

BRAZIL: **2021 MINING GUIDE**

Brazilian Law Overview,
Trends, Perspectives
and Opportunities

CESCON, BARRIEU, FLESCH & BARRETO ADVOGADOS

SÃO PAULO | RIO DE JANEIRO | BELO HORIZONTE | BRASÍLIA | SALVADOR | TORONTO

www.cesconbarrieu.com.br

BRAZIL: 2021 MINING GUIDE

BRAZILIAN LAW OVERVIEW, TRENDS,
PERSPECTIVES AND OPPORTUNITIES

This guide is for general information and academic purposes only. It is not intended for providing legal advice or opinions of any kind and may not be used for professional or commercial purposes. No one should act or refrain from acting based solely upon the materials provided in this guide, in any hypertext link, references or other general information without first seeking appropriate legal or professional advice. While the authors have made reasonable efforts to ensure that the information contained in this guide is accurate, they do not warrant or guarantee the accuracy, pertinence or completeness of the information contained here.

A background image of a topographic map with white contour lines on a gray background, covering the top half of the page.

TABLE OF CONTENTS

3		INTRODUCTION
6		LEGAL SYSTEM AND FOREIGN INVESTMENTS IN BRAZIL
9		THE BRAZILIAN MINERAL EXPLORATION AND MINING INDUSTRY
11		Mineral Rights & Surface Rights in Brazil
14		Brazilian Mineral Exploration and Mining Regimes
19		TAXES, ROYALTIES AND INCENTIVES IN BRAZIL (MINING)
23		ENVIRONMENTAL LAW IN BRAZIL (MINING)
25		BRAZILIAN MINERAL EXPLORATION AND MINING COMPANIES ON THE B3



INTRODUCTION

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

In fact, according to World Mining Data 2020, Brazil is the only Latin American country to rank within the top 10 large producers of mineral fuels, iron, ferrous and non-ferrous metals, precious metals and industrial minerals. It is the 8th largest producer in the world, coming in between Indonesia and Canada.¹ Brazil is constantly improving its business and regulatory environment to further attract foreign investments in this industry which is so important to the Brazilian economy. The recent transformation of the Brazilian National Department of Mineral Production (“DNPM”, or Departamento Nacional de Produção Mineral in Portuguese) into an independent national mining agency (“ANM”) responsible for the regulation, supervision, and promotion of the sector has improved Brazil’s already investor-friendly environment by simplifying the regulatory burden and improving transparency; including by beginning to analyze processes that were pending in the agency’s files; and by starting the bidding procedure of the over 57,000 available areas in the agency’s portfolio. The new changes in the Brazilian mining regulations, together with ANM’s enthusiasm for promoting a business-friendly environment with increasing legal certainty, is helping to foster investments in the Brazilian mineral exploration and mining industry.

The Brazilian Mineral Yearbook²⁻³, prepared by ANM, also accurately demonstrates the size and potential of the Brazilian mining industry: commercialized mineral production of the principal metallic substances reached R\$103 billion in 2018, R\$129 billion in 2019 and, in the 1st semester of 2020, R\$81,1 billion⁴. The Brazilian Mining Association (IBRAM) also analyzed the Brazilian mining

¹ http://www.wmc.org.pl/sites/default/files/WMD2020_0.pdf e

² Anuário Mineral Brasileiro: Principais Substâncias Metálicas / Coord. Técnica de Marina Dalla Costa et al.; – Brasília: ANM, 2020. 35 p.: il. Ano Base 2018. Available at: < https://www.gov.br/anm/pt-br/centrais-de-conteudo/publicacoes/serie-estatisticas-e-economia-mineral/anuario-mineral/anuario-mineral-brasileiro/AMB2019_anobase2018_FINAL.pdf>

³ Anuário Mineral Brasileiro: principais substâncias metálicas / Agência Nacional de Mineração; coordenação técnica de Marina Dalla Costa. – Brasília: ANM, 2020. Ano Base 2019. Available at: <https://www.gov.br/anm/pt-br/centrais-de-conteudo/publicacoes/serie-estatisticas-e-economia-mineral/anuario-mineral/anuario-mineral-brasileiro/amb_2020_ano_base_2019_revisada2_28_09.pdf>

⁴ Informe Mineral, ANM. Jan/2021. 1º/2020. Available at: < https://www.gov.br/anm/pt-br/centrais-de-conteudo/publicacoes/serie-estatisticas-e-economia-mineral/informe-mineral/publicacoes-nacionais/informe_mineral_1_2020.pdf/@@download/file/Informe_Mineral_1_2020.pdf>

industry: in 2018, Brazilian mineral production reached US\$34 billion; in 2019, US\$38 billion. In 2020, despite the COVID-19 pandemic and devaluated local currency,⁵ the mining industry presented a revenue of R\$37 billion.⁶ These results clearly depict the sector's resilience.

