grounds:

- (i) **Lack of regulatory support:** The Legal Opinion clarified that ANM Regulation 90/2021 authorizes the encumbrance of mining rights exclusively for mining projects financing purposes, such as installation, expansion, or rectification. Security deeds executed for other purposes, including corporate or commercial transactions, would lack regulatory support; and

⁵ Although the figure of '*alienação ou cessão fiduciária*' in Brazilian law, where civil law prevails, lacks an exact common law counterpart, it will be translated and referred to as a 'security deed' for the purposes of this article. This is a conceptual approximation due to their similar legal nature, even though the two instruments are not identical and operate within distinct legal frameworks.

(ii) **Incompatibility with the legal framework governing mining concessions:** A security deed, by its nature, implies transfer of ownership and indirect possession of the asset to the creditor (although subject to reversion), which may conflict with article 176, paragraph 3, of the Federal Constitution and articles 22 and 55 of the Mining Code. These provisions require prior consent from the Federal Government for any assignment or transfer. PFE concluded that the automatic transfer inherent to the security deed could undermine government oversight over mining rights, since the creditor would effectively hold a terminable title over the asset.

PFE's Legal Opinion did not fully consider certain aspects of the applicable laws and regulatory framework. A closer consideration of these elements could lead to a different interpretation, allowing for a more comprehensive understanding of mining rights encumbrance scenarios.

2. CASES OF ENCUMBRANCE OF MINING RIGHTS: SYSTEMATIC INTERPRETATION OF ARTICLE 92-A OF THE MINING CODE

The restrictive interpretation adopted by the Legal Opinion on the scope of ANM Regulation 90/2021 disregards article 92-A of the Mining Code and is contrary to a systematic interpretation of the mining legal framework. Article 92-A employs broad and permissive language, so its meaning should only be limited by express legal provision:

Art. 92-A. Mining titles and rights, including exploration authorization permits, mining concessions, licenses, mining permits, as well as rights that persist after the expiration of the research authorization and before the mining concession is granted, recognized under this Code, **may be encumbered and offered as collateral.** (Emphasis added) (author's translation)

The principle of legality states that where the law does not distinguish, the interpreter should not do so (*ubi lex non distinguit, nec nos distinguere debemus*)⁶. Although ANM Regulation 90/2021 limits encumbrance of mining rights to financing operations, article 92-A, introduced by legislative amendment after the Regulation's enactment, does not limit mining rights encumbrance exclusively to mining activity financing operations, nor does it establish an exhaustive list of admissible purposes for this type of security.

⁶ Superior Court of Justice (STJ). Appeal to STJ (AgRg in AgRg in Resp) 1.574.085-PR. Reporting Justice Humberto Martins, Second Panel. Judged on 04/05/2016.

Article 43 of Decree 9,406/2018 (Mining Code Regulation) states that “*the mining concession may be offered as collateral for financing purposes.*” This is a permissive rule and does not impose restrictions on encumbering mining concessions for other purposes.

Such a restriction cannot be imposed by decree, as no corresponding limitation exists in the underlying legislation. Under the principle of normative hierarchy, decrees must ensure the faithful execution of the law and cannot innovate or exceed the boundaries established by it.⁷

ANM Regulation 90/2021 cannot be construed as narrowing the scope of the law. Indeed, ANM acknowledges that in Order 1086/SPE-ANM/ANM/2023⁸, noting that “*the innovation brought by Law 14,514/2022, regarding article 92-A of the Mining Code, will result in changes to ANM Regulation 90/2021*”.

The Order states that “*the new legal provisions are immediately applicable, as they implicitly repealed regulations to the contrary.*” The Brazilian legal framework does not allow regulations to limit and deviate from the provisions of the law they regulate.

This also goes for Law 14,514 of 2022, which added article 92-A to the Mining Code: law provisions must prevail over regulatory provisions.

Article 1 of the Regulation, by mentioning “*fundraising deals to finance mining,*” establishes procedures for a specific scenario without excluding other legally valid forms of encumbrance. It should therefore be construed as exemplary rather than exhaustive regulation.

Analysis of SRGR/ANM’s justification for rejecting contributions to Public Hearing 02/20219 reveals that ANM intended to regulate exclusively credit mechanisms for mining activities. This justification was not based on the exhaustive nature of the regulation, but rather derived from a policy choice to delimit the rule’s scope to promote sector credit expansion:

⁷ STJ. Appeal to STJ (AgRg in Resp) 1.034.539/CE, Reporting Justice Benedito Gonçalves, First Panel, judged on 18/11/2008, published in the Official Gazette (DJe) of 26/11/2008.

⁸ ANM Proceeding 48051.007857/2022-03. SEI ID 5996291.

⁹ ANM Proceeding 48051.003748/2020-47. SEI ID 3322583

“As indicated in Technical Note 2 (1674460), which triggered SEI proceeding 48051.003748/2020-47, the proposed regulation is based on the premise that mining lacks ‘less costly financing sources for its activities’ and that addressing this issue would ‘reduce financing costs’ for the sector.

The rule’s objective is directly associated with credit expansion and, consequently, fostering mining-related activities. **Enabling encumbrance for a purpose beyond this scope would undermine the rule’s primary objectives.”** (emphasis added) (author’s translation)

Although ANM Regulation 90/2021 addresses encumbrance specifically for financing purposes, this does not imply that other forms of mining rights encumbrance are prohibited. It just means that ANM chose to prioritize one of these scenarios.

However, article 44 of Decree 9,406/2018 defines ANM’s responsibility for regulating the requirements and procedures for registering all encumbrance scenarios:

Art. 44. ANM shall regulate **the cases of mining rights encumbrance and the requirements and procedures** for the registration of assignments, transfers, and encumbrances of mining rights. (emphasis added) (author’s translation)

Systematic reading of the Mining Code shows that, by adding article 92-A, lawmakers aimed to expand possibilities for encumbering mining rights, providing greater flexibility for mining rights holders to structure financial and commercial deals. Limiting the rule’s scope only to transactions directly related to mining activity financing would defeat this legislative purpose.

The Civil Code likewise does not support this limitation. Articles 1,361 et seq. of Chapter IX address the reversionary interest arising from security deeds in any type of legal transaction, without limiting the encumbrance of rights or the offering of collateral exclusively to finance transactions.

Mining rights encumbrance as security for different types of obligations is in line with the principles of free enterprise (head provision of article 170, Federal Constitution) and free competition (article 170, item IV, Federal Constitution), as mining titles hold economic value and are part of the holder’s legal assets.¹⁰

¹⁰ Federal Supreme Court (STF). Appeal to STF (AgR in RE) 140254, Reporting Justice Celso de Mello, First Panel. Judged on 05/12/1995.

Imposing limitations not expressly provided by law would constitute a disproportionate constraint on economic activity, conflicting with the constitutional guideline of minimal State intervention in the economic order.

The encumbrance of mining rights should be interpreted broadly, covering not only mining activity financing deals but also any obligations lawfully undertaken by the holder, provided ANM registration procedures are observed. This interpretation aligns with the legal framework and promotes greater economic efficiency in the mining sector.

3. SECURITY DEED

Security deed has become one of Brazil's primary credit protection instruments. It allows creditors to acquire ownership of movable or immovable assets, subject to reversion, to ensure debtor fulfillment.

Use of this legal instrument has intensified in recent decades, particularly in financing contracts, due to its ability to secure rapid asset recovery in cases of default and to provide greater legal certainty.

Decree-Law 911/1969 introduced the security deed on movable assets in Brazil as a mechanism to ensure obligation fulfillment, granting ownership to the creditor (subject to reversion) while preserving the debtor's direct possession.

This mechanism has proven particularly useful for transactions involving easily devalued or deteriorating assets, such as vehicles and industrial equipment, as it allows creditors to quickly repossess assets in default situations through simplified extrajudicial procedures.

In the case of movable property, the debtor typically takes the role of trustee, being responsible for the asset's safekeeping and preservation. In the event of default, and after formal notice under article 2 of Decree-Law 911/1969¹¹, the creditor or owner under the security deed may sell the asset directly to third parties without the need for an auction or other judicial or extrajudicial measures. Sale proceeds must be used to pay the outstanding debt and resulting expenses, with any remaining balance delivered to the debtor, due accounted for.

¹¹ **Art. 2.** In the event of default or delay in contractual obligations under a security deed, the owner or creditor may sell the asset to third parties, regardless of auction, public auction, prior appraisal, or any other judicial or extrajudicial measure, unless expressly provided otherwise in the contract, and must apply the sale price to the payment of its claim and the resulting expenses and deliver the balance, if any, to the debtor, with proper accountability. (author's translation)

Law 9,514/1997 extended the security deed to the real estate sector through specific regulations within the Real Estate Financial System (SFI), granting creditors ownership rights over financed real estate under the security deed while possession remains with the debtor.

Security deed emerged as a market-driven response to demands for transactions involving high-value movable and immovable assets, offering an alternative to pledges, antichreses, and mortgages, which typically require judicial enforcement and are time-consuming.¹²

Under article 23 of the above-mentioned law, the security deed on real estate becomes effective only when the contract is registered with the relevant Real Estate Registry Office. Until registration, ownership remains entirely with the debtor, and the deed does not bind third parties. The registration must specify the debt amount, payment terms, applicable interest rates, and auction conditions. In the event of a significant delay, the property may be sold at an extrajudicial auction to settle the debt.¹³

This mechanism offers greater security to creditors, as it enables faster credit satisfaction than mortgages, primarily due to extrajudicial enforcement possibilities. The possibility of real estate security deeds as collateral was created specifically to boost the real estate market, making it more dynamic and attracting larger capital volumes, particularly from the private sector.¹⁴

Although the legislator initially aimed to restrict the use of security deeds as collateral to the real estate financial system, significant support from legal scholars has emerged for their application to general obligations.

Some argue that no legal provision prevents this expansion. Others contend that there is an exhaustive list of rights over property,¹⁵ so only those expressly provided for by law can be recognized. Thus, the express provision for security deeds on real estate in specific legislation already meets this requirement, legitimizing its application beyond the originally envisaged scope.

¹² MENEZES, Cláudia Cardoso de. EMERJ. Breves Considerações Sobre a Alienação Fiduciária de Bens Imóveis. Available at: https://emerj.tjrj.jus.br/files/pages/publicacoes/serieaperfeicoamentodemagistrados/paginas/series/16/direitosreais_25.pdf. Accessed on: 04/08/2025.

¹³ ACS. TJDFT. Security Deed. 2025. Available at: Security deed – Court of Appeals of the Federal District and Territories. Accessed on: 07/08/2025

¹⁴ MARMO, Leandro. Alienação Fiduciária de Bens Imóveis: Nulidades e aspectos polêmicos, de acordo com a Lei nº14.711/2023. Revista dos Tribunais. 2024. Page 62.

¹⁵ OLIVA, Milena Donato. Do Negócio fiduciário à fidúcia. São Paulo, Atlas, 2024. Page 145.

Since 1998, Restiffe¹⁶ and Lima have argued for the admissibility of a new right, namely, the use of security deeds over real estate as collateral:

“It must meet practicality and causality. Without a so-called just cause, capable of meeting new social and economic needs, there is no practicality. There is no point in a new right entering the legal system if it is not useful to society.”¹⁷ (author’s translation)

Law 10,931/2004 settled the matter by expressly stating: “Art. 51. *Without prejudice to Civil Code provisions, general obligations may also be secured (...) by a security deed on immovable property.*” This was later ratified by Article 1,368-B of the Civil Code, added by Law 13,043/2014.

Although discussions existed regarding possible purpose deviation in security deed use, the Superior Court of Justice (STJ)¹⁸ has settled the matter, unanimously holding that it is valid even outside the scope of the real estate financial system.

Legal scholars recognize the validity of using real estate security deeds to secure various credit deals, such as personal loans or working capital financing, given the express legal provisions supporting this use.¹⁹

The applicable laws, scholars, and case law argue for security deed possibilities for both movable and immovable property, whether for financing operations or securing different obligations.

The legal framework encompasses the assignment of credit rights. As pointed out by scholars, “Article 66-B of Law 4,728/1965 admits the use of security deeds over replaceable or interchangeable things and the assignment of rights over movable things and credit titles. It further clarifies that both direct and indirect possession of the collateral asset/title representing the right or credit is attributed to the creditor, which, upon default, should be sold to a third party, using the price to settle the debt and returning any balance to the debtor.”²⁰

¹⁶ RESTIFFE NETO, Paulo. RESTIFFE, Paulo Sérgio. *Propriedade fiduciária imóvel*. São Paulo. Malheiros, 2009, p.14.

¹⁷ LIMA, Frederico Henrique Viegas. *Da alienação fiduciária de coisa imóvel*. 4ª Ed., ver. E atual. Curitiba: Juruá, 2011, p. 52.

¹⁸ Appeal to STJ (Resp) 1.542.275/MS, Reporting Justice Ricardo Villas Bôas Cueva, Third Panel, judged on 24/11/2015, published in the Official Gazette (DJe) on 02/12/2015. Appeal to STJ (AgInt in AREsp) 711.778/MS, Reporting Justice Paulo De Tarso Sanseverino, Third Panel, judged on 09/22/2016, published in the Official Gazette (DJe) on 29/09/2016.

¹⁹ MARMO, Leandro. *Alienação Fiduciária de Bens Imóveis: Nulidades e aspectos polêmicos*, de acordo com a Lei nº14.711/2023. *Revista dos Tribunais*. 2024. Page 65-66.

²⁰ Cunha, Fernando Antonio Maia da Cunha, e Dias, Maria Rita Rabello Pinho. *Alienação fiduciária em garantia*. *Cadernos Jurídicos*, São Paulo, ano 20, nº 50, p. 31-52, Julho-Agosto/2019. Page 39. (author’s translation)

Precedent 59 of the São Paulo State Court of Appeals (TJSP) states that “*for legal purposes, credit rights are classified as movable property and may be subject to a security deed.*” This demonstrates that case law upholds using credit rights as collateral under a security deed.

These examples show that the applicable laws provide a number of security mechanisms, whether a security deed on movable or immovable property, or the assignment of rights, revealing the deed’s intended scope.

Regardless of the mining rights’ legal nature as movable property, immovable property, or assignable rights over movable property (the latter being the most appropriate given the joint interpretation of article 176 of the Federal Constitution and article 84 of the Mining Code)²¹, the legal framework provides for their encumbrance through security deeds.

These transactions place creditors in a far more advantageous position than pledges, as they allow creditors to enforce the security and consolidate mining rights ownership, which are excluded from the bankruptcy estate. If the bankruptcy trustee asserts a claim to these rights, the creditor may request restitution, ensuring direct asset recovery.

This structure removes creditors holding security deeds from the payment order established by Law 11,101/2005 (Bankruptcy and Reorganization Law)²², ensuring priority over other creditors. Their claims will not be subject to judicial reorganization effects, as their property rights over the assets and contractual conditions take precedence.²³

For pledges, although precedents exist for ANM registration and the industry is more familiar with them, mining rights can be claimed and sold in bankruptcy proceedings alongside the debtor’s other assets.