The Brazilian mining and metals industry has shown strong resilience, positive results and growth during the past few years. There are incredible investment opportunities available and a backlog on mining investments. For example, the 2019 Mineral Sector Bulletin⁷ reported that the known contained reserves of copper add up to 11,212 ($\times 10^3$) t. Gross production was slightly over 584 ($\times 10^3$) t, representing a lifespan of almost 20 years. With an area of over 8.5 million km² and the granting of just 2,733 exploration permits⁸ in 2019, it is clear that Brazil has the geological potential to become an even greater player in the global mining and metals industry.

Brazil is a third of Latin America in whichever way, shape or form you slice and dice the numbers (population, territory, economy, etc.). More importantly, Brazil continues to be the largest economy in Latin America.⁹ As of October 2020, the Brazilian gross domestic product (GDP) was 1.36 trillion dollars,¹⁰ ranking twelfth in the world.¹¹ Due to its abundant natural resources, Brazil's economy is especially active in the agricultural, food, mining, steel, clean energy, and oil and gas industries, but Brazil is also surging as a technology hub in the region, and is commonly known as the pathway to Latin America for many companies around the globe.

Under President Jair Bolsonaro, the government passed a comprehensive pension reform in October 2019, which investors welcomed as an indication of stricter control over government spending in this administration. Privatizations and other ambitious reforms, such as an administrative reform to tackle super salaries and strong legal protections for government employees, and a tax overhaul to simplify the tax system, have been under negotiation in Congress since 2019, but were

⁵ It is interesting to note how the COVID-19 pandemic is reshaping the global mining and metals industry. For many different reasons, the challenges and opportunities created, imposed and/or brought with COVID-19 pandemic has impacted the global mining and metals industry in many different ways. The Brazilian mining industry reacted strongly and, supported by the Ministry of Mines and Energy that issued Ordinance N. 135 on March 28, 2020, which declared mineral exploration and mining, processing of mineral products, mineral transformation, commercialization and disposal of products generated in the mineral production chain and transportation and delivery of mineral products to be considered essential activities and therefore authorized to continue operating, subject to local regulation that are imposing specific restrictions on transportation, staff reduction, additional mandatory HSE equipment etc.

⁶ Infográfico: Resultados Setor Mineral – 2020. Ibram. Available at: < http://portaldamineracao.com.br/wp-content/uploads/2021/02/Apresentacao_Resultados_Setor_Mineral_2020-1.pdf >

⁷ Mineral Sector Bulletin – 2019. Available at: < <http://www.mme.gov.br/documents/36108/1006289/Mineral+Sector+Bulletin+-+february+2020+-+English+Version/4c608433-6d7e-503a-27f3-e96d58b39565?version=1.2&previewFileIndex=>> >

⁸ Anuário Mineral Brasileiro: principais substâncias metálicas / Agência Nacional de Mineração; coordenação técnica de Marina Dalla Costa. – Brasília: ANM, 2020. Available at: <https://www.gov.br/anm/pt-br/centrais-de-conteudo/publicacoes/serie-estatisticas-e-economia-mineral/anuario-mineral/anuario-mineral-brasileiro/amb_2020_ano_base_2019_revisada2_28_09.pdf>

⁹ The World Bank. GDP (current US\$) - Latin America & Caribbean, Colombia, Chile, Mexico, Peru. Available at: <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2016&locations=ZJ-CO-CL-MX-PE&most_recent_value_desc=true&tt-start=2016&view=bar>.

¹⁰ International Monetary Fund. Country data: Brazil. <<https://www.imf.org/en/Countries/BRA#countrydata>>.

¹¹ International Monetary Fund. GDP, current prices. Available at: <https://www.imf.org/external/datamapper/NGDPD@WEO/OEMDC/ADVEC/WEO_WORLD/USA/BRA>

overshadowed by the COVID-19 pandemic and related response measures. During the COVID-19 crisis¹², the federal government has been primarily focused on fiscal stimulation packages and welfare policies to mitigate the adverse economic effects of social distancing strategies.

Some good news for foreign investors and Brazilian exporters is that the Brazilian real has devalued significantly in 2020, having reached a record low after losing more than 40% of its value against the U.S. dollar in 2020.¹³ As of February 26, 2021, one U.S. dollar was worth approximately 5.58 Brazilian reais. The International Monetary Fund (IMF) expects the Brazilian economy to shrink 5.8% this year, and inflation to be lower than 3%.¹⁴ As of October 29, 2020, the basic interest rate of the Brazilian economy was 2.00% (an all time low).

Despite all of the adversities presented by the COVID-19 pandemic, the Brazilian capital markets are experiencing a boost in equity offerings and have raised more than US\$3.6 billion in 2020.¹⁵⁻¹⁶ Furthermore, the World Bank expects the Brazilian economy to recover steadily in 2021 and Brazil's GDP to increase by 2.2% next year.¹⁷

¹² For more information regarding COVID-19, please refer to our website at the following link: <<https://www.cesconbarrieu.com.br/busca#keyword=covid>>

¹³ <https://br.reuters.com/article/idBRKBN27F2Y5-OBRS>

¹⁴ International Monetary Fund. Country data: Brazil. <<https://www.imf.org/en/Countries/BRA#countrydata>>.

¹⁵ Financial Times. Brazil's IPO market on track for biggest year since 2007. Available at: <<https://www.ft.com/content/da448e33-f8a1-43d4-b910-99ded84670d7>>.

¹⁶ Deloitte. Brazilian stock market and IPOs. Available at: <<https://www2.deloitte.com/br/en/pages/doing-business-brazil/articles/ipos-in-2019.html>>

¹⁷ Worldbank. Global Economic Prospects – Forecasts. Available at: <<https://data.worldbank.org/country/brazil>>.



LEGAL SYSTEM AND FOREIGN INVESTMENTS IN BRAZIL

Brazil is a Federal Republic, formed by the indissoluble union of 26 states, the Federal District (Brasilia, founded in 1960), and 5,564 municipalities. Every state has the power to adopt its own constitution and laws (mainly local tax and administrative law), although their legislative autonomy is limited by the principles and rules established by the Federal Constitution. Municipalities are also subject to restricted autonomy and their legislation must follow the dictates of the State and Federal Constitutions. The laws governing mining activities are found in federal legislation, which include the Brazilian Mining Code and, from a foreign investment perspective, the Foreign Investment Rules and Regulations. Other federal, state and municipal legislation also applies with respect to taxation, environmental and administrative matters.

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

The legal structure of a mining project in Brazil, like in many other countries, can take a variety of forms to achieve the needs of a particular project or investment. Except for the prospecting, mining, and reprocessing of nuclear mineral ores, which is considered a monopoly under the control of the Brazilian Government, the exploitation of other mineral resources can only be carried out by private parties, provided that they are Brazilian nationals or entities incorporated in Brazil (which can be foreign-controlled).¹⁸

Brazil is one of the most investor-friendly emerging markets in the world. Generally, local and foreign investors are treated equally under Brazilian law. For instance, Brazil's Federal Constitution treats local and foreign investors equally.¹⁹ However, there are some restrictions on foreign investment in certain sectors, e.g., the mining sector, as explained in this paper. Non-residents, for example, may be subject to certain regulatory restrictions, such as the inability to control mining activities located within the Brazilian border zones.²⁰ On the other hand, several tax benefits are

¹⁸ Constitution of Brazil, art 177.

¹⁹ Constitution of Brazil, art 177.

²⁰ Together with the fact that mining is considered a national policy matter, the Brazilian legislation provides special restrictions to mining activities within the so-called Brazilian border zones. It states that mining companies with operations within 150 km from the Brazilian border zone must have (i) at least 51% of its capital owned by Brazilians; (ii) at least 2/3 of employees as Brazilians and (iii) the management done mostly by Brazilians.

available solely to foreign investors, such as tax exemptions or reduced rates for income taxes.²¹ On August 17, 2020, the Brazilian government launched a national plan for economic recovery which aims to foster foreign investment by increasing government transparency and regulatory certainty.²²

In 2020, Brazil received an average of US\$34.2 billion in foreign direct investment (FDI). Mainly due to the COVID-19 pandemic and its economic impacts, FDI flows to Brazil have decreased by approximately 48%.²³ However, confirming the positive outlook for the country's post-pandemic economy, Brazil ranked 22nd in the 2020 Kearney FDI Confidence Index as one of the markets likely to attract the most investment over the next three years.²⁴

Foreign investment in Brazil is regulated by Law n. 4,131 (known as the "Foreign Capital Law")²⁵ which requires that foreign investments in Brazil be registered with the Central Bank²⁶ to ensure foreign remittance of profits and/or interest on equity, repatriation of foreign capital invested in Brazil and reinvestment. In addition, within 30 days of closing the exchange contract, capital remittances must be registered with the online Brazilian Central Bank electronic system RDE-IED ("Registro Declaratório Eletrônico de Investimentos Estrangeiros Diretos").²⁷ Foreign capital may take the form of cash, goods, services or intangibles, with investments in cash being the simplest and most common form of initial investment.²⁸

²¹ For example, we have portfolio investments under CVM Resolution 4,373 providing reduced tax rates for capital gain recognized and exemption to dividends paid abroad. As well, we point out the FIP (Private Equity Funds) which has an income tax exemption for income paid abroad, as long as the foreign party does not control over 40% of the fund. Specific benefits such as SUDENE, SUDAN and REID may also be available depending on the business sector and location of the investment in Brazil.

²² <https://www.gov.br/economia/pt-br/assuntos/noticias/2020/agosto/plano-nacional-de-investimentos-preve-acoes-ate-2022-para-retomada-da-economia>

Due to the fact that mining is considered a national policy matter, the legislation provides special restrictions to \ exploitation in border areas. It states that companies focused in the mining industry intending to operate within 150 km from the border must have (i) at least 51% of its capital owned by Brazilians; (ii) at least 2/3 of employees as Brazilians and (iii) the management done mostly by Brazilians.

²³ United Nations Conference on Trade and Development. World Investment Report, 2020. Available at: <https://unctad.org/system/files/official-document/wir2020_en.pdf>.