²¹ Art. 176. The deposits, whether being mined or not, and other mineral resources and hydraulic energy potentials constitute property distinct from that of the soil, for the purpose of exploration or exploitation, and belong to the Federal Government, with the concessionaire being guaranteed ownership of the mining product. (author’s translation)

Art. 84. The deposit is immovable property, distinct from the land on which it is located, and the ore or useful mineral substance that constitutes it does not fall under the ownership of the latter. (Renumbered from Art. 85 to Art. 84 by Decree-Law 318/1967) (author’s translation)

²² Law 11,101/2005

²³ **Law 11,101/2005: Art. 49:** All claims existing on the date of the complaint is filed, even if not yet due, are subject to judicial reorganization. (...) Paragraph 3. If a creditor is the owner of movable or immovable property under a security deed, a commercial lessor, the owner or signed a contract for deed on real estate whose respective contracts contain an irrevocability or irreversibility clause, including in real estate developments, or of an owner in a sale contract with reservation of ownership, their claim will not be subject to the effects of the judicial reorganization and the rights of ownership over the property and the contractual conditions will prevail, in compliance with the respective legislation. However, during the suspension period referred to in paragraph 4 of article 6 of this law, the sale or contract for deed for sale of the property, the sale or removal from the debtor’s establishment of capital goods essential to his business activity shall not be permitted. (author’s translation)

Secured creditors would only have payment order priority but could not have the ability to recover assets directly. According to Fernanda Costa Neves do Amaral (2022, apud Sugimoto, 2023):²⁴

“Because the debt is secured by a security deed, legal title to the backing assets has been transferred to the creditor, albeit subject to a reversionary interest held by the debtor, who retains only equitable title to the assets. Since the debtor no longer holds legal title to these assets, the secured debt does not enter the pool of claims if the debtor undergoes judicial reorganization—not even as a first-priority claim. According to Marcelo Barbosa Sacramone, creditors holding security deeds are not subject to a debtor’s judicial reorganization, as such creditors hold legal title to the asset pledged as collateral rather than merely enjoying priority over that asset. Under a security deed, the creditor holds legal title to the asset as security for the underlying obligation, which distinguishes security deeds from other forms of security, such as a mortgage, pledge, or antichresis.” (author’s translation)

Although pledges remain the most common practice, security deeds/fiduciary assignments appear to offer a stronger form of protection in bankruptcy scenarios, despite their uncommon application in mining.

Legal scholars debate about the legal nature of mining rights—whether they should be classified as movable or immovable property for civil law purposes. Albeit relevant, this debate is not the focus of this article. What matters is that, under Brazilian Law, security deeds may apply to movable or immovable property or rights over them, with the applicable legal rules varying depending on the case.

This clearly shows the flaws in the PFE Legal Opinion’s conclusions, that a security deed over such rights is inadmissible, overlooking the fact that the laws already broadly provide for this possibility for both movable and immovable property, with no express exclusion of mining rights.

PFE’s interpretation is overly restrictive. Denying its application to mining rights unduly restricts private autonomy and undermines a legal instrument already recognized for its efficiency in preserving credit and business relationship safety.

²⁴SUGIMOTO, Erick. O que você precisa saber sobre a relação entre alienação fiduciária em garantia e falência? JUSBRASIL. 2023. Available at: [What do you need to know about the relationship between security deeds and bankruptcy? | Jusbrasil](#). Accessed on 07/08/2025.

4. THE EFFECTS OF THE SECURITY DEED AFTER REGISTRATION WITH ANM

Contrary to the Legal Opinion's claim that "*the basic characteristic of the security deed is the immediate transfer of ownership to the creditor along with indirect possession of the asset,*" ownership or reversionary interest under a security deed does not arise automatically.

Registration is contingent on the asset's nature: for movable property, the instrument must be filed with the Notary Public Office²⁵; for immovable property, with the Real Estate Registry Office²⁶.

The encumbrance of mining rights is not a new concept in the mining sector. The previous Mining Code (Decree 24,642/1934) stipulated that liens on mining authorizations would only be valid after title registration. This requirement was later reaffirmed in article 59, paragraph 1, of its Regulation (Decree 62,934/1968).

Similar provisions were incorporated into articles 22²⁷ and 55²⁸ of the current Mining Code, which provides that sale or encumbrance acts only take effect after registration with ANM.

²⁵Decree-Law 911/1969. Art. 66: The security deed transfers to the creditor the domain, subject to reversion, and indirect possession of the movable thing, regardless of the effective delivery, the debtor becoming the direct possessor and trustee with all the responsibilities and charges incumbent upon him under civil and criminal law.

Paragraph 1. Security deed shall be in writing and its instrument, in public or private form, whatever its value, must be filed, by copy or microfilm, with the Notary Public Office of the creditor's domicile, under penalty of not being valid before third parties, and shall contain, in addition to other data, the following: (...) (author's translation)

²⁶ Law 9,514/1997. Art. 23. Reversionary interest due to a security deed on immovable property is established by registering the relevant contract with the relevant Real Estate Registry Office.

Sole Paragraph. With the registered secured deed, possession is divided, with the borrower becoming the direct possessor and the lender the indirect possessor of the immovable property. (author's translation)

²⁷**Art. 22.** The research authorization will be granted under the following conditions, in addition to the others contained in this Code:

I. the title may be the object of assignment or transfer, provided that the assignee satisfies the legal requirements;

I-A. the acts of assignment and transfer will only be valid once they have been duly registered with ANM; (author's translation)

²⁸**Art. 55.** The concession shall subsist, as regards its rights, obligations, limitations, and effects, when the concessionaire sells it or registers it, under the law.

Paragraph 1. Acts of sale or encumbrance shall only be valid once registered with DNPM.

Paragraph 2. The mining concession is only transferable to those who are capable of exercising it under the provisions of this Code.

Paragraph 3. Debts and encumbrances constituted over the concession shall be resolved with its extinction, except for personal action against the debtor.

Paragraph 4. Creditors have no action against the new holder of the extinguished concession, unless the concession, for whatever reason, returns to the domain of the original debtor concessionaire. (author's translation)

A systematic interpretation of the applicable laws shows that the validity of mining rights encumbrance acts has always been conditional on registration with the competent authority. This requirement rules out concerns over an alleged automatic ownership transfer, as claimed by the Legal Opinion.

Even upon forfeiture, effective ownership transfer will only be effective after registration, in compliance with applicable legal and regulatory requirements.

There is no incompatibility between the reversionary nature of interest due to a security deed and the mining titles' legal provisions. Ownership transfer, which is not automatic upon default, remains subject to ANM's approval, either for consolidation purposes or any definitive transfer.

It is a legitimate collateral, subject to the same requirements and conditions applicable to any other type of encumbrance.

To deny the possibility of using a security deed over mining rights based solely on a restrictive interpretation of ANM Regulation 90/2021 while disregarding the regulatory advancements brought by article 92-A of the Mining Code is not only an undue limitation on contractual freedom but also a setback in mineral financing modernization, a sector heavily reliant on intensive capital and efficient credit mechanisms.

Reversionary interest arising from a security deed is precarious in nature and granted exclusively for security purposes. Its creation is legally admissible, with any ownership consolidation and definitive rights' transfer remaining subject to ANM's prior consent, per article 176, paragraph 3 of the Federal Constitution.

The creation of collaterals, including through security deeds, over mining titles mentioned in article 92-A of the Mining Code, is legally possible without limitation as to its purpose. However, in all cases, enforcement and definitive title transfer are subject to ANM consent.

None of the arguments invoked by the Legal Opinion overcome the fact that its interpretation ignores article 92-A provisions of the Mining Code, which allows mining title encumbrance without restrictions as to purpose.

Considering normative hierarchy, an administrative resolution, particularly when issued prior to art. 92-A's introduction, cannot impose limitations unsupported by the legal norm in force.

5. FINAL CONSIDERATIONS

The current legal framework expressly admits the possibility of encumbering mining titles and rights through security deeds without imposing any restrictions on their purpose.

Article 92-A's introduction to the Mining Code broadened its scope, putting an end to previous discussions about the mining rights' nature and purpose when offered as collateral. The absence of distinctions regarding the secured obligation type or legal instrument used highlights that interpreters should not impose limitations not provided in the legal text.

Registration with ANM remains an essential requirement for enforcement against third parties, as it ensures the agency's role in preserving lawfulness and proper standing. Compatibility between security deeds and the mining legal regime results precisely from the requirement of prior administrative consent, under article 176, paragraph 3, of the Federal Constitution.

The amendments to ANM Regulation 90/2021 must be in line with the new article 92-A of the Mining Code. Updating the regulation will provide greater legal certainty for interested parties and allow mining titles to be used more clearly and efficiently as collateral in mining transactions.

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ARTICLE

ENVIRONMENTAL
AND MINING LIABILITY
IN MINING RIGHTS
ACQUISITION
TRANSACTIONS:
MERGERS AND
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STRUCTURING

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ENVIRONMENTAL AND MINING LIABILITY IN MINING RIGHTS ACQUISITION TRANSACTIONS: MERGERS AND ACQUISITIONS LEGAL ANALYSIS AND CONTRACTUAL STRUCTURING

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Keywords: Environmental liability; Mining; Mergers and acquisitions; Environmental liabilities; Due diligence.

Summary: This article examines environmental and mining liability in mergers and acquisitions (M&A) within the mining sector. It focuses on the succession of environmental liabilities and mining obligations under Brazilian law and court precedents, highlighting that environmental obligations are inherent to the property, whereas administrative sanctions are personal in nature.

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The article further addresses different corporate acquisition structures and their impact on the succession of liabilities. It concludes with practical recommendations for structuring M&A deals in the mining sector, emphasizing robust due diligence and contractual safeguards to mitigate risks effectively.

1. INTRODUCTION

The Brazilian mergers and acquisitions (M&A) market has experienced remarkable growth in mining deals. This surge reflects not only the strategic importance of Brazil's mineral resources but also the legal complexity surrounding these transactions, particularly the sensitive relationship between mining rights and environmental liabilities.

Nationwide, mining has established itself as a strategic economic pillar and an indispensable part of everyday life, as most consumer goods contain mineral components or were manufactured using mineral-made tools. However, M&A deals in the mining sector require in-depth scrutiny of risks that transcend conventional business considerations, directly related to environmental law.

Environmental liabilities, especially those arising before the acquisition of assets or shareholdings, have emerged as a central concern in deal structuring. Determining who bears the duty to remedy environmental damage, whether administrative sanctions transfer to successors, and how to allocate these risks contractually are key questions for ensuring legal certainty and attracting sustainable investment.

This article analyzes the complex interaction between Mining Law and Environmental Law in M&A transactions, with a focus on succession of liability, based on the applicable laws and precedents settled by the higher courts, which have shaped the environmental liability regime in Brazil. The implications of share deals and asset deals are also covered, detailing how each type of deal affects the transfer of liabilities.

Finally, best practice recommendations are presented, highlighting the importance of robust due diligence and specific contractual clauses for risk mitigation, supporting the sector's sustainable and legally sound development.

2. LEGAL FOUNDATIONS OF ENVIRONMENTAL LIABILITY

This analysis begins with two fundamental pillars of the Brazilian legal system: ownership of mineral resources and environmental protection. The interaction between these frameworks defines the scope of risks and obligations transferred in the acquisition of mineral rights.



Brazilian law establishes a distinction between ownership of the soil and ownership of mineral resources underground. Under article 20, item IX, and article 176 of the 1988 Federal Constitution, ownership of mineral deposits, whether mined or not, and other mineral resources, is distinct from that of the soil and belongs to the Federal Government.

This ownership duality principle is the foundation of Mining Law in the country. It states that the right to exploit these resources is not inherent to land ownership, but rather must be granted by the Federal Government.

This conceptual separation between soil and subsoil creates additional complexity in M&A deals, as the buyer of a mining right is not necessarily acquiring ownership of the land.

The Constitution also inaugurated a new paradigm for environmental protection in Brazil. Article 225 recognizes an ecologically balanced environment as a third-dimension fundamental right, imposing on both the government and society the duty to protect and preserve it for present and future generations.

The environment's elevation to a constitutional status is not merely symbolic. It creates a legal duty that permeates all economic activities, including mining.

For the mining sector, paragraphs 2 and 3 of article 225 are of paramount importance. Paragraph 2 imposes a specific and direct obligation: *“Anyone who exploits mineral resources must remediate the degraded environment in accordance with the technical requirements set by the competent public authority and applicable law.”*

This is an express constitutional command that binds the exploitation activity to an inescapable duty of remediation. It creates an inseparable connection between the right to mine and the obligation to remediate, affirming that mineral exploitation is not an absolute right, but one subject to environmental preservation and remediation.

Law 6,938/81, regulating the constitutional provision in question, created the National Environmental Policy (PNMA). It provides for environmental protection mechanisms in the country, and two of its provisions are key to liability succession. First, article 3, item IV, defines polluter broadly as *“the public or private individual or legal entity directly or indirectly responsible for an activity that causes environmental degradation.”*

This broad and flexible definition forms the legal basis for joint and several liability, extending the duty to remediate not only to the direct polluter but also to those who benefited from or contributed to the harmful activity, including successors.

Second, article 14, paragraph 1 of the PNMA sets out the strict civil liability principle, stipulating that the polluter must *“regardless of fault, compensate for or remediate the damage to the environment and to third parties affected by its activity.”*



Precedents of Brazil's higher courts have gone even further, consolidating the application of the full risk theory in environmental matters. Under this theory, no circumstances exclude causation: unforeseeable circumstances, force majeure, or third-party actions do not exempt liability. Simply carrying out a hazardous activity, such as mining, makes the operator liable for any resulting environmental damage.

3. THE PROPERTY-BASED NATURE OF ENVIRONMENTAL OBLIGATIONS

Brazilian prevailing case law has recognized that the obligation to remediate environmental damage is inherent to the land, adhering to the property or property right affected by the degradation.

Through Precedent 623, the Superior Court of Justice (STJ) settled that *“environmental obligations have a property-based nature, and may be enforced against the current and/or previous owners or possessors, at the creditor’s discretion.”*

This understanding was further detailed by Precedent-Setting Issue 1,204, which confirmed that remediation can be demanded from the current owner or possessor, from any of the previous owners, or from all of them, jointly and severally.

For buyers of mining rights under asset deals, this entails assuming all environmental liabilities associated with the assets, even if the damage was caused by their predecessors.

This is because the environmental liability is unique to Environmental Law, with its own foundations, and stems directly from article 2, paragraph 2 of the Forest Code. According to this article, *“the obligations provided for in this code are property-based in nature and pass on to successors of any kind upon the transfer of ownership or possession of the rural property.”*

Under Precedent-Setting Issue 1,204, the *“purchaser of a degraded area is also liable for environmental damage.”* Since environmental obligations are tied to property, the creditor may elect to seek compensation or remediation from the current owner or possessor, from any of them, or all of them, *“with the seller whose right over the asset ceased before the damage was caused being exempt from liability, provided that such seller did not contribute to it, directly or indirectly.”*

This is a milestone in Brazilian case law, establishing clear criteria for environmental liability succession and increasing legal certainty in M&A deals.

In Precedent-Setting Issue 999, the Federal Supreme Court (STF) affirmed that *“civil claims for environmental damage are not barred by limitation periods,”* and later, in

Precedent-Setting Issue 1,268, STF extended this understanding to claims for compensation to the public treasury for irregular mineral exploitation, as it is inseparable from the environmental damage caused.

This significantly heightens risks for buyers, who face potentially perpetual liability. The fact that environmental obligations are not subject to limitation periods means that environmental liabilities can emerge decades after the original damage took place, creating enduring uncertainty for investors.

4. DISTINCTION BETWEEN CIVIL AND ADMINISTRATIVE LIABILITY

In sharp contrast to civil liability, administrative liability is punitive and personal in nature. It aims to sanction the offender for unlawful conduct through penalties such as fines, embargoes, or suspension of activities. Due to its very personal nature, administrative sanctions cannot be passed on to a successor who did not commit the infraction.

There is a fundamental distinction between environmental remediation obligations and administrative sanctions, as the former seek to remediate damage in the strict sense. In turn, administrative fines are based on the state's power to impose sanctions, which makes it incompatible with the remediation nature of obligations based on environmental civil liability.

5. TYPES OF M&A TRANSACTIONS AND THEIR IMPLICATIONS

M&A transactions in the mining sector can be structured in one of two main ways: the acquisition of shareholding (share deal) or the acquisition of assets (asset deal). Choosing between these approaches goes beyond tax or corporate considerations. It is a critical decision that shapes the allocation of risks, especially those of an environmental nature.