²⁴ A.T. Kearney. The 2020 Foreign Direct Investment Confidence Index. Available at: < <https://www.kenney.com/documents/20152/17723905/The+2020+Kearney+Foreign+Direct+Investment+Confidence+Index-2+paper.pdf/43de25af-01e1-8b48-4f7e-7575e34730f7?t=1591940119683>>

²⁵ Law n. 4.131/1962, which was regulated and amended by Law n. 4.390/1964, Decree 55.762/1965, Decree-Law n. 37/1966, Decree-Law n. 94/1966, Law n. 8.383/1991, Law n. 8.685/1993, Law n. 9.069/1995 and Decree-Law n. 2.073/1983 (Lei N° 4.131, Brasil 3 September 1962, Palácio do Planalto, online: <http://www.planalto.gov.br/ccivil_03/leis/L4131.htm> [Lei N° 4.131]).

²⁶ The registration of foreign capital with the Central Bank of Brazil (Banco Central do Brasil or BACEN) is provided for by Law 4,131/1962 and Law 4,390/1964, which guarantees equal treatment of foreign and national capital (Ibid; Lei N. 4,390, Brasil 29 August 1964, Palácio do Planalto, online: <https://www.planalto.gov.br/cCivil_03/LEIS/L4390.htm>).

²⁷ The Brazilian Central Bank is responsible for the registration and monitoring of foreign investments in Brazil. The Ministry of Finance is responsible for monitoring tax issues relating to foreign investments in Brazil.

²⁸ A foreign creditor can convert into foreign investment the amounts due by Brazilian companies which can then be remitted abroad according to Brazilian laws. The profits and/or interest on equity payable to the foreign investor may also be reinvested in the same Brazilian company or in a third Brazilian company.

According to the Foreign Capital Law, foreign capital includes any goods, machines or equipment that enter Brazil without an initial disbursement of foreign exchange and are intended for the production of goods or services. Foreign capital also includes any funds brought into Brazil to be used in economic activities or owned by individuals or companies that reside or are headquartered abroad.

The remittance of profits to non-resident foreign investors must comply with the following requirements: **(i)** the foreign investment must have been duly registered with the Central Bank (as explained above); and **(ii)** the Brazilian company must yield a profit. Capital repatriation cannot exceed the amount of registered foreign currency, and the par value of the Brazilian company's shares/quotas and proportionality rules must be observed, where applicable.²⁹

Investments in the capital market by individuals or legal entities that are non-residents of Brazil are subject to registration with the Brazilian Central Bank as well as with the Brazilian Securities Commission (CVM).³⁰

²⁹ The amount that exceeds the registered foreign investment is characterized as a capital gain.

³⁰ Non-resident investors (individuals or legal entities) may invest their funds in the same financial and capital market instruments and operational modalities available to resident investors. See CVM Resolution 560/15, CMN Resolutions 4,373/14 and 2.687. For additional information please see generally ANBIMA, "Non-Resident Investors Guide" ANBIMA (July 2016), online: <<http://www.anbima.com.br/data/files/4B/65/20/1C/F29D851093995C8569A80AC2/Non-resident-Investors-Guide.pdf>>



THE BRAZILIAN MINERAL EXPLORATION AND MINING INDUSTRY

Mining activities are the foundation of the production chain, providing the materials required to build, maintain, and improve the infrastructure and objects we use in our everyday lives. Once a geological discovery is made, several studies and assessments must be conducted to evaluate the economic potential of the discovery, its social and environmental impacts, as well as the necessary logistics and infrastructure before developing and operating a mine. These studies and assessments can lead to the completion of a definitive feasibility study, the construction and operation of a mine, and eventually to the closure of the mine and the recovery of the degraded area. In each of those phases, there are several technical, economic and social challenges that require substantial investment to turn a geological discovery into mineral production. There are also several stakeholders involved in each of these phases: the explorer or miner, the communities located in the neighboring areas, the governmental and supranational authorities, national and international institutions and associations, financial institutions, logistics operators, buyers (or consumers), etc. This section provides a general overview about the Brazilian mineral exploration and mining regulatory framework.

World-renowned for its incredible natural resources and for having the largest economy in Latin America³¹, Brazil has extremely rich mineral deposits³² and provides an excellent environment for foreign investments, particularly in the mining industry.

The Brazilian Constitution treats mining as a national policy matter, which must be carried out with the national interest in mind. The Brazilian federal government owns and has the jurisdiction to control, regulate and grant rights to exploit Brazil's mineral resources.³³ Accordingly, the Brazilian Constitution states that all mineral resources are owned by the federal government and that these are distinct from land ownership; in other words, the subsoil and soil are subject to distinct legal treatment, and the holder of a mineral exploration authorization or a mining concession has the right to conduct mineral exploration activities or mining activities even where there is a dispute with the landowner. Due to this distinction under Brazilian law, the mineral rights holder has guaranteed access to the area covered by its mineral rights, provided that the owner of the surface

³¹ GDP Ranking. World Bank. <https://databank.worldbank.org/data/download/GDP.pdf>