In a share deal, the transaction involves acquiring the shares of a company that holds mining rights. The buyer takes control of or a stake in the target company, which continues to exist as the same legal entity, retaining its National Register of Corporate Taxpayers (CNPJ), its operating history, and, crucially, all its assets and liabilities.

In this scenario, there is no formal succession of liabilities, as the debtor for environmental liabilities (the target company) remains the same. However, the buyer indirectly assumes all associated risks and liabilities, whether known or hidden. This simplifies operations but exposes the buyer to the target company's entire history of liabilities.

In contrast, an asset deal in the mining sector entails the transfer of the mining right itself—a research permit, mining concession, or lease—from one company to another, with the buyer (assignee or lessee) acquiring the specific asset, but not the corporate structure of the seller.

In an asset deal, environmental civil liability, due to its property-based nature, follows the asset, while personal liabilities, such as administrative fines, generally remain with the seller. Thus, asset deals offer greater flexibility for isolating liabilities but do not eliminate environmental risks entirely.

6. COMPARATIVE INTERNATIONAL PERSPECTIVES

The Brazilian approach to successor liability in environmental matters is not unique. Legal frameworks in other major mining jurisdictions, such as the United States and Australia, reveal a global convergence towards models that seek to ensure environmental remediation and the internalization of pollution costs, although along different paths.

This international convergence demonstrates that the trend towards broad liability in environmental matters is not a Brazilian peculiarity, but a global response to sustainability challenges.

The US system is strongly influenced by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, which establishes strict, joint, and several liability for the remediation of contaminated areas, defining four categories of Potentially Liable Parties that include current and former owners and operators.

The Brazilian system is remarkably similar to CERCLA in that it holds both current and previous owners liable, demonstrating an international trend towards broader liability regimes.

In the US, rigorous due diligence is key, as it can entitle the buyer to certain legal protections, such as the innocent owner defense. The US experience shows that even broad liability regimes can coexist with active M&A markets, provided there are adequate risk mitigation measures.

Australia has introduced an innovative concept known as trailing liability, which allows government authorities to hold former mine owners liable and force them to comply with environmental remediation obligations, even after the asset has been sold to a third party.



The trailing liability regime represents an evolution in the governance of environmental liabilities, recognizing that mine remediation falls onto the one who earned profits from exploitation throughout its useful life. This Australian concept offers an interesting perspective on how to balance liability between different stakeholders throughout the life cycle of a mining project.

7. CONTRACTUAL STRUCTURING AND RISK MANAGEMENT

Given the environmental liability regime, carefully structuring M&A contracts and adopting good management practices are indispensable to ensure legal certainty and protect investments in the mining sector. Proactive management of these risks is not just a compliance issue, but a key strategic element for successful mining operations.

Gathering information and documents for proper due diligence before the property is acquired is also crucial to avoid problems and financial losses stemming from potential liability for environmental damage.

Environmental due diligence should entail a comprehensive assessment of all the environmental and mining aspects of the relevant asset. This includes a thorough documentary analysis of environmental licenses and their renewal history, mining titles and status before the National Mining Agency (ANM), environmental monitoring reports, history of environmental investigations and fines, assessment of environmental liabilities, analysis of soil and water resource contamination, risk assessment of tailings dams, verification of compliance with environmental conditions, and legal compliance.

Comprehensive due diligence is the first line of defense against hidden liabilities and allows for more accurate risk-based pricing. Representations and warranties clauses are also essential contractual tools for risk allocation, through which the seller formally attests to the veracity of information about the target company or asset.

In addition, indemnity clauses are a fundamental mechanism for allocating environmental risks between the parties, and it is advisable to provide for the seller's environmental liabilities before the closing date. This includes time and monetary limitations for claims, specific procedures for notifying and resolving disputes, as well as the seller's obligation to financially compensate the buyer for any loss and damage arising from liabilities prior to the transaction.

Although these clauses do not eliminate the risks associated with the property-based nature of environmental liabilities, they are important mechanisms for protecting and allocating responsibilities between the parties.

Environmental insurance, performance bonds, and other financial instruments are also substantial risk mitigation mechanisms. To make sure that sellers will have the resources to honor their obligation, the parties can negotiate financial guarantees, including holding a portion of the purchase price in an escrow account, hiring specific insurance for the deal, or demanding bank or corporate guarantees.

These financial instruments give credibility to contractual safeguards and ensure the effectiveness of compensation mechanisms.

8. CONCLUSION

The Brazilian legal framework demonstrates the consolidation of a particularly strict environmental and mining liability regime for successors of mining rights.

In line with international trends, the Brazilian system imposes on buyers strict, joint and several, property-based civil liability to fully remediate environmental damage, with no limitation period.

This requires a sophisticated and diligent approach on the part of market agents, as selecting a share or asset deal structure goes beyond a purely fiscal and corporate analysis. The proactive management of environmental liabilities and the careful legal and contractual structuring of transactions are no longer mere risk mitigation measures. They are now integral to the mining asset's value.

Sustainability, in its environmental, social, and governance (ESG) dimensions, is no longer a peripheral concept or an additional cost, but a central pillar for assessing, pricing, and negotiating mining rights. Its effective integration into M&A strategies is indispensable for legal certainty, the continuity of mining operations, and the long-term success of investments in the Brazilian mining sector.

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ARTICLE

RESTRICTIONS ON
THE DIRECT AND
INDIRECT ACQUISITION
AND LEASE OF
RURAL PROPERTIES
BY FOREIGNERS IN
MINING M&A DEALS

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RESTRICTIONS ON THE DIRECT AND INDIRECT ACQUISITION AND LEASE OF RURAL PROPERTIES BY FOREIGNERS IN MINING M&A DEALS

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Abstract: This article examines the restrictions on the acquisition and lease of rural properties by foreigners and Brazilian companies deemed foreign under applicable laws, highlighting their implications for M&A deals in the mining sector. It explores the legal framework, including Law 5,709/1971, Federal Decree 74,965/1974, and AGU Opinion LA-01/2010, while also addressing constitutional and environmental aspects. The article further discusses how the legal definition of rural property shapes mining activities.

1. INTRODUCTION

Mining operations are intrinsically contingent on the use of properties predominantly located in rural areas, where mineral deposits are generally located. These areas are essential not only for mineral extraction but also for establishing the infrastructure required

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to ensure the mining operations' viability, including meeting environmental compensation requirements arising from impacts authorized under an environmental license.

A significant challenge for mining companies derives from the restrictions imposed by Brazilian laws, particularly Law 5,709/1971, as reaffirmed by Opinion LA-01/2010 of the General Counsel's Office (AGU), on the direct and indirect acquisition and lease of rural properties both by foreigners and Brazilian companies deemed foreign by the applicable laws. These restrictions include prior authorization from the National Institute for Colonization and Agrarian Reform (INCRA), limits on the concentration of rural areas held by foreign interests of the same nationality within a given municipality, and other case-specific conditions.

These restrictions extend beyond the direct acquisition of rural properties through purchase and sale agreements and encompass indirect transactions resulting from corporate reorganizations, including mergers, acquisitions, and changes to the shareholding control of the companies involved.

The interpretation of these rules has been the subject of continuous debate, reflecting changes in public policy and in Brazil's political and economic priorities. Ongoing discussions also concern the extent to which such restrictions should apply to mining activities, given their strategic relevance and national interest, as well as their role in serving broader public objectives.

This article examines the legal framework governing the restrictions applicable to foreigners and to Brazilian companies deemed foreign under applicable laws, particularly in the context of M&A transactions in the mining sector. It further explores the different interpretations of what constitutes rural property for mining purposes and the practical implications of these definitions for such restrictions. The analysis underscores that compliance with this regulatory framework is crucial to ensure both legal certainty and the economic feasibility of these transactions.

2. SUMMARY OF THE APPLICABLE FRAMEWORK

Currently, the restrictions³ on the acquisition and lease⁴ of rural properties in Brazil are governed by Law 5,709/1971, Decree 74,965/1974, as well as Law 8,629/1993, as interpreted by AGU Opinion LA-01/2010.

Under article 1, paragraph 1, of Law 5,709/1971⁵, **(i)** foreign individuals residing in Brazil and foreign legal entities authorized to operate in the country; and **(ii)** Brazilian legal entities in which foreign individuals or legal entities residing or headquartered abroad, hold, in any capacity, a majority interest, may acquire rural properties in Brazil only if the applicable restrictions are duly observed in advance.

Article 20 of Decree 74,965/1974 states that indirect acquisitions or leases of rural properties by foreigners or foreign-controlled Brazilian entities, in any capacity, whether resulting from corporate reorganizations, including merger and acquisition processes or changes to the shareholding control of a company that owns or leases a rural property, are also subject to the same restrictions.

The 2010 AGU Opinion offered a comprehensive interpretation of article 1, paragraph 1, of Law 5,709/1971, clarifying that: **(i)** a majority of corporate capital equals corporate control; and **(ii)** the expression in any capacity encompasses both the direct and indirect foreign participation in a Brazilian company that owns or leases rural property. Accordingly, the restrictions apply not only to direct control but also to indirect control, extending to the ultimate controlling individual(s).

³ **(i)** Foreign legal entities may only acquire rural properties intended for the development of agricultural, livestock, industrial, or colonization projects related to their corporate purposes. These projects must be approved by the Ministry of Agriculture, after consultation with the competent federal agency responsible for overseeing regional development in the area of the intended acquisition (Article 5 of Law 5,709/71 and Article 11 of Decree 74,965/74); **(ii)** the total area of rural properties owned by foreign individuals or legal entities may not exceed one-quarter ($\frac{1}{4}$) of the surface area of the municipality where such properties are located, as verified through a certificate issued by the Land Registry Office (Article 12 of Law 5,709/71). The acquisition of rural areas beyond the established limits will require prior approval from the President of the Republic; **(iii)** companies or individuals of the same nationality may not hold, within the same municipality, more than 40% (forty percent) of the limit mentioned in item **(ii)** above, which corresponds to 10% (ten percent) of the total area of each municipality (Article 12, paragraph 1, of Law 5,709/1971); **(iv)** the acquisition of an area exceeding 100 (one hundred) undefined development modules (which may vary according to the characteristics of each region in Brazil) will require prior approval from the National Congress (Article 23, paragraph 2, of Law 8,629/93); and **(v)** the acquisition must necessarily be formalized through a public deed (Article 3 of Decree 74,965/74).

⁴ Rural lease, *arrendamento rural* in Portuguese, is governed by the Land Statute (Brazilian Federal Law 4,504/1964).

⁵ “Law 5,709/1971. Article 1. A foreign national residing in the country and a foreign legal entity authorized to operate in Brazil may only acquire rural property in accordance with the provisions of this Law. Paragraph 1 – However, a Brazilian legal entity in which foreign individuals or legal entities residing or headquartered abroad hold, in any capacity, a majority interest shall also be subject to the regime established by this Law.”

In line with the above, the 2010 AGU Opinion further establishes that a Brazilian company under foreign control must be identified based on an analysis of its corporate capital structure, the ability of foreign shareholders or foreign members to approve resolutions at the company's meetings, appoint the majority of the board of directors, and steer the company's activities, as prescribed by article 116 of Law 6,404/1976 (Brazilian Corporation Law).

The acquisition or lease of rural properties by foreigners or by foreign-controlled Brazilian companies, whether directly or indirectly (through the acquisition of corporate interests), is subject to prior approval by INCRA to verify compliance with the applicable restrictions in each specific case. In cases where a rural property exceeds one hundred (100) Undefined Exploration Modules (MEI)⁶, the value of which varies according to the characteristics of each region in Brazil, the acquisition or lease will also require prior approval from the National Congress. This requirement is governed by INCRA Regulation 88/2017.

Any acquisition or lease of rural property, and any changes to the corporate structure of a company holding rights over rural property (whether through ownership or lease), carried out in violation of the applicable laws, are **null and void** under article 19 of Decree 74,965/1974⁷ and, as such, cannot be ratified. The respective declaration of nullity, however, cannot be issued by INCRA on its own initiative. Rather, it must be declared in an administrative or court proceeding initiated by the Chief Internal Auditor of the State Court or the local District Court, always with the participation of the State Attorney General's Office.

Without seeking to provide an exhaustive account of the history behind the enactment of Law 5,709/1971, the following timeline highlights the main amendments and the key shifts in AGU's interpretation of the matter.

⁶ "Undefined Exploration Module (MEI) is a unit of measurement in hectares, based on the concept of a rural module. It is used in processes related to land acquisition by foreigners. The size of the MEI varies according to the Typical Module Zone (ZTM) of the municipality where the rural property is located. The MEI is assessed based on the concept and calculation methodology of other rural modules, such as horticulture, permanent and temporary crops, livestock, and extractivism. The areas of the MEI also aim to reflect the socioeconomic conditions of each of the nine ZTMs. Thus, the more developed the typical module zone, the smaller the area of the undefined exploration module, and the less developed the zone, the larger its respective dimension." (Available at **MÓDULO DE EXPLORAÇÃO INDEFINIDA — INCRA (WWW.GOV.BR)**. Accessed on 08/20/2025).

⁷ "Article 19. The acquisition of rural property in violation of the applicable laws is null and void: the Notary who drafts the deed and the registry official who transcribes it will be civilly liable for any damage caused to the contracting parties, without prejudice to criminal liability for malfeasance or fraudulent misrepresentation; the seller will be forced to return to the buyer the price of the property, or the amounts received under this title, as part of the payment."

Legal Framework	Content
Law 5,709/1971	Establishes restrictions on the acquisition of rural property by foreigners and foreign-controlled Brazilian entities (article 1, paragraph 1).
Decree 74,965/1974	Regulates Law 5,709/1971. Article 20 expressly extends restrictions on indirect acquisitions through corporate reorganizations, including mergers, acquisitions, changes in control, or other corporate transformations.
Law 6,634/1979	Provides for special rules for the border strip (150 kilometers from the international border). Any act conferring title, possession, or property rights to foreigners or foreign-controlled entities requires prior approval from the National Security Council (CSN/now CDN).
1988 Federal Constitution	Article 190 authorizes laws to regulate and limit the acquisition and lease of rural properties by foreigners and to define situations requiring authorization from the National Congress. Article 171 (later repealed by Constitutional Amendment 6 of 1995) distinguished Brazilian companies in general from Brazilian companies with national corporate capital.
Law 8,629/1993	Extends the restrictions of Law 5,709/1971 to rural leases (article 23). Foreigners and foreign-controlled entities are subject to the same limits and conditions applicable to acquisitions. The National Congress must authorize acquisitions or leases exceeding the statutory limits, including transactions involving more than 100 MEI by foreign legal entities.
.AGU Opinion GQ-22/1994	Concludes that article 1, paragraph 1, of Law 5,709/1971 was not incorporated into the 1988 Constitution due to its incompatibility with Article 171, thereby excluding foreign-controlled Brazilian entities. Approved by the Brazilian President but not published in the Official Gazette. Thus, it lacks a general binding effect, applying only to executive agencies and the Ministry of Agriculture.
Constitutional Amendment 6/1995	Revokes article 171 of the Federal Constitution, eliminating the distinction between a Brazilian company and a Brazilian company with national corporate capital. This amendment removes the constitutional status of the matter, allowing it to be regulated by statutes enacted by Congress.
AGU Opinion GQ-181/1998	Reaffirms the inapplicability of article 1, paragraph 1, of Law 5,709/1971, as a repealed law does not automatically reinstate a prior law (article 2, paragraph 3, of the Introductory Law to the Rules of Brazilian Law). Unlike the 1994 opinion, this one was published in the Official Gazette and signed by the President, thereby binding the entire Federal Public Administration (Supplementary Law 73 of 1993, article 40, paragraph 1).
AGU Opinion LA-01/2010	Reverses the previous understanding and restores the restrictions of Law 5,709/1971 (and Decree 74,965/1974) to Brazilian legal entities with majority foreign capital and controlled by non-residents or non-domiciled entities. Published in the Official Gazette and signed by the President, it is binding for the Federal Public Administration. Revokes Opinions GQ-22/1994 and GQ-181/1998.

Continues

Interministerial Ordinance 4/2014	Sets out transitional rules in light of Opinion LA-01/2010, recognizing as valid transactions acquisitions carried out between June 7, 1994, and August 22, 2010, including public deeds not yet registered and corporate acquisitions filed with commercial registries.
Law 13,986/2020	Introduces exceptions to the restrictions established by Law 5,709/1971 and amends Law 6,634/1979, including: (i) the creation of security interests over properties, such as fiduciary ownership; and (ii) acquisitions resulting from the settlement of obligations with legal entities through the enforcement of collaterals, payments in kind, or equivalent mechanisms.
Regulation 88/2017	Details the administrative procedures to be followed for prior approval of acquisitions or leases of rural properties by foreigners or foreign-controlled entities, as required by Law 5,709/1971 and Opinion LA-01/2010.

3. IMPLICATIONS OF THE 2010 AGU OPINION'S BROAD INTERPRETATION FOR M&A TRANSACTIONS IN THE MINING SECTOR

Based on the review of the applicable regulations, this matter is particularly significant given the interpretation settled by the 2010 AGU Opinion. In practice, this interpretation prevents even companies duly incorporated under Brazilian law and headquartered in the country, directly or indirectly controlled by foreign shareholders, from acquiring or leasing rural properties. The same restriction applies to corporate transactions that transfer control of companies owning or leasing rural properties to foreign investors. The matter is further complicated by the lack of assurance that administrative approval will be granted in specific cases, as INCRA has so far authorized only small-scale rural land transactions involving foreign individuals.

3.1 Mining Activities in the Brazilian Legal Framework

As a starting point, it is essential to define the scope of Federal Law 5,709/1971 and determine whether it applies to mining activities regularly carried out in Brazil. While the primary purpose of the statute, as stated in its preamble, is to regulate the acquisition of rural properties by foreigners and foreign-controlled Brazilian companies, its provisions, particularly article 5, set out specific limits and conditions. They provide that these entities are allowed to purchase rural land only for agricultural, livestock, industrial, or colonization projects, provided such projects align with their corporate purposes and have been approved by the competent authorities.

A systematic reading of the statute and its regulations shows that the 1971 lawmaker did not contemplate mining activities, overlooking specific aspects inherent to the sector.

This raises a key question: what qualifies as mining activities, and how might their legal definition shape the application of Law 5,709/1971? At first glance, the issue may seem straightforward; yet, as this article demonstrates, its answer entails complex legal considerations and far-reaching practical consequences for the mining sector.

Mining has been expressly recognized as an activity of public interest since 1941, with the enactment of Decree-Law 3,365, which governs expropriations for public interest purposes. This recognition underscores its status as a matter of national interest, a principle later reaffirmed by the 1988 Federal Constitution in article 176, which states:

Article 176. Mineral deposits, whether or not under exploitation, together with other mineral resources and hydraulic energy potentials, are deemed property distinct from the land, for purposes of exploration or use. They belong to the Federal Government, while ownership of the extracted mining product is ensured to the public concession company.

Paragraph 1. The development of mineral resources and use of the potentials referred to in the head of this article may only be carried out under authorization or concession granted by the Federal Government, in the national interest, **by Brazilians or by companies incorporated under Brazilian law, headquartered and managed in the country**, in accordance with the law, which shall establish specific conditions for activities conducted in border areas or on indigenous lands. (as amended by Constitutional Amendment 6 of 1995).

At this point, it is worth noting that the shift in the Brazilian legal framework governing the treatment of Brazilian companies deemed foreign under Law 5,709/1971, culminating in the 2010 AGU Opinion, originated from Constitutional Amendment 6/1995, which repealed article 171 of the Federal Constitution. By doing so, it eliminated the constitutional distinctions between a Brazilian company and a Brazilian company with national corporate capital, thereby allowing statutes enacted by Congress to establish the criteria for what constitutes a Brazilian company.

Given that the wording of article 176, paragraph 1, was introduced by the same Constitutional Amendment, it is clear that the Constitution imposes no restriction on Brazilian companies with foreign corporate capital or control to develop mining activities. The only exceptions expressly provided concern operations in border strip areas and on Indigenous lands.

Explanatory Note 37/1995, submitted by the Executive Branch alongside the proposal that ultimately led to Constitutional Amendment 6/1995, makes it clear that the amendment

to article 176, paragraph 1, sought to remove the exclusivity previously granted to companies with national corporate capital under article 171 of the Federal Constitution. The aim was to foster foreign investment into the mining and electric power sectors, while maintaining Federal Government oversight through the requirement of prior authorization or concession.

If the Federal Government already assesses and safeguards the national interest when granting mining rights, how can the law require that this same assessment be repeated for the acquisition or lease of rural properties to enable the development of those mining activities on such land?

3.2 Environmental Compensation in Environmental Licensing for Mining Activities

Another key aspect of the topic is the well-established requirement, based on the polluter-pays principle, to restore and/or compensate for all damage caused by environmentally harmful activities.

The environmental licensing procedure set out in the National Environmental Policy Act (PNMA) and incorporated into the 1988 Federal Constitution was designed to balance socioeconomic development with environmental sustainability. Within this framework, environmental compensation, provided for in various forms under Brazilian law, emerges as a vital instrument of the country's environmental policy. Since it is often impossible to fully restore environmentally protected assets affected by polluting activities (such as mining), compensatory measures in line with the polluter-pays principle serve as a subsidiary form of redress for the resulting damage.

The relevance of environmental compensation is clear. To secure environmental licenses and authorization to extract natural resources, mining companies are often required to implement compensatory measures. One common way to meet this obligation is through the acquisition of properties and preservation of ecological characteristics similar to those of the affected site, which are usually also located in rural areas.

Following the same reasoning, how can Brazilian companies under foreign control, which have been granted mining rights by the Federal Government, effectively implement their projects if they are not even allowed to secure the environmental licenses necessary for their execution?

In an effort to overcome this impasse, the State of Minas Gerais, mindful of the restrictions arising from the interpretation of Law 5,709/1971 by the 2010 AGU Opinion,

introduced article 44 in State Decree 47,749/2019⁸, which governs environmental intervention authorizations and forest production within the state. This provision allows companies meeting environmental compensation obligations to act solely as financial contributors, eliminating the requirement to acquire rural properties and, consequently, avoiding the restrictions currently in force.

Despite Minas Gerais' mitigating measures, a fundamental question remains in Brazilian law: how can Brazilian companies under foreign control be authorized to exploit and commercialize mineral resources owned by the Federal Government, while prohibited from acquiring the private land essential to maintain areas with comparable ecological characteristics for their operations?

3.3 The Definition Of Rural Property Under Brazilian Law

If the preceding arguments were not enough to highlight the inconsistency of broadly applying the restrictions derived from the 2010 AGU Opinion to mining activities, we now turn to a final issue that lies at the very core of the discussion: the **definition of rural property**.

The Land Statute (Law 4,504/1964) defines rural property by the type of activity carried out on the land, namely agricultural, livestock, or agro-industrial purposes. This means that even properties located in urban areas may be deemed rural if intended for such activities, and rural properties may not be considered as such if used otherwise.

In turn, the Brazilian Tax Code (Law 5,172/1966) adopts the location of the property as the defining element for the assessment of the Rural Land Tax (ITR), classifying as rural those properties outside the urban zone of the municipality.

These definitions often come into play in discussions regarding the applicability of the Urban Real Estate Tax (IPTU) versus the ITR, as IPTU is a municipal tax and ITR is a federal one. The Superior Court of Justice (STJ), in Precedent-Setting Issue 174, established the following: *“Urban Real Estate Tax (IPTU) does not apply, but rather Rural Land Tax (ITR), to property located within the urban area of a municipality, provided that it is used for extractive, vegetal, agricultural, livestock, or agro-industrial activities”*. (STJ, Precedent-Setting Issue 174). Thus, a property located in an urban area will be subject to ITR if its use for rural activities is duly substantiated.

⁸ State Decree 47,749 of November 11, 2019, State of Minas Gerais. *“Article 44 – In cases of compliance with compensation obligations through the allocation to the public authority of areas located within Conservation Units, the entrepreneur may act solely as a financial contributor.”*

Revisiting the provisions of the Land Statute, particularly article 4, which defines rural property as “*a rustic property, of continuous area, regardless of its location, intended for agricultural, livestock, or agro-industrial use*”. A careful reading of this provision makes it clear that mining activities are not included among the listed purposes for the application of the use-based classification.

Ambiguities arising from the reference to extractive activities were addressed by article 18, III, combined with article 27 of Decree 4,382/2002, which narrowed the definition to areas specifically used for vegetal extraction. Similarly, article 26 of Regulation 256/2002, issued by the Federal Revenue Service (SRF), establishes that only vegetal extractivism counts as a valid extractive activity for ITR assessment, thereby expressly excluding mining.

While debates on the distinction between rural and urban property have primarily focused on the applicability of one tax over another, a further legislative gap can be observed.

This is because, if a property, even though located in a rural zone, is not used for the activities expressly listed in article 4 of the Land Statute but rather for mining (an activity subject to its own tax regime, beyond the scope of this article), it could be argued that it does not qualify as rural and, therefore, would not be subject to the restrictions of Law 5,709/1971.

However, there still is a grey area regarding the definition of rural property and the enforcement of Law 5,709/1971 restrictions: should rural status be determined by **(i)** the property’s location outside of the urban area and the ITR payment, or **(ii)** the economic activity carried out on it?

The fact that the activity developed, such as mining, is not listed in article 4 of the Land Statute to define a property as rural is enough to justify the non-application of the restrictions to Brazilian companies under foreign control.

Given the legal uncertainty deriving from this discussion, a more conservative approach would be to convert rural properties into urban to enable foreign participation (majority participation and/or control) in mining operations or to consider other legal arrangements and property rights to allow foreign-controlled Brazilian entities to use rural land.

4. CONCLUSION

It is clear that, since the 2010 AGU Opinion reaffirmed the restrictions on transactions involving foreign-controlled Brazilian entities, numerous questions have arisen regarding its legal applicability and its compatibility with the contemporary context marked by

globalization, the intense flow of international capital, and growing economic interdependence among nations. In this scenario, aligning legal provisions with current realities and ensuring legal certainty in their application have become imperative.

The debate clearly extends beyond theory. Considering the absolute nullity of transactions carried out in violation of the restrictions and the various obstacles faced by companies in the sector before real estate registry offices attempting to use rural properties for mining activities, numerous contractual arrangements have been adopted to secure possession of these properties, since possession, like other property rights, is not covered by the legal restrictions.

The significance of the controversy is underscored by the judicialization of the matter, most notably through Original Civil Action (ACO) 2,463—a lawsuit filed directly before the Federal Supreme Court (STF) under its original jurisdiction—and Action Against the Violation of Fundamental Precept (ADPF) 342, both of which remain pending final judgment before the STF.

At the same time, Bill 2,963/2019, currently under consideration in the National Congress, seeks, among other amendments, to ease the restrictions applicable to Brazilian companies under foreign control. These developments reflect the social, political, and economic pressures, driving a reassessment of the existing legal framework across all branches of government.

The analysis carried out throughout this article shows that the issue extends beyond the compatibility of Law 5,709/1971 with contemporary realities. It lies in a true regulatory mismatch in how the statute is applied to the mining sector. Although mining is constitutionally recognized as an activity of public interest, the interpretation consolidated by AGU Opinion LA-01/2010 has been applied indiscriminately, disregarding the specificities of the industry. The contradiction is evident: while the Federal Government itself grants mining rights to foreign-controlled Brazilian companies after determining that they serve the public interest, sub-constitutional laws restrict access to rural properties that are indispensable for carrying out such activities and complying with related obligations, such as the environmental compensation measures required in licensing procedures.

It is important to emphasize that the critique presented here is not intended to weaken the protection of national sovereignty or to downplay the need for state control over strategic sectors. Rather, it aims to promote legal certainty and regulatory coherence, ensuring that applicable rules keep pace with legislative and economic transformations, and reflect the strategic relevance of mining for the country's development.

The significance of this impasse becomes even more pronounced when viewed against the backdrop of the Mining Code (Decree-Law 227/1967), which imposes on mining

concession companies the legal duty to pursue mining activities until the exhaustion of the deposit, under threat of sanctions. How can this obligation be fulfilled if, conversely, barriers are placed preventing the acquisition or lease of the rural properties essential to the development of such activities?

The inconsistency is further aggravated by the inadequacy of the very legal definition of rural property. While the Land Statute (Law 4,504/1964) defines it by reference to agricultural, livestock, and agro-industrial activities, complementary and tax regulations expressly exclude mining from the scope of valid extractive activity. This regulatory disconnection reinforces the need to revisit the criteria used to define rural properties linked to mining activities, under penalty of increasing legal uncertainty and fostering contradictory interpretations.

Given this framework, it is essential to acknowledge the urgency of legislative reform to align the rules governing the acquisition of rural properties by foreign-controlled Brazilian companies with the constitutional and economic realities of the mining sector. Without such reform, the outdated regulatory framework will continue to pose barriers to both domestic and foreign investment and erode legal certainty in a sector vital to Brazil's strategic and economic development.

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ARTICLE

REAL ESTATE ASPECTS
IN MERGERS AND
ACQUISITIONS IN
THE MINING SECTOR:
THE IMPORTANCE
OF DUE DILIGENCE
IN STRUCTURING
TRANSACTIONS

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REAL ESTATE ASPECTS IN MERGERS AND ACQUISITIONS IN THE MINING SECTOR: THE IMPORTANCE OF DUE DILIGENCE IN STRUCTURING TRANSACTIONS

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1. INTRODUCTION

First, it is important to put into perspective the importance of the Brazilian mining sector. It represents approximately four percent (4%) of the national GDP, according to data from the Ministry of Mines and Energy (MME), with significant growth expected in the coming years.

In addition to this growth trend, Brazil's mining industry is currently undergoing a period of intense transformation, as new mineral assets are being sought after, several of which

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have supranational interests. This amplified spotlight is directly linked to the global energy transition and the digitalization of the economy, imposing an almost exponentially driven demand for strategic minerals.

As a result, investments and corporate transactions have intensified, including various mergers and acquisitions (M&A) in the sector, which are becoming increasingly frequent and sophisticated.

Mindful of this expansion scenario, it should be noted that M&A transactions in the sector present specific complexities that transcend the scope of conventional due diligence.

The peculiarity of mining assets—characterized by the constitutional separation between ownership of the soil and the subsoil, the multiplicity of applicable legal regimes, and the constant convergence with environmental and land issues—makes a specialized approach essential, including a tailored analysis of real estate aspects.

Unresolved land issues not identified during the transactional process can significantly affect the operational viability of mining projects and create ripple effects across other areas related to the project.

Issues such as unclear and/or fragile land titles, lack of georeferencing, overlapping claims, and environmental liabilities pose significant risks. Proximity to sensitive areas, including historical or archaeological heritage sites, environmental protection areas, or land occupied by traditional communities, also presents challenges. These risks can render projects unfeasible or create significant contingencies, which may be exacerbated if they are only identified later on.

This article aims to analyze the main real estate aspects that permeate M&A transactions in the mining sector, focusing on the significance of specialized real estate due diligence as an essential tool for identifying and mitigating risks.