³² Anuário Mineral Brasileiro: principais substâncias metálicas / Agência Nacional de Mineração; coordenação técnica de Marina Dalla Costa. – Brasília: ANM, 2020. Available at: <https://www.gov.br/anm/pt-br/centrais-de-conteudo/publicacoes/serie-estatisticas-e-economia-mineral/anuario-mineral/anuario-mineral-brasileiro/amb_2020_ano_base_2019_revisada2_28_09.pdf>

³³ The Brazilian Federal Constitution of 1988 states that the “mineral deposits, under exploitation or not, and other mineral resources and the hydraulic energy potentials form, for the purpose of exploitation or use, a property separate from that of the soil and belong to the Union, the concessionaire being guaranteed the ownership of the mined product”. Constitution of Brazil, art 176.

rights gets compensated for the use of surface rights by the respective mineral rights owner.³⁴ The constitutional system governing mineral deposits and the regulations on exploration and mining in Brazil establishes a special legal framework that protects the mining company (which invested resources in order to discover the mineral deposit), the state, the citizens, local communities, the environment and the landowner; and despite the government's ownership of the resources, the product of the mining belongs to the mineral rights holder. Therefore, mineral exploration and mining in Brazil are regulated by the federal government, which grants the right to explore mineral resources in a certain area to third parties.

As mining is treated by the Brazilian Law as a national policy matter, the power to regulate this important industry is held exclusively by the federal government, which applies its control through a system of authorizations, concessions, licenses and permits established in the Brazilian Mining Code, which is periodically reviewed and amended.³⁵ The state and municipal governments have supplementary authority to regulate certain aspects of mining, such as matters related to the environment and zoning, and other aspects related to planning, implementation, operation, safety, tax and the decommissioning of tailings dams.

The regulatory control of the exploration and mining industry in Brazil is carried out by the Brazilian Ministry of Mines and Energy (MME), which administratively responsible for regulating, granting, monitoring, overseeing and sanctioning the mineral exploration and mining industry. Such responsibilities are exercised through ANM, a special independent federal agency tied to MME, whose administrative and financial independence was established with the modernization of the Brazilian Mining Code in 2017.³⁶

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

- ◆ Law n. 13,575/2017 (created the National Mining Agency – ANM and extinguished the old National Department of Mining – DNPM);
- ◆ Law n. 6,567/1978 (Regulated the Licensing System),
- ◆ Law n. 7,805/1989 (created the small-scale independent mining permit), Law n. 8,176/1991 (defined illegal mining as an economic crime);
- ◆ Law n. 7,990/1989 (Financial Compensation for Exploiting Mineral Resources)
- ◆ Law n. 8,001/1990, (Financial Compensation for Exploiting Mineral Resources) Law n. 13,540/2017, Financial Compensation for Exploiting Mineral Resources; and
- ◆ Law n. 12,334/2010 (created the National Policy for Dam Safety).

³⁴ Brazilian Mining Code. Please note that as a general rule the compensation payable by the mineral rights owner to the surface right owner for the use of its surface right is half of the royalty payable to the Brazilian Government and compensation for any damage and loss caused or that may be caused as a result of such activities.

³⁵ Decree-Law n. 227/1967. [NTD: include information about updates]

³⁶ Law n. 13.575/2017 created the ANM and Decree n. 9.587/2018 installed ANM

Together with these main federal laws, there is a wide range of administrative rules, ordinances, and regulations, mainly issued by ANM (and its predecessor DNPM) and the MME (Ministry of Mines and Energy).

Main regulations include:

- ◆ Decree 9,406/2018 (New Regulation of the Mining Code)
- ◆ Ordinance 155/2016 (Consolidation of ANM normative acts)
- ◆ Resolution 1/2018 (Regulates the exploitation system known as extraction) .
- ◆ Resolution 22/2020 (Sets the deadlines for tacit approvals)
- ◆ Resolution 24/2020 (Regulates the mining rights availability procedure)

MINERAL RIGHTS & SURFACE RIGHTS IN BRAZIL

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

A mineral exploration authorization (“alvará de autorização de pesquisa”) regulates the stage of mineral exploration activities. Normally, mineral exploration rights are granted for a period of one to three years, and may be extended by ANM, at its sole discretion, if requested by the holder. The extension of the original term of the mineral exploration authorization must be requested by the holder at least 60 days prior to its expiration. By the end of the term of the mineral exploration authorization, a final exploration report must be filed and accepted by ANM (the “Final Mineral Exploration Report”), either proving the technical and economic feasibility of exploiting a mineral deposit, the submission of which results in the granting of a mining concession, or demonstrating that no mineable deposit exists, which results in the termination of the application. There is a penalty of R\$ 3,70 (C\$ 0.83/US\$ 0.65) per hectare if the holder of the mineral exploration authorization does not file the Final Mineral Exploration Report. The holder of a mineral exploration authorization must carry out all exploration activities necessary to determine the existence and extent of a mineral deposit and define the technical and economic feasibility to explore said deposit. The mineral exploration authorization can be assigned to a third party if the assignee fulfils the legal requirements of the original authorization and is approved by ANM.

The mining concession (“concessão de lavra”) is applicable to and regulates the exploitation stage. Following approval of the Final Mineral Exploration Report, the holder of the mineral exploration authorization has the exclusive right to request the mining concession, which must be exercised or negotiated within a period of one year and may be extended for a further year at ANM’s sole discretion. The mining concession itself is granted for an indeterminate period of time. The granting of a mining concession is subject to the fulfilment of certain conditions, specifically: exploring the area, obtaining an approved Final Mineral Exploration Report and ensuring that the area will be adapted to the technical and economic conditions necessary for carrying out the mining operations and related works, in accordance with what was established under the economic

exploitation plan (the “PAE”) related to the concession.³⁷ The PAE must be submitted by the holder together with its application requesting the mining concession.³⁸

An application for the granting of a mining concession includes a mining plan and an economic feasibility analysis, which may be prepared by the applicant.³⁹ While ANM may request additional information, the main information required is as follows: **(i)** certificate of incorporation of the company; **(ii)** description of the minerals (quality, reserve calculation, volume, density, etc.) and an indication of the mining authorization and the approved technical report; **(iii)** description and information related to the area and the main aspects of the deposit (maps, plants, roads, railways, rivers, topography, neighboring areas, surface landowners, etc.); **(iv)** graphic definition of the area; **(v)** mining easement (servitude); **(vi)** PAE; and **(vii)** proof of financial capacity required to carry out the mining.

After a mining concession is published in the official gazette, the mining company has 90 days to request possession of its respective mineral lode or deposit, and six months to start the preparatory work as established in the PAE. Once mining has commenced, it cannot be interrupted for a period of six consecutive months. The mining company must file detailed annual statistical mining reports with ANM. To exploit the mine, an operating permit from the applicable environmental authority(ies) must also be obtained.

Throughout this process, the surface rights remain on the hands of landowners who can also be the owner of the respective mineral rights and are typically farmers, ranchers or companies.⁴⁰ In the event that the mining company does not hold the title to the underlying surface rights, the surface rights must be individually negotiated to allow the holder of a mineral exploration authorization or a mining concession to access the land and conduct exploration and/or mining activities. The surface rights owners are obliged by law to provide access to the mineral license holders to conduct exploration. If the parties cannot reach an agreement by mutual negotiations, there are legal mechanisms to enforce such rights.

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

³⁷ Essentially, the two reports may be seen as a feasibility study.

³⁸ The PAE must contain a detailed description of the project and all technical and economic information defined by article 39 of the Mineral Code (Decreto-lei n° 227/67, Brasil 28 February 1967, Planalto, online: <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del0227.htm>).

³⁹ It is important to note that the requirements related to technical reports and feasibility studies under Brazilian regulation are not the same as the ones adopted by CRIRSCO or other internationally recognize technical disclosure standard.

⁴⁰ Please note that there are some restrictions regarding the acquisition of a rural estate property in Brazil; for example, a foreign non-resident in Brazil or a foreign company authorized to operate in Brazil cannot acquire a rural property or a property that borders other countries, on a coastline or in areas considered to be national security areas. According to a 2010 binding legal opinion issued by the Federal Attorney General's Office (“Advogado Geral da União – AGU”) interpreting the applicable regulation, the direct or indirect transfer of rural properties to a Brazilian company of foreign capital must be previously authorized by Brazil's National Institute of Rural Settlement and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária, “INCRA”) and is subject to certain restrictions/limitations (although one can argue the constitutionality of such restriction). See Constitution of Brasil, supra note 11 at art 190, 20 para II as revised by Emenda Constitucional 46/05, Brasil 5 May 2005, JusBrasil, online: <<http://presrepublica.jusbrasil.com.br/legislacao/96718/emenda-constitucional-46-05>>; Lei n° 5.709, Brasil 7 October 1971, Palácio do Planalto, online: <http://www.planalto.gov.br/ccivil_03/leis/L5709.htm> and its regulatory decree Decreto No 74.965/74, Brasil 26 November 1974, JusBrasil, online: <<http://presrepublica.jusbrasil.com.br/legislacao/114840/decreto-74965-74>>; Lei n° 6.634, Brasil 2 May 1979, Palácio do Planalto, online: <http://www.planalto.gov.br/ccivil_03/leis/L6634.htm>.