Although a complete assessment necessarily entails multiple analyses encompassing other aspects, some of which have already been mentioned above, this article focuses on the real estate aspects, which are sometimes ignored or considered to be of lesser importance. Such an approach risks underestimating their impact on mining ventures, often under the justification of their public interest.

Another reason for choosing this focus is the dynamism of the market—especially M&A deals in the mining sector—is the need to comply with a constantly evolving regulatory framework, and the potential financial and operational risks associated with irregularities not identified during the transactional process.

2. REAL ESTATE DUE DILIGENCE SPECIFIC TO MINING ASSETS

2.1 Concept and Specificities of the Mining Sector

Real estate due diligence is a systematic and generally preventive process that consists of analyzing information and documents to assess the legal status of the property or project under negotiation, and to identify any legal risks and liabilities.

In the mining context, real estate due diligence takes on specific characteristics due to the nature of the assets involved and the regulatory complexity of the sector.

The analysis of these assets must consider the relation between surface and subsoil rights and assess the validity of the titles backing possession and ownership, in accordance with mining, environmental, cultural, and land laws.

In practice, M&A transactions in the mining sector often require the analysis of companies whose main assets are rural properties with potential or established mining operations. These properties may be subject to different legal regimes, requiring specific and individualized examination of each case.

2.2 Real estate due diligence in the mining sector

Real estate due diligence in the mining sector has particularities that differentiate it from traditional analysis in several critical aspects.

As a general rule, assessment of the property's chain of title transcends mere ownership of the land to include ownership of mining rights. Under constitutional provisions, mineral resources destined for exploration or development are deemed property distinct from that of the land, subject to a specific regime.

Thus, the holder of the mining right and the owner/possessor of the area can be (and usually are) different people, and it is up to the legal system to provide mechanisms to ensure that the mining activity, recognized as being of public interest, can be carried out.

The analysis must also take into account other legal and regulatory aspects. This includes compliance with environmental licensing procedures and specific authorizations from the National Mining Agency (ANM) and other bodies to understand whether it is possible to implement the project in that particular location, and the conditions for doing so. It further involves assessing risks from land claims by indigenous peoples or traditional communities, with the corresponding demarcation before the National Institute of Colonization and Agrarian Reform (INCRA). Additionally, compliance with the Forest Code, verification of georeferencing accuracy, and adherence to Municipal land use guidelines must be checked.

The identification of liabilities, especially environmental ones, takes on a critical dimension in real estate due diligence. Mining activities are subject to strict environmental controls and obligations to remediate any damage. In Brazil, these obligations often have grounds in the Constitution or are deemed *propter rem* obligations, meaning they are tied to the actual property. As a result, owners may bear secondary risks or costs associated with the remediation.

It is also essential to check that the legal reserve area is in order and to identify any permanent preservation areas. This analysis should involve overlaps with mining areas, the need for environmental compensation and its location, and the existing contractual structure, including the adequacy of instruments and any need for restructuring.

Certain recurring patterns of irregularities serve as warning signs, such as inconsistencies in ownership titles, manifested in properties formally registered in the name of third parties or without proper registration with the competent Real Estate Registry Office. Under Brazilian law, ownership of immovable property is only perfected by registering the title deed with the competent registry office. Private instruments, although valid between the parties, do not create enforceable rights against third parties.

In the words of Fabrício Zamprogna Matiello: *“Before the registration of the title thus conceived, only a personal or transactional right is generated between the parties who signed it; only with the registration will the property right arise, that is, the power of the acquirer over the thing and the consequent enforceability before third parties, binding all other individuals, in an abstract universality”*. (Código civil comentado: Lei n. 10.406, de 10.01.2002 – 7 ed. São Paulo: LTr, 2017, p. 641).

Discrepancies between the documented area and the actual areas of rural properties are also common. These differences can limit the effective use of the property or raise questions about its validity, especially for mining and environmental licensing purposes. They may require additional documentation, complementary studies, or prior land title rectification, which can extend the rectification period and affect transactions.

Another recurring issue is the absence of georeferencing for properties over 25 hectares—an indispensable requirement for any act relating to the property’s registration. It is important to note that as of November 2025, this obligation will also apply to properties with an area smaller than 25 hectares.

The identification of environmental liabilities, such as discrepancies in legal reserve areas, unauthorized interventions in Permanent Preservation Areas (APPs), lack of environmental licenses, or non-compliance with conditions, may give rise to administrative, civil, and sometimes even criminal liability, in addition to temporarily making it impossible to secure licenses for new projects or imposing encumbrances on essential activities.

Identifying and analyzing the findings of a real estate due diligence is key. It must take into account the peculiarities of a specific case, ensuring proper assessment and the structuring of mechanisms to protect and mitigate risks for stakeholders.

3. LAND OWNERSHIP AND TITLE RECTIFICATION

3.1 Interface between Land Ownership and Mining Rights

As previously noted, the Brazilian Constitution establishes that mineral deposits constitute property distinct from that of the soil for purposes of exploration or development, with their ownership vested in the Federal Government.

Likewise, article 84 of the Mining Code states that “the deposit is immovable property, distinct from the soil on which it is located, and the ore or useful mineral substance that constitutes it does not fall under the real estate’s ownership”.

Article 1,230 of the Civil Code reinforces this distinction by stating that “ownership of the land does not include deposits, mines, and other mineral resources (...)”.

This dichotomy implies that the holder of the mining right and the owner of the land may be different parties, a situation with practical implications. It requires an analysis of the holder of the mining rights, linked to that of the holder of the area, as well as the formalization of appropriate contractual instruments to enable the lawful development of the land, especially given that mining is deemed a public interest activity.

3.2 Public Interest Activity

Mining activities are of national and public interest, as established in article 176 of the Brazilian Constitution and article 2 of the Mining Code Regulation (Decree 9,406/2018). This characterization gives holders of mining rights specific prerogatives to access areas of interest, even when they do not own the land.

Article 27 of the Mining Code, for example, guarantees to the holder of a research permit the right to carry out work on government or privately-owned land, upon payment of monetary compensation for the occupation and any resulting damage to the property. This provision represents a legal mechanism that underpins the viability of compulsory access to areas of mining interest, even in the absence of an agreement with the landowner, provided that the relevant judicial procedures are adopted.

Along the same lines, landowners may be subjected to the compulsory use of their land through the creation of an easement, or even be deprived of it altogether in cases of expropriation for mining purposes. These measures are provided for in article 2, item

XXI, of Law 13,575, article 59 et seq. of the Mining Code, Law 3,365/1941, and article 41 of Decree 9,406/2018, all of which will be addressed in greater detail below.

It follows, therefore, that due to the national and public interest status associated with mining activity, access must be ensured to the researcher or miner. This is necessary so as not to create insurmountable obstacles to the development of this activity, which supplies inputs for many other industries, especially those considered fundamental to the national economy.

Where there is resistance from the landowner to allow access or to sign appropriate contractual instruments, the interested party may petition the courts to secure such access. The feasibility of accessing the area will then be assessed, along with the conditions for such access, including the determination of rents and compensation for the use of the land and any damage resulting from mining activities.

3.3 Land Risk Mitigation Strategies

Implementing land risk mitigation measures is essential for operations in the mining sector. The findings of due diligence and the specifics of each negotiation must be taken into account to devise strategies tailored to the parties involved and the primary objective of the deal.

When prior rectification is not feasible, it becomes all the more important to properly structure the contractual instruments, incorporating clauses that ensure compliance with the applicable real estate requirements and mitigate risks for the parties involved.

This includes specific representations and warranties concerning the status of the land, obligations to undertake the necessary rectifications within defined milestones, liability mechanisms for identified defects or discrepancies, provisions for compensation and penalties in the event of non-compliance, among other safeguards.

It may also be necessary to establish suspensive or precedent conditions related to land title rectification, making the closing of the transaction contingent upon the resolution of serious issues identified during due diligence.

Depending on the issue, different courses of action may apply. In all cases, however, the interests of the parties, the purpose of the negotiation, the allocation of risks for each party, and the need to ensure that each stage is conducted in a compliant and appropriate manner must be duly considered.

3.4 Legal Structuring of Contractual Relationships

To secure access to areas of interest for the development of mining activities, contracts establishing surface rights may serve as particularly useful instruments for entrepreneurs.

A commonly used contractual instrument, in this case, is the assignment of possessory rights. This instrument is particularly important when the target company holds mining rights over areas owned by third parties.

Given the precarious nature of possession, when compared to ownership, this contractual arrangement is subject to legal limitations that must be appropriately addressed to ensure legal certainty for the enterprise and the interested parties.

The mining easement, in turn, is a specific form of administrative easement. In the words of Bruno Feigelson, *“it is a type of administrative easement, expressly provided for in the Mining Code, since mining is an activity of national interest and should therefore prevail over private interest”* (FEIGELSON, Bruno. Mining Law Course. São Paulo: Saraiva, 2012. Pag. 245).

The Mining Code, in its article 59, further provides a non-exhaustive list of the purposes for which mining easements may be created, including the installation of equipment, the opening of transportation routes, the construction of transmission lines, and other activities necessary for mining projects. This flexibility allows easements to be tailored to the specific needs of each project, allowing areas necessary to carry out the mining undertaking to be subject to such a regime.

Mining easements may be created either by mutual agreement or court order, and the interested party may request a Declaration of Public Interest (DUP) from ANM. However, the lack of specific ANM regulation governing DUPs currently hampers its practical application, making it necessary, in some scenarios, to resort to alternative contractual instruments.

As a rule, mining easements and surface rights are preferable to contracts involving the transfer of possessory rights and/or leases in long-term transactions, as they establish rights enforceable before third parties and, therefore, provide greater legal certainty.

However, their full effectiveness requires more stringent formalities, such as proper registration with the competent Real Estate Registry Office. They may further demand judicial proceedings in the event of resistance from the superficiary. Additionally, administrative and judicial measures may be necessary to address documentary or registration discrepancies in the property title. These steps are needed to enable the registration and proper establishment of the intended right.

The particularities of each case must be carefully examined within the scope of the due diligence to propose suitable and adequate alternatives for the interested parties that also ensure compliance with the applicable legal requirements.

4. CONCLUSION

The analysis of real estate aspects in mining operations, with a view towards implementing proactive land title rectification strategies and structuring legally viable deals for the parties involved, highlights the complexity and critical importance of specialized real estate due diligence.

The increasing dynamism of the market and the evolution of the regulatory framework make the promotion of due diligence indispensable. Verifying the chain of ownership, identifying liens and encumbrances, analyzing regulatory compliance, and assessing environmental liabilities are some of the essential elements of this process. Likewise, the appropriate approach to structuring contractual guarantees and the use of suspensive or precedent conditions prove fundamental to ensuring transactions grounded on legal certainty and mitigating potential liabilities.

Real estate due diligence, therefore, emerges as an indispensable tool for identifying and mitigating risks, enabling the interested parties to accurately assess the circumstances surrounding properties intended for mining activities.

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ARTICLE

LEGAL DUE DILIGENCE
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AN ESSENTIAL TOOL
FOR IDENTIFYING
AND COMBATING
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LEGAL DUE DILIGENCE IN THE MINING SECTOR: AN ESSENTIAL TOOL FOR IDENTIFYING AND COMBATING CHILD LABOR AND SLAVE-LIKE LABOR

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1. INTRODUCTION

The Brazilian mining sector plays a crucial role in the national and international economy, accounting for a substantial portion of the country's exports and generating thousands of direct and indirect jobs. However, it also faces structural challenges related to

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sustainability and social responsibility. One of the most critical issues is the possibility of child and slave labor practices³, both in direct operations and in supply chains.

Legal due diligence is a systematic process of investigating, analyzing, and verifying legal and regulatory aspects. It is an indispensable tool for identifying, preventing, and mitigating labor risks, either before (as preparation and presentation of the business, known as vendor due diligence) or during a corporate deal.

This article analyzes the relevance of legal due diligence in the mining sector, in light of the Brazilian legal system, international standards, and applicable verification protocols.

2. LEGAL AND REGULATORY CONTEXT

2.1 Brazilian Legislation

Brazil has implemented a robust system to combat slave and child labor. The Federal Constitution, in article 5, item XLVII, letter c, prohibits forced labor sentences. Article 7, item XXXIII, bans night, dangerous, or unhealthy work for children under the age of eighteen and any work for children under the age of sixteen, except as apprentices from the age of fourteen.

Article 149 of the Brazilian Penal Code makes it a crime to reduce someone to a slave-like condition, which encompasses forced labor, exhausting working hours, degrading conditions, and debt-based restrictions on freedom of movement.

Regulation 671/2021, issued by the Ministry of Labor and Employment (MTE), defines the elements that characterize slave-like work and the criteria for inspecting it:

- I. **forced labor:** work under threat of physical or psychological punishment and for which the worker has not volunteered or does not spontaneously wish to remain;
- II. **exhausting working hours:** any form of physical or mental work that, due to its extent or intensity, entails a violation of the worker's fundamental rights, especially those related to safety, health, rest, and family and social life;
- III. **degrading working conditions:** any form of denial of human dignity through the violation of the worker's fundamental rights, notably those laid down in the rules on labor protection, occupational safety, hygiene, and health;

³ In this article, we use the terms “slave-like work”, “forced labor”, and “contemporary slavery” as synonyms to describe the same set of conditions, such as: forced labor, exhausting working hours, degrading working conditions, restriction on freedom of movement due to debts owed to the employer or agent (whether at the time of hiring or during the course of the employment contract), confinement to the workplace through limitations on the use of transportation, constant and oppressive surveillance, and confiscation of personal documents or belongings.

- IV. restrictions on freedom of movement due to debts:** limitations on the fundamental right of movement or to stop working, due to debt imposed by the employer or agent, or inducement to indebtedness to third parties;
- V. confinement to the workplace through limitations on the use of transportation:** any form of limitation on the use of private or public means of transportation that could be used by the worker to leave the workplace or accommodation;
- VI. constant and oppressive surveillance:** any form of direct or indirect control or supervision by the employer or agent over the worker, preventing them from leaving the workplace or accommodation; and
- VII. confiscation of personal documents or belongings:** any form of illicit possession by the employer or agent of the worker's personal documents or objects.

As for child labor, the Child and Adolescent Statute (ECA) and the Consolidation of Labor Laws (CLT) establish specific protections. CLT defines a minor as a person between the ages of fourteen and eighteen and prohibits anyone under the age of sixteen from working, except as an apprentice starting at fourteen.

2.2 International standards

Brazil is a signatory to the main International Labor Organization (ILO) conventions on the subject. ILO Convention 29 defines forced labor as “all work or service exacted from an individual under threat of any penalty and for which he has not offered himself his own free will.”

ILO Conventions 138 and 182 establish, respectively, the minimum age for being hired as an employee and the worst forms of child labor. Convention 138 sets a minimum age of fifteen for employment and eighteen for work that could harm the health, safety, and morals of young people. Convention 182 identifies four specific types of child labor considered to be the worst, two of which are particularly relevant to the mining sector: all forms of slavery or similar practices and work that may harm the health, safety, and morals of children.

3. LEGAL DUE DILIGENCE

3.1 The Specificity of the Mining Sector

The mining sector has characteristics that amplify the risks of slave and child labor. Operations often take place in remote regions, through complex and extensive supply chains, involving multiple suppliers and service providers. This configuration creates

environments conducive to irregular labor practices, especially when there are deficiencies in monitoring and control systems.

The nature of mining activities, often classified as dangerous or unhealthy, makes the rigorous verification of the workers' age and working conditions even more critical. As highlighted above, under Brazilian legislation, minors under the age of eighteen cannot work at night, in dangerous, or unhealthy conditions.