- ◆ **Original Acquisition of Mineral Rights.** Mineral rights may be acquired originally, upon an administrative procedure with ANM and according to the principle of priority, under which the first applicant has assured priority to obtain exploration rights over an available area if the other applicable requirements are met (first-come, first-served principle). ANM also conducts bidding processes for areas in which there is a certain level of geological information allowing the agency to put such areas up for bidding. This is a fairly new process within ANM and is valid only for those areas in which ANM has declared the availability of the area, and, through a competitive process, has put said area up for bidding⁴¹. This procedure is opposed to the Principle of Priority, since it is applicable to those cases in which the title was lost or waived without being assigned to a new holder. Although in these occasions a bidding procedure will take place, if the area is not auctioned, it will return to the initial stage in which the first-come, first-served principle guides the acquisition.
- ◆ **Assignment of Mineral Rights.** The assignment of mineral rights, according to the Mining Code, is subject to the authorization of ANM, and it is not allowed prior to the granting of an exploration authorization. The documents which must be submitted with the request for the assignment vary according to the mineral rights process status. For instance, for the partial or total assignment of an exploration authorization, the application must include proof of the financial capacity of the assignee, as well as public or private instruments providing for the assignment, as well as corporate documents including proof of power of the representatives and proof of payment of the relevant fees. It should be noted that the request for the assignment does not interrupt the legal term for the presentation of the application for an exploitation authorization (one year from the approval of the respective Report). The assignment of mineral rights located within the Brazilian border zones is subject to prior approval from the National Defence Counsel (CDN). Failure to comply with this requirement will nullify all contracts, acts and/or transactions.
- ◆ **Lease of Mineral Rights.** In addition to the original acquisition and assignment of mineral rights, and subject to the authorization of ANM, mineral rights may be leased to third parties without the assignment of the mining rights. The documents which must be submitted with the request for the lease of mineral rights include: the lease agreement; corporate documents (as applicable); a new plan for the exploration and/or exploitation of the deposit with a compliance commitment from the lessee; a declaration from the lessee with regards

⁴¹ Currently there are two main cases of mining rights' bidding process in Brazil. Those are:

- ANM's Disponibilidade.
- CPRM's mining rights.

CPRM is a public company, the Brazilian Geological Survey, responsible for gathering data and information on Brazilian geology, minerals and water resources. To do so, it holds several mining rights, some of which are economically attractive.

The company therefore decided to auction some of its mining rights under the Investment Partnership Program, which is conducted by the Investment Partnership Program's Council, under the Ministry of Economy. ANM's Disponibilidade is guided by ANM's Resolution 24/2020 and is applicable only to the areas which were previously under a mining title (such as exploration permit, mining concession and so), as a way of fostering investments and allowing a broader participation of the mining community on areas about which there is deeper geological knowledge. Given that Brazil has thousands of areas to be declared available for this bidding process, every 60 days, ANM should indicate the areas which will be put up on the following round. Any interested parties should indicate their interest in specific areas in a preliminary hearing, through ANM's website. Those with two or more interested parties would then hold an online bidding process. The areas with only one interested party will be given to the one which indicated its interest, and the ones with no interested parties will be considered free to new applications on the following day.

to the environmental recovery of the area; proof of the lessee's financial capacity; and other documents. The product of the exploration is accepted as a means of payment for the lease, with or without preference in the acquisition in favor of the title-holder.

BRAZILIAN MINERAL EXPLORATION AND MINING SYSTEMS

The governing legislation provides that only Brazilians and mining companies incorporated under Brazilian law, headquartered and managed in Brazil may hold mineral rights, which are issued by the federal government following the procedures regarding one of the systems: **(i)** mineral exploration authorizations (*autorização de pesquisa*), **(ii)** mining concessions (*concessão de lavra*), **(iii)** mining licensing (*licenciamento mineral*), **(iv)** small-scale independent mining permits (*permissão de lavra garimpeira*), and **(v)** monopoly (*monopólio*).

Mineral Exploration Authorizations and Mining Concessions

Mineral exploration authorizations and mining concessions are two separate systems in Brazil. Mineral exploration authorizations consist in an authorization to conduct mineral exploration activities within a certain area; they are valid for one to three years and can be extended for up to three years at ANM's discretion. As a general rule, the holder of a mineral exploration authorization is not allowed to exploit the deposit, however, in exceptional cases, the holder of a mineral exploration authorization may be able to apply for a special permit to operate a small-scale mining operation, or as some prefer, to obtain a trial mining permit.⁴²

Requirements for Conducting Mineral Exploration in Brazil

Mineral exploration comprises the activities necessary for measuring, evaluating and delineating mineral deposits, and defining the technical and economic feasibility of a mine. To carry out these activities in Brazil, interested parties must apply for a mineral exploration authorization from ANM, called *Alvará de Pesquisa* (mineral exploration authorization).

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

In order to conduct mineral exploration activities in Brazil, the holder of a mineral exploration authorization also needs to obtain **(i)** the relevant environmental permits such as authorization for vegetation suppression, intervention in the Atlantic forest and others; and **(ii)** the corresponding right

⁴² Utilization Bill (a special permit to operate a small-scale mining operation during the exploration phase) Ordinance No. 155/2016.

of access to the area covered by its mineral rights in the event the holder of a mineral exploration authorization is not also the holder of the underlying surface rights. Normally, surface rights owners in Brazil receive a fee that is on average half of the royalty payable to the Brazilian Government (in other words, to receive a compensation that is equivalent to half of the CFEM) and are also entitled to be compensated to any damages caused by the holder of a mineral exploration authorization. If the corresponding surface rights are located within public lands, then the payment of said fee is waived.