3.2 Legal Due Diligence: Concept and Application

Legal due diligence consists of a systematic process of investigating, analyzing, and verifying legal and regulatory aspects related to a company, operation, or supply chain. In the fight against slave and child labor, this tool plays a strategic role in identifying risks, implementing preventive controls, and continuously monitoring labor practices.

3.2.1 Stages of Labor Due Diligence

As a rule, labor due diligence should entail the following stages:

- **Risk Mapping:** identification of critical points in the activity and supply chain.
- **Preventive Controls:** verifying the age of workers, checking the suitability and contractual clauses of service providers, and implementing and publicizing reporting channels.
- **Continuous Monitoring:** audits, on-site inspections, and periodic reviews.

Risk Mapping and Assessment

The first step is thoroughly mapping the activity and supply chain, as well as an assessment of jurisdictional risks. Companies in the mining sector must implement processes proportionate to the risks identified to ensure the exclusion of forced or slave labor and, above all, child labor.

The assessment should consider factors such as the geographical location of operations, the regions' socio-economic profile, the history of labor infractions, the complexity of the supply chain, and the nature of activities.

Implementation of Preventive Controls

Effective due diligence requires the implementation of robust preventive controls, including:

- Clear corporate policies on child and slave labor;
- Procedures for verifying the workers' age and documentation;

- Procedures for verifying suitability and specific contractual clauses with suppliers and service providers;
- Systems for monitoring and auditing working conditions;
- Implementation and dissemination of whistleblowing channels; and
- Remediation mechanisms.

Processes should ban unjustified restrictions on employees' freedom of movement, retention of personal documents, demands for deposits or recruitment fees, and practices that prevent contractual termination.

Supply chain monitoring

Supply chain monitoring is a critical element of due diligence. Mining companies should extend their checks at least one link up the supply chain, especially in jurisdictions with a higher risk of child or forced labor.

Standards related to forced and child labor should be incorporated into selection processes and contractual documentation, and suppliers should be required to maintain the same rigor in their own chains.

3.2.2 International examples

IRMA Standard – Initiative for Responsible Mining Assurance

The **Initiative for Responsible Mining Assurance (IRMA)**⁴ is an international multi-sector platform that sets rigorous environmental, social, and governance performance standards for industrial mining operations. It aims to ensure greater transparency, protect human rights, and promote sustainability throughout the mining value chain.

The **IRMA Standard v.1.1**, available in Portuguese, contains more than 400 auditable requirements organized into four main axes: business integrity, planning for positive legacies, social responsibility, and environmental responsibility. The criteria include, among others, the prohibition of forced and child labor.

The system includes stages of self-assessment, independent external auditing, and public classification at levels such as IRMA Transparency, IRMA 50, 75, or 100. Brazilian companies have already been assessed according to this standard.

⁴ <https://responsiblemining.net/resources>

TSM Protocol

The Towards Sustainable Mining (TSM) protocol⁵, developed by the Mining Association of Canada, provides a set of protocols and indicators for assessing social and environmental performance in mining operations. The areas covered include tailings management, climate change, community relations, biodiversity, and child labor prevention. The system includes self-assessments, independent audits, and disclosure of results in public reports.

International Regulations

The development of international regulations on human rights due diligence, such as the European supply chain legislation, will influence the practices of Brazilian mining companies operating globally.

The European Union's Corporate Sustainability Due Diligence Directive 2024/1760 was adopted in July 2024 and came into force the same year. It requires companies with significant turnover in the EU to identify, prevent, mitigate, and remedy human rights and environmental violations along their value chains, including labor violations.

The German Supply Chain Act (LkSG), in force since January 2023, requires companies to monitor labor and environmental risks in their operations, implement whistleblowing channels, and publish annual compliance reports, with penalties of up to 2% of annual revenue.

The EU Regulation 2017/821 (Conflict Minerals Regulation) has been applied since 2021 to importers of 3TG (tin, tantalum, tungsten, their ores, and gold), requiring due diligence according to the Organization for Economic Co-operation and Development's (OECD) guidelines, and public disclosure of results.

Thus, to operate in the European market or with international investors and buyers, Brazilian companies must meet the due diligence requirements set by these regulations, including traceability and risk mitigation. Compliance with these regulations has a direct impact on access to contracts, exports, and ESG capital.

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3.3 Strategic Benefits of Due Diligence

Mitigation of Legal and Reputational Risks

Implementing effective due diligence processes allows mining companies to identify and mitigate risks before they materialize in legal proceedings or reputational issues. Prevention is always more effective and less costly than subsequent remediation.

In 2024, Pan American Silver Corp. implemented a due diligence system for suppliers⁶ through a third-party digital platform, based on its Global Human Rights Policy and Supplier Code of Conduct, which expressly prohibits forced and child labor. This system has allowed the company to identify and eliminate risks related to human rights violations before they become litigation or reputational crises.

Regulatory Compliance

Due diligence ensures compliance with legal and regulatory obligations, reducing exposure to administrative sanctions, lawsuits, and other adverse consequences.

By way of example, AMG Brasil S.A. has been audited under the Responsible Minerals Assurance Process (RMAP), in line with OECD guidelines for areas of conflict and high risk⁷. The 2023 audit confirmed that the company meets due diligence requirements in its supply chain, demonstrating compliance with international standards and avoiding administrative sanctions.

Sustainability and Social Responsibility

Companies that demonstrate effective commitment to combating slave and child labor strengthen their position in the market, attract conscientious investors, and contribute to the sustainable development of the communities where they operate.

Glencore regularly publishes its “Modern Slavery Report”⁸, detailing its human rights due diligence: from checking suppliers to demanding equivalent standards throughout the chain. The company’s actions follow ILO conventions and reinforce its commitment to sustainable and responsible practices in the eyes of investors and society.

⁶ Governance – Pan American Silver

⁷ Five Steps – RMAP – Due Diligence Guidance 2024 – 16-05-2025

⁸ Glencore – 2024 Modern Slavery Statement

Access to Markets and Financing

Especially in the European Union, investors, financiers, and business partners are increasingly demanding evidence of human rights due diligence under the European Corporate Sustainability Due Diligence Directive. Mining companies with well-documented processes have easier access to sustainable investment funds and demanding business partners.

3.5 Practical Implementation of Due Diligence

Planning Phase

The effective implementation of due diligence processes requires careful planning, including defining the scope and objectives, identifying the necessary resources, establishing a timeline, appointing a multidisciplinary team, and developing a specific methodology.

Execution of the Verification

Execution should follow a structured methodology, including document analysis (policies, procedures, contracts), interviews with managers and workers, on-site inspections of facilities, verification of labor records, and supply chain analysis. Verification should include confirmation of implemented processes proportionate to jurisdictional risks.

Documentation and Reporting

Adequate documentation is essential to demonstrate the effectiveness of implemented processes. Reports should include the methodology used, findings and observations, risks identified, recommendations for improvement, and corrective action plans.

4. RECOMMENDATIONS FOR MINING COMPANIES

Based on the above, the following are recommendations for mining companies to adopt in Brazil:

- 1. Clear Corporate Policy:** Establish a specific policy prohibiting child and slave labor, in line with ILO conventions and local laws.
- 2. Integrated Management System:** Integrate the prevention of slave and child labor into existing management systems, including operational procedures, internal controls, and performance indicators.

- 3. Training:** Train internal teams on risk identification, verification procedures, and incident response protocols.
- 4. Strategic Partnerships:** Collaborate with specialized organizations, government bodies, and other companies in the sector to strengthen prevention practices.
- 5. Continuous Monitoring:** Implement continuous monitoring systems, including regular audits, on-the-spot inspections, and reporting channels.

Adopting these measures will make mining companies attractive to investors and allow high-value corporate transactions.

5. CONCLUSION

Legal due diligence has become a strategic tool in tackling slave and child labor practices in the mining sector. Its effective implementation not only ensures compliance with legal obligations and the sustainability of operations but also strengthens the institutional image of companies in the eyes of the market and society.

The effectiveness of this tool depends on top management commitment, investment in adequate resources, and the implementation of robust processes to mitigate risks. Collaboration between companies, government bodies, civil society organizations, and specialized professionals is key to effectively facing these challenges.

The Brazilian mining sector has the opportunity to lead by example, demonstrating that it is possible to reconcile economic development with respect for workers' fundamental rights. Legal due diligence is the way to achieve this goal, contributing to a fairer and more sustainable future for all those involved in the mining value chain.

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ARTICLE

MINING CONTRACTS:
STRATEGIC TOOLS
FOR THE EFFICIENT
DEVELOPMENT OF
DEPOSITS AND RISK
MITIGATION

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MINING CONTRACTS: STRATEGIC TOOLS FOR THE EFFICIENT DEVELOPMENT OF DEPOSITS AND RISK MITIGATION

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1. INTRODUCTION

Mining is an economic activity of great relevance and exerts significant socio and environmental impacts, standing out prominently within the Brazilian legal framework. Its importance extends beyond the financial aspect, being elevated to the status of national and public interest by article 176 of the 1988 Federal Constitution.

This constitutional mandate allows miners to seek profit but also imposes upon them the responsibility to ensure the efficient development of the country's mineral wealth. In this sense, established legal writings in Mining Law reinforce that mineral exploration,

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even when carried out by private parties, must always prioritize public interest, striving to achieve the greatest possible benefit from mineral resources for society.

Therefore, efficiency in the mineral sector is not limited to merely increasing productivity or lowering costs. It also involves optimizing the utilization of mineral resources within deposits. Considering this, the mineral sector faces a challenge due to its very nature: the fixed location of mineral deposits. Unlike other activities, the location and extent of a mineralized body are fixed and cannot be altered. This inherent rigidity is one of the pillars that characterize mineral deposits, as established in article 2 of Decree 9,406/2018, which regulates the Brazilian Mining Code.

Frequently, the polygonal area of mining rights defined by the National Mining Agency (ANM) for exploration and mining concessions may not coincide with the actual geological boundaries of the mineralized deposit, which can extend beyond or be smaller than the legally defined area. On this matter, Pedro Ataíde states:

Locational rigidity is the most important peculiarity of mining, according to which the exploration and extraction of ores can only occur where a deposit exists. That is, if an entrepreneur aims to extract iron ore, this activity cannot be carried out anywhere else on the globe, but only where there is an individualized mass of this mineral substance with economic potential for mining. Even the nomenclature is quite suggestive: locational (in the choice of location), rigidity (lack of malleability). A different situation occurs, for example, with the installation of a pharmaceutical industry, whose opportunity to select a location is far superior⁵ (translated).

The disconnect between the legally defined boundaries of mining rights and the actual geological extent of mineral deposits often leads to complex scenarios, particularly in neighboring operations, making it impossible to extract all valuable ore that lies beyond the official limits and ultimately undermining both the economic efficiency of mining operations and the optimal development of deposits.

This article analyzes the importance and unique aspects of partnerships and joint mining agreements as essential tools for promoting efficiency in mineral exploration. It aims to demonstrate how these contractual models can streamline the development of deposits, minimize operational and legal risks, and highlight important precautions miners should take when drafting and managing them, all with the goal of ensuring sustainable and long-lasting operations.

⁵ ATAÍDE, Pedro. *Direito Minerário*. 3. ed. Salvador: Juspodivm, 2020, page. 48.

2. CONTRACTS AND MINERAL DEPOSIT DEVELOPMENTS

As pointed out above, mineral exploration inherently faces the challenge of deposit rigidity, where the location and shape of the deposit are unalterable characteristics dictated by the natural geological formation of the subsoil. Consequently, the legal delimitation of a mining right, materialized in the concession's polygonal area, often does not perfectly align with the true extent of the mineralized body, hindering optimal mineral deposit development.

This disconnect creates boundary challenges where valuable ore portions extend beyond the confines of granted areas into neighboring lands or areas held by other industry players. When exploration is carried out separately within the strict confines of the polygonal area of each mining right, it may lead to considerable operational and economic inefficiencies, manifesting in duplicated infrastructure, wasted resources, and the inability to develop a truly finely tuned mining plan that encompasses the deposit's full geological and economic scope.

At this critical juncture, contracts emerge as invaluable strategic tools for optimizing deposit development, serving as bridges that align interests and overcome obstacles. The execution of partnership or joint mining agreements between mining companies holding contiguous areas, or whose deposits are naturally interconnected underground, allows for transcending the legal barriers imposed by individual polygonal delimitations.

Through meticulously drafted and legally binding contractual instruments, the parties involved can pool their efforts and resources, enabling collaborative development that yields substantial advantages. This makes it possible to create an integrated mining plan and design an exploration strategy that best covers the deposit in its geological totality.

This approach not only maximizes ore recovery but also ensures that portions considered uneconomical in isolated operations become viable and profitable when mined jointly. The collaboration further allows for infrastructure efficiencies by sharing key access points, such as ramps and shafts, and crucial processing facilities and other operational support structures. This leads to a significant cut in operational and capital costs for all parties involved, improving profit margins and competitiveness.

Beyond these benefits, improved mineral resource exploration through partnership agreements contributes to reduced environmental impact by keeping the disturbed area under control and making more rational use of natural resources and tailings disposal sites, naturally aligning economic efficiency with indispensable sustainability practices.

Finally, coordinated and comprehensive deposit development through contractual partnerships increases mine lifespan, extending the duration of operations and, consequently,

generating long-term value, which also contributes significantly to the security of the national mineral supply.

Partnership agreements in the mining sector should not be viewed as mere legal formalities but rather as essential mechanisms for achieving efficiency in mineral exploration. These agreements transform the inherent physical rigidity of deposits and the limitations imposed by polygonal boundaries into strategic opportunities for collaboration and synergy, paving the way for more rational, complete, and, above all, economically advantageous development of valuable mineral resources.

3. CONTRACTUAL INSTRUMENTS AND STRUCTURES FOR INTEGRATED OPERATIONS

While the economic and operational efficiencies of mining sector partnerships are unquestionable, it is fundamental that miners recognize the need for robust contractual instruments to regulate these partnerships. The intrinsic complexity of mining activity, marked by high investments, long terms, and substantial risks, requires contracts that foresee diverse scenarios, clearly allocate responsibilities, and establish effective mechanisms for relationship management.

Inefficiency or lack of clarity in contractual clauses can, in such an uncertain environment, create significant risks and liabilities for the parties, severely compromising the longevity and success of operations.

Mining partnership risks are multifaceted, ranging from operational issues, such as production deviations and accidents, market issues, including fluctuations in commodity prices, and regulatory issues, encompassing changes in mining or environmental laws, to financial issues, such as the need for additional capital contributions, and governance and corporate issues, like decision-making impasses or partner disagreements.

To mitigate these risks, well-drafted contracts function as strategic guides for partnership management, anticipating potential problems and establishing predefined solutions. They serve as essential tools for risk allocation and mitigation, distributing risks fairly and defining each party's responsibilities in the face of challenges that will inevitably arise.

To this end, contracts must include detailed clauses addressing a clear division of costs and profits, and expressly defining each party's environmental and social responsibilities. They must further provide for escrow accounts or other guarantees covering potential liabilities and contingency plans for adverse situations, and establish effective dispute resolution mechanisms, such as mediation and arbitration, to avoid litigation

and preserve relationships. Without a solid contract, the partnership can quickly degenerate into disputes, leading to operational stoppages and significant financial losses for all involved.

Extensive mining sector experience, combined with specialized legal knowledge, demonstrates that various contractual structures can effectively govern integrated operations and strategic partnerships. Choosing the most appropriate structure depends on a careful evaluation of multiple factors like project complexity, investment level, pre-existing relationships between the parties, long-term collaboration goals, and tax and regulatory considerations based on the main structures commonly used to regulate such operations.

3.1 Mining Rights Lease Agreement

A Mining Rights Lease Agreement serves as a cornerstone instrument and primary contractual structure for enabling integrated operations. It provides a strategic way to temporarily transfer mining rights, allowing the titleholder—the lessor—to hand over operational control to another party—the lessee—who may possess superior technical or financial capabilities.

However, this arrangement is subject to strict regulatory oversight. Article 130 of Regulation DNPM⁶ 155/2016 requires the lease agreement to be submitted for prior approval and subsequent registration with ANM. This legal formality is essential to ensure the agreement's public record and enforceability before the regulatory body:

Article 130. Total and partial lease agreements for mining concessions and mine manifests must be submitted to DNPM for prior approval and registration.

§ 1 Total or partial lease agreements under other mineral resource exploitation regimes, as well as sublease agreements, shall not be permitted.

§ 2 For the purposes of the head of this article, a lease is any agreement whose purpose is the exploitation of the deposit without the transfer of title of the mining concession or mine manifest. It may allow payment, in whole or in part, through the transfer of the mined product, regardless of whether the titleholder has a purchase preference for the mineral.

§ 3 Agreements whose purpose is the outsourcing of any mining operations, in whole or in part, are not subject to registration if characterized as such at DNPM's discretion.
(translated)

⁶ DNPM (National Department of Mineral Production) was the regulatory body at the time this rule was issued. It has since then been replaced by ANM, which now handles these responsibilities.

This contractual instrument permits deposit exploitation without permanently transferring the mining right title, and it is only allowed under the mining concession and mine manifest regimes, applicable to the entire area or a part of it. For clarity, according to paragraph 2 of Article 130 of the regulation, a lease is *“any agreement whose purpose is the exploitation of the deposit without the transfer of title of the mining concession or mine manifest. It may allow payment, in whole or in part, through the transfer of the mined product, regardless of whether the titleholder has a purchase preference for the mineral.”*

However, it is imperative not to confuse the lease’s purpose—authorizing deposit exploitation without permanent title transfer—with mining operations outsourcing cases. In the latter instances, the contract is not subject to registration by ANM, as stated in paragraph 3 of the same article, reflecting different legal natures and regulatory requirements.

Therefore, a thorough review of ANM-required documentation and subsequent regulatory approval are essential to ensure compliance and legal certainty of the exploration process. Due to the inherent complexity of this contract, a careful prior assessment is recommended. This ensures that the rights and duties of both the lessor and lessee are rigorously protected, creating a balanced and solid legal relationship.

When it comes to key clauses in this type of contract, beyond those typically found in general partnership agreements, a peculiarity of utmost importance in Lease of Mining Rights Agreements must be singled out. Article 149 of Regulation DNPM 155/2016 establishes that the parties involved—both lessor and lessee—are jointly and severally liable for all obligations arising from the mining title.

Therefore, contracts submitted to ANM for registration must contain express clauses assigning joint and several liability to the parties, under penalty of rejection of the registration request. This legal requirement highlights the importance of addressing this responsibility carefully when structuring lease agreements, as this liability binds both parties in the event of any environmental, social, or regulatory violations or damages.

To protect the parties’ interests, contracts must be drafted with well-defined internal responsibilities. They should also include provisions allowing one party to seek recourse in case it is found liable for an act solely caused by the other.

Conversely, this joint and several liability makes the assessment of lessees even more critical, as a lease signed with a party that does not have a history of full compliance with applicable regulations, especially mining and environmental ones, can be a prelude to serious future problems for the lessor.

The importance of lease agreements for deposit developments lies primarily in enabling the exploration of mineral deposits that would otherwise remain inactive or underutilized. Often, the holder of a mining right lacks the technical expertise, capital, or infrastructure necessary for efficient development and extraction of the deposit. Through a lease, the titleholder can transfer operational responsibility to a lessee with the necessary capabilities and resources or collaborate with a neighboring mining right holder to develop the deposit.

This strategic transfer allows for the implementation of advanced technologies, optimization of mining plans, and investment in modern equipment, ensuring a more thorough and cost-effective extraction of ore. Consequently, the lease not only secures royalty generation for the right owner but also contributes significantly to maximizing the intrinsic value of the deposit and supporting the public interest in the rational exploitation of the country's mineral resources.

3.2 Outsourcing Agreements for Mining Operations

Outsourcing operations are among the most widespread management tools in modern mining, allowing mining right holders to hire specialized companies to execute crucial activities in the production cycle. Driven by Law 13,429/2017, which consolidated the possibility of outsourcing core business activities, this model covers everything from drilling, blasting, and hauling to the ore processing itself. The main goal is resource optimization: contracting companies gain access to state-of-the-art technology, high-cost equipment, and specialized labor, turning what would be substantial capital expenditure (CAPEX) into more manageable operational expenditures (OPEX).

Unlike lease agreements, outsourcing does not transfer technical control or strategic mine management. Mining right holders remain solely responsible for mining plans and for all obligations before ANM. For this reason, such agreements are not subject to registration and are treated as service agreements.

The effectiveness and security of such agreements rely on several meticulously drafted clauses designed to protect mining right holders. A detailed Scope of Work (SOW) is fundamental, as it must precisely describe all activities, production targets, and quality specifications. The contract must further require the service provider to strictly follow all Health, Safety, and Environment (HSE) standards, both legal and internal to the mining company, and should include a clear responsibility matrix to avoid operational disputes.

To cover potential liabilities, the contract must also require the service provider to maintain adequate insurance coverage. A robust indemnification or hold harmless clause is

critical. As the cornerstone of the right holder's protection, this clause requires the service provider to defend and compensate the contracting party for any damage, fines, or legal proceedings resulting from its failure to comply or negligence.

While these clauses offer strong legal protection, they do not eliminate significant risks that right holders still face, the most serious being joint and several liability as well as strict liability. Before ANM, mine owners remain liable for environmental damage, workplace accidents, and tax liabilities generated by service providers.

As legal experts warn, outsourcing does not entail the transfer of liabilities. Therefore, effective risk mitigation must extend beyond the contract itself, beginning with a thorough due diligence investigation of the service provider's financial health and safety records before contract execution. This must be followed by continuous and vigilant management and oversight from the right holder's team throughout the contract's duration.

Well-drafted contracts are more than legal safeguards; they serve as active management tools that, through performance metrics and audit rights, allow right holders to monitor operations, address deviations, and proactively prevent accidents and liabilities, ensuring that the benefits of outsourcing are not overshadowed by its inherent risks.

3.3 Mining Rights Assignment Agreement

Mining Right Assignment implies the definitive total or partial transfer of a mining title. It assures the assignee a legal position identical to that of the assignor and implies that the assignee fully undertakes all rights and obligations inherent in the acquired right. As a result, only individuals or entities legally entitled to hold mining rights can act as assignees, as determined by the applicable laws, including article 176 of the 1988 Federal Constitution, the Mining Code, and its Regulation.

The procedures for requesting assignment approval and subsequent registration are outlined in article 224 of DNPM Regulation 155/2016, which requires the submission of an electronic application to ANM, accompanied by the duly signed contract:

Article 224. The request for approval and registration of total or partial assignment of mining rights must be submitted through a standardized electronic application form, to be completed on ANM's website and filed via the Digital Filing system, duly accompanied by the respective supporting documents and evidence.

§ 1. The request for approval and registration of total or partial assignment of an exploration permit, license registration, small-scale mining permit, the right to apply for a mining concession, or the mining concession application itself must be submitted along with a contract signed by the assignor, either alone or jointly with the assignee. In the

case of a total or partial assignment of a mining concession, the contract must necessarily be signed by both the assignor and the assignee.

§ 2. Except for the request for approval and registration of total or partial assignment of a mining concession, which must be addressed to the Minister of Mines and Energy, all other requests for registration of assignment of rights must be addressed to the Director-General of ANM.

§ 3. The total or partial assignment or transfer of applications for exploration permit, license registration, and small-scale mining permit is not allowed. (translated)

For the assignment—in whole or in part—of exploration licenses, licensing registrations, mining permits, rights to apply for mining concessions, and mining concession applications, the contract must bear at least the signature of the assignor, though the assignee may also sign it. In turn, the total or partial assignment of mining concessions strictly requires signatures of both the assignor and the assignee. It is relevant to note that while assignments of mining concessions must be submitted to the Minister of Mines and Energy (MME), other requests for registration of assignment of rights must be addressed directly to ANM's Director-General.

The regulation also specifies at which stages of the mining right process assignments can be registered. Paragraph 3 expressly prohibits the total or partial assignment of mining rights that are still in the application phase for exploration licenses, license registrations, and small-scale mining permits, before they are formally granted. Once the assignment is granted, the assignee must meet specific conditions, such as: for assignments of mining concession applications, mining concession, or licensing stages, the assignee must be a legal entity; for mining permits, only individuals or cooperatives of artisanal miners qualify; and, for exploration licenses, the assignee may be either an individual or a legal entity.

In addition to verifying compliance with legal and regulatory requirements, the parties must draft contractual clauses expressing all agreed commercial terms with utmost clarity and accuracy. Preferably, these provisions should establish clear and measurable conditions, relying on objective standards and criteria to avoid ambiguity.

Contractual instruments often set prices, or significant portions thereof, based on revenue, profits, and/or the volume of extracted/sold ore without providing well-defined criteria, leaving payment terms open to subjective interpretation and potential disputes. To avoid any pitfalls, drafting these contractual clauses demands not only legal expertise once pricing and payment terms are agreed upon by the parties, but also technical inputs from specialists who understand the mining operation and can substantially assist in constructing these operational provisions.

From the acquirer's or assignee's perspective, a thorough due diligence into the status and compliance of the mining right is essential. This includes confirming its validity, checking the expiration date, identifying encumbrances, outstanding fines, forfeitures, or other administrative proceedings before ANM. Additionally, a comprehensive assessment of potential liabilities or assessments arising from previous titleholder actions is key.

This prior diligence aims to mitigate the risks that the assigned title may be invalid, expired, or under the process of revocation or imposition of penalties by ANM. It also aims at preventing the assignee from being held liable for environmental, social, regulatory, or financial obligations stemming from events caused by previous holders. It is, therefore, pertinent to assess the applicable regulation regarding liability for known and potential future liabilities not yet identified. In cases of greater complexity, depending on the circumstances, a thorough technical assessment of the area, both of the property and of the pre-existing mining activity, may be strongly advisable to effectively mitigate future risks.

Conversely, assignors, acting as sellers, are primarily concerned with ensuring effective receipt of agreed assignment amounts, as it is common for full payment not to be completed at contract signing. To protect their interests, assignors may require guarantees or collateral instruments, which may include offering the mining right itself for this purpose, providing greater security to the transaction.

Other specific provisions can be included in these contracts based on the intended operations and party-defined strategies. These may cover detailed payment methods according to the particularities of each case, such as royalty payments, restrictions on the assignment of mining rights or related legal entities until the price is fully paid, or until prior approval from the assignor is granted. In addition, provisions on access to and use (possession and/or ownership) of properties essential to the mining operation, and confidentiality clauses to protect sensitive operations or certain information, are among various other customizable provisions.

In summary, numerous variables require careful evaluation to construct the most appropriate legal instrument to protect the interests of the parties involved. This process undoubtedly demands specialized technical legal advice to maximize the security of operations and prevent future disputes.

3.4 Corporate Agreements for the Constitution of Joint Ventures (JVs) and Special Purpose Entities (SPEs)

Joint Ventures (JVs) are collaborative arrangements between two or more entities formed to achieve common objectives. Special Purpose Entities (SPEs) are frequently

used to legally structure these JVs, especially when the purpose requires creating a new legal entity. An SPE is a specific form of an incorporated joint venture, created with a limited corporate purpose and a lifespan often tied to the duration of the project that originated it.

The main underlying purpose for structuring JVs that form new companies for joint enterprises lies in isolating risks and liabilities associated with large-scale projects. This segregation of assets and liabilities makes it less probable that parent companies will be directly impacted by potential financial, operational, or legal adversities inherent in that specific initiative. This allows the JV partners to maintain total focus on the project's activities and results without interruptions affecting other operations of their respective main companies. This approach, in turn, serves as a highly effective mechanism for risk management in capital-intensive and complex sectors like mining.

Joint Ventures, by their intrinsically collaborative nature, allow companies with different expertise and resources to combine forces in achieving objectives that would be overly complex, costly, and/or difficult to accomplish individually. The purposes of a JV are multifaceted, encompassing everything from sharing substantial capital investments in greenfield (and sometimes brownfield) mining projects to mitigating political challenges in complex jurisdictions or enhancing specific technical capabilities. The core characteristics of a JV include sharing profits, losses, and control, with each JV partner typically holding equity stakes in the new entity (if one is formed). This arrangement provides access to an expanded pool of expertise and knowledge, leveraging each party's strengths to foster innovation, streamline operations, and boost market competitiveness.

To mitigate risks inherent to these complex arrangements, JV and SPE must be meticulously structured through robust corporate agreements, such as constitutional documents and, crucially, shareholders' agreements. These contractual instruments must thoroughly address the allocation of risks and responsibilities, clearly defining who bears which burdens. They must also identify governance mechanisms for the new entity, establish decision-making quorums, define operator duties, protect minority rights to prevent deadlocks, and outline capital commitments, specifying each party's contributions and applicable remedies in the event of default. Finally, they must further detail exit strategies from the partnership, allowing for an orderly dissolution of the JV or SPE, if necessary.

Lack of objective alignment among partners and potential cultural clashes are common risks that require management through clauses encouraging transparent communication and cooperation, in addition to providing clear and escalating dispute resolution mechanisms.

In mining contexts specifically, SPEs and JVs generally prove to be extremely useful for deposit development. They allow for the aggregation of substantial capital, an essential element for projects with long maturation periods and high investment intensity. They also facilitate the exchange of technical and managerial expertise among partners, which is crucial for more efficiently optimizing mining and processing plans.

Most importantly, these structures enable the integration of contiguous or complementary concessions under single management and planning, overcoming the limitations imposed by the fragmentation of mining rights and allowing for more rational and complete exploration of a single deposit that extends across different polygonal areas.

This translates into significant economies of scale, better use of shared infrastructure, including access roads, processing plants, and waste dumps, reduction of environmental impacts arising from duplicated structures, and, ultimately, maximization of ore recovery, aligning private profit interests with public interests in efficient mineral exploration while ensuring activity sustainability.

4. FINAL CONSIDERATIONS

This article aims to bring light to the intrinsic relevance of contracts in the mining sector, especially considering the peculiar nature of mineral deposits and the constitutional mandate for their efficient development. Rather than covering the full spectrum of contractual arrangements or detailing all their complexities, the objective was to highlight how these instruments are essential for optimizing the development of mineral resources and mitigating the risks inherent in this large-scale activity.

The discussion demonstrated how the fixed location of mineral deposits and mining rights polygonal area limitations impose challenges that demand collaborative solutions. Lease agreements, outsourcing of services, assignment of mining rights, and formation of Joint Ventures, such as SPEs, were identified as the primary legal tools to enable integrated operations.

However, other legal instruments and structures may also be adopted, including non-corporate JVs, even without specific mining laws. For example, companies may execute agreements to jointly operate mining activities in boundary areas. Even though each party remains responsible for its own operations, the coordination of mining plans may increase efficiency.

Each structure, whether regulated or not and subject to specific ANM regulatory requirements, plays a critical role by enabling the unification of efforts and infrastructure

sharing. These structures leverage capital and expertise, and, ultimately, maximize ore recovery, transforming potential obstacles into opportunities for improved operations.

Therefore, drafting robust and well-delineated contractual instruments is the cornerstone of sector partnership security and success. Risk management, allocation of responsibilities, definition of governance mechanisms, and provisions for dispute resolution are elements that, when carefully articulated in the contract, protect the interests of the parties and ensure the longevity of the enterprise. Lack of clarity or superficiality in these documents can easily lead to operational obstacles and costly litigation, compromising project sustainability.