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

Upon completion of mineral exploration activities, the holder of a mineral exploration authorization must file a Final Mineral Exploration Report with ANM showing the results of the mineral exploration activities carried out within the area covered by the respective mineral rights and shall establish the feasibility or non-feasibility of further developing the area and file the Final Mineral Exploration Report, whose final approval will be decided by ANM.⁴³

After approval of the Final Mineral Exploration Report, the holder of the mineral exploration authorization must apply for a mining concession within a one-year period (extendable for one more year), or assign the mineral rights to a third party. If the owner of a mineral exploration authorization requests the extension of the one-year term for submitting the application for the mining concession in a timely manner, the mineral exploration authorization remains valid, and the holder may continue exploration activities for as long as the decision regarding the extension request is pending.⁴⁴

Requirements to Conduct Mining Activities in Brazil

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

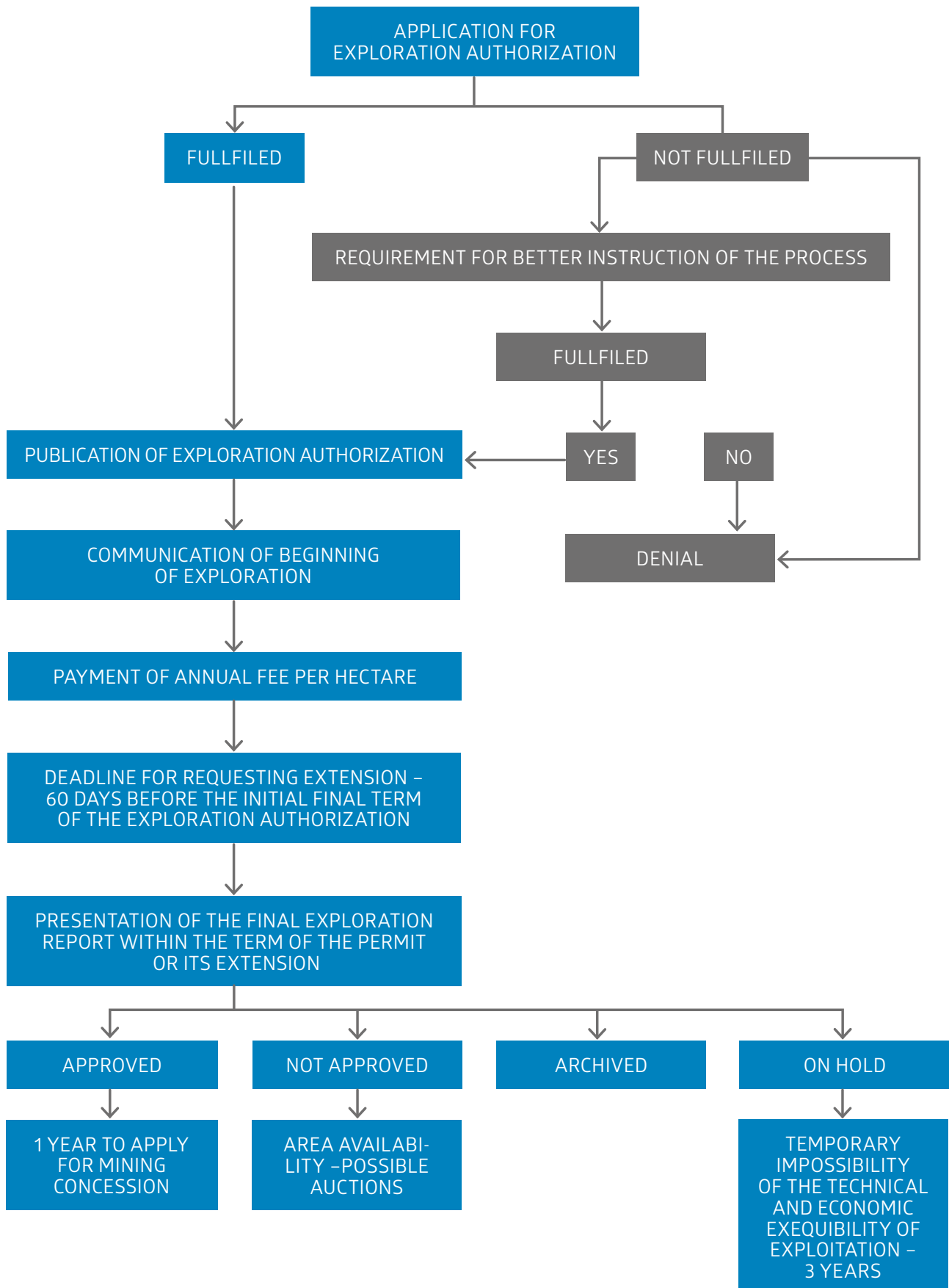
Once the application for a mining concession is filed at ANM, the mineral rights holder shall, within sixty days, provide proof that the application for the relevant environmental license was duly submitted to the relevant authorities. Thereafter, every six months, the holder of the mineral rights shall prove to ANM that its environmental licensing process is in its due course and that it has (or it is complying with) all necessary actions and requirements in order to obtain the environmental license (failure to comply could prevent the granting of the respective mining concession). Upon the fulfilment of all legal requirements,⁴⁵ the