In this sense, legal instrumentation through contracts that contemplate mining law complexity and operational technical reality is fundamental to the success and security of these initiatives. The accurate construction of clauses that reflect operational dynamics, specific risks, and the strategic objectives of the parties is what ultimately ensures the validity and legal certainty of mining operations in Brazil, preventing dissent and supporting the continuity and efficiency of mineral exploration, in line with the public interest.

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ARTICLE

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ANALYSIS OF
THE BENEFITS
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THE GENERAL ENVIRONMENTAL LICENSING LAW (LAW 15,190/2025) AND ITS IMPACTS ON MINING INVESTMENTS: ANALYSIS OF THE BENEFITS OF PROCEDURAL STANDARDIZATION

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1. INTRODUCTION

On August 8, 2025, Federal Law No. 15,190/2025, called the General Environmental Licensing Law (LGLA, the Portuguese acronym standing for *Lei Geral do Licenciamento Ambiental*), was published, after more than two decades of legislative processing on the subject in the National Congress.

This standard represents a fundamental regulatory framework for Brazilian environmental licensing, establishing uniform guidelines for the entire national territory and significantly impacting, among others, the mining sector.

During the years of legislative processing, numerous bills, amendments, substitutes and opinions were presented, all converging on the need to establish a general law uniformly

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applicable throughout the national territory, overcoming the normative fragmentation that characterized the previous system.

It should be noted that the main objectives of the LGLA, as established in its articles 1 and 2, are: **(i)** *to standardize* environmental licensing procedures in all federative spheres, ensuring legal certainty; **(ii)** *simplify* the granting of licenses through more efficient procedures; and **(iii)** *establish clear guidelines* for procedural transparency and availability of information, facilitating access and reducing costs of environmental studies.

It is noteworthy that, although the projects always intended to standardize procedures throughout the country for all the numerous projects and licensable activities, at a time of the processing – notably back in 2021, still under reflections of what happened in Brumadinho two years earlier –, the Bill intended not to be applicable to large-scale and/or high-risk mining activities, relegating this type of activity to a future regulation in a new norm (and, in the meantime, submitted to CONAMA resolutions) which, for sure, would demand for more studies, not necessary environmental ones.

In addition to the generality of the concepts proposed in the Bill for the exclusion of the application of the law to large-scale or high-risk mining projects, there was, in fact, no plausible basis for, in a law that outlines general licensing rules, to abstract from its scope undeniably licensable activities or projects, and which also have as qualifiers their public utility and national interest.

These projects, therefore, would be outside uniform and procedural rules applicable to the entire country under the justification that they should be more rigorous licensing.

Fortunately, after intense parliamentary discussions, the final approved text of the LGLA kept mining under its normative scope, giving a vote of confidence to the technical team of the environmental agencies, with the recognition that analytical rigor should not be the procedure, but the information to be generated and debated with the environmental authorities.

Thus, mining activities will also be regulated by this general law, which primarily establishes general procedural rules for licensing in the country, as provided for in article 4 of the Law.

This article aims, therefore, to analyze how LGLA will provide greater legal certainty, procedural simplification and agility, without giving up to being a robust enterprise evaluation system, including for the mining sector, making Brazil more attractive for investments.

The analysis addresses three fundamental aspects: **(i)** how the standardization of procedures eliminates the main bottleneck of mining projects in the country; **(ii)** how legal certainty and predictability are essential for mining investments; and **(iii)** how transparency

and availability of information, especially by the internet, reduce costs and complexity of environmental studies, making generic and repetitive data unnecessary and allowing focus on the peculiar and unknown aspects of the region or the project for an even more technical and analytical analysis, and not just bureaucratic.

2. ENVIRONMENTAL LICENSING AS THE MAIN BOTTLENECK FOR MINING INVESTMENTS IN THE COUNTRY

As previously mentioned, mining activity is recognized as of public utility and national interest¹, with growing strategic importance to meet numerous needs, including those currently linked to the energy transition and global food security.

Thus, the inclusion of mining in the LGLA ensures that this essential sector benefits from the uniform, safe and transparent procedures established by the law, creating a more favorable environment for investments.

2.1. Diagnosis of Procedural Fragmentation Prior to LGLA

Before the enactment of the LGLA, Brazilian environmental licensing was characterized by the absence of procedural uniformity among the federative entities.

In spite of understandings that, in the absence of a federal law (strict sense), the rules of CONAMA Resolution No. 237/1997 should be considered as the basic and general norms for the procedure, several state and municipal legislations had their own regulations – without necessarily having the CONAMA provision as a guide.

This lack of uniformity, which imposes a difficulty in the exchange of experiences, combined with the proliferation of numerous state legislations (which transformed environmental licensing into a set of norms), helped the creation of a strong bottleneck for the implementation of the procedure, and, therefore, of investments.

The BNamericas² report reveals that in countries such as Chile, Brazil and Peru, the time it takes to obtain licenses can exceed a decade. In Brazil, estimates vary between five and ten years, but it is common for the processing to exceed this limit. In spite of this, from comparative data from Latin America, the complexity of the Brazilian scenario is demonstrated.

Chile would require, on average, 9 years for mining (12 years for desalination) with numerous permits per project; while Peru would require hundreds of licenses in up to 15 years; Brazil, on the other hand, requires patience, since the period in processes could go from 5 to 10 years, without which there were, in fact, fixed and predetermined deadlines in each process with up to 9 stages.

To corroborate the problem, according to data from AMJ Consultoria³, obtaining all the necessary licenses for the operation of a mine can take up to 8 years in Brazil, especially in projects related to strategic minerals such as lithium, nickel and rare earths.

Several factors can be listed as causes for the slowness, such as: the scarcity of technical and financial resources in regulatory agencies; the high turnover of public managers; the absence of integrated analysis and approval mechanisms; the lack of an information database with the lessons learned from the licensing experiences made for each area; and also, the fragmentation of rules for each state that sometimes came to be contradictory – thus harming a standard licensing procedure.

Some of these factors were addressed by the LGLA, which, by establishing uniform procedures, defined deadlines and greater transparency, significantly alters this dynamic, thus allowing new frontiers to be opened for new investments in mineral exploration and making greenfield projects more attractive to investors.

2.2. Impacts of Indefinite Deadlines and Heterogeneous Procedures

The absence of a general licensing law resulted in heterogeneous procedures among states, generating significant legal uncertainty for investors.

Each federative unit developed its own rules, deadlines and requirements, making it difficult to standardize business strategies, raising operating costs and creating barriers to the entry of new investors.

In addition, it was not uncommon for procedures to be judicialized on the grounds that they would not be respecting the general norm, which, for some, should be a CONAMA Resolution nº 237/1997, which is not even a formally legal rule.

The LGLA solves this fragmentation by establishing, in effect, a legislation that is intended to be applied uniformly in the whole country.

In addition, it establishes specific and uniform maximum terms: 10 months for Preliminary License (“LP”) with Environmental Impact Study (EIA), 6 months for LP with other studies, and 3 months for other licenses (article 47)⁴.

This definition of deadlines provides fundamental legal certainty for the planning of investments and project schedules, eliminating the temporal uncertainty that characterized the previous system.

Although the passage of time does not allow a precarious authorization to be granted for the enterprise, it gives rise to supplementary jurisdiction, with the possibility of transferring the procedure to another entity.

It is from this perspective – the need for legal certainty and procedural predictability to enable long-term investments in mining – that LGLA assumes strategic relevance for the sector.

2.3 The LGLA as an Instrument of Legal Certainty for Investments

To properly understand the impact of the LGLA, it is essential to analyze the constitutional system of competences in environmental matters. The Federal Constitution establishes concurrent legislative competence between the Union, States and the Federal District (Article 24, VI), and it is up to the Union to issue general rules and the other entities to legislate in a complementary way.

Concurrent legislative competence allows states and the Federal District to exercise full competence in the absence of general federal rules. However, the supervenience of a federal law suspends the effectiveness of state legislation to the contrary of it, as established in article 24, paragraph 4 of the Federal Constitution.

The general rules, according to specialized doctrine⁵, are “*essential guidelines that must be supplemented by state or district legislation*”. The LGLA fulfills this function by establishing principles, basic procedures and minimum deadlines, preserving the state competence for regional specifications.

As for administrative competence, Complementary Law 140/2011 establishes that licensing must be assigned to only one federated entity, avoiding overlaps. Article 17, paragraph 3 of LC 140/2011 determines that the inspection is preferably exercised by the same licensing body, a principle maintained by the LGLA.

The LGLA responds to the imperative need for procedural uniformity and legal certainty, positioning Brazil more competitively on the international scene.

This is because, based on the unique procedure in the country, a better understanding of (a) the steps necessary for the environmental licensing of a project, (b) the average duration of each one, and (c) that each significant step is possible; and (d) how this understanding will be applied anywhere in the country.

Thus, for the constancy of investments for projects in Brazil, which tends to grow, the uniform law throughout the country allows for the planning and effective monitoring of the stages, often considered a serious tangle.

Therefore, it can be asserted that this standardization will provide an environment of greater legal certainty, essential for attracting long-term investments in the mining sector.



2.4 LGLA's Competitive Advantages

As seen, the new law establishes uniform procedures, defined deadlines and objective criteria throughout the national territory, eliminating the fragmentation that characterized the previous system.

The LGLA represents a structured response to Brazil's historical procedural deficiencies. As highlighted by Édis Milaré and Maria Clara Rodrigues Alves Gomes⁶:

“The approved text brings a new conformation to environmental licensing, by consolidating important rules that, until then, were treated in a sparse and poorly systematized way in state and municipal standards, CONAMA resolutions, normative instructions or ordinances of environmental agencies, often with different approaches.”

The legal certainty of uniform and predictable procedures is an essential foundation of the Democratic State Ruled by Law and a prerequisite for attracting long-term investments.

For the mining sector, characterized by capital-intensive investments and extensive time horizons for return, regulatory predictability is especially critical.

In addition, the transparency of the procedure with the requirement that its processing be done exclusively on an electronic basis, allows investors to know, in advance, the project, and follow its evolution over time, and it is common to establish steps for the complementation of investments to a mining project.

It is important to emphasize that the LGLA, as a general rule, does not exclude the applicability of supplementary rules and the proper exercise of administrative and inspection activities by environmental entities.

It is noteworthy that the law should be understood as a procedural framework, preserving the specific competencies of the federative entities in their respective spheres of action.

3. CHALLENGES AND OPPORTUNITIES OF IMPLEMENTATION

The effective implementation of the LGLA represents a unique opportunity to consolidate legal certainty in Brazilian mineral licensing.

Procedural standardization, the definition of maximum deadlines and greater transparency meet historical demands of the sector, creating a modern and predictable regulatory environment that significantly enhances the attraction of long-term investments.

Mining, recognized as an essential activity of public interest, assumes increasing strategic importance in the context of energy transition and global food security.

For Brazil to capitalize on these opportunities, it is essential that environmental licensing provides legal certainty both from the perspective of environmental protection and for the viability and economic development of enterprises, on a sustainable basis.

The enactment of the LGLA is also a fundamental regulatory framework for the Brazilian mining sector.

However, its success will depend on the training of environmental agencies, adequate regulation by the states and the construction of consistent administrative jurisprudence.

For investors, the LGLA represents a concrete opportunity to enter the market with greater regulatory predictability, simplified procedures and easier access to information.

The effective implementation of the law, scheduled to begin 180 days after its publication, will be decisive to consolidate Brazil as a preferred destination for investments in sustainable mining on the global stage, offering the ideal combination of legal certainty, procedural efficiency and regulatory transparency.

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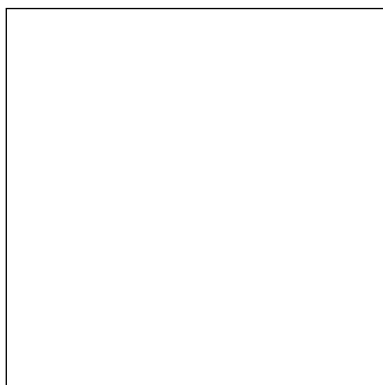
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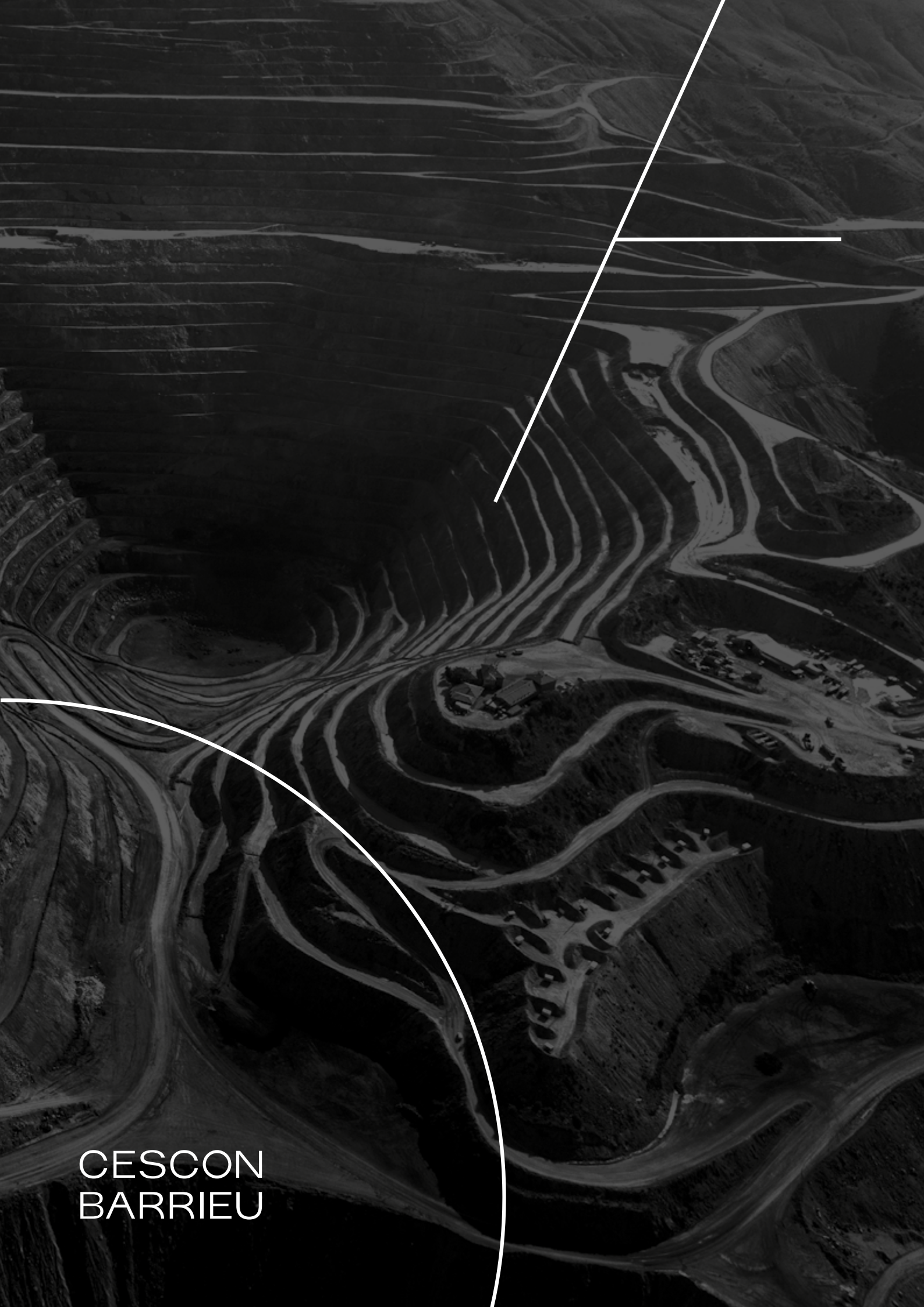
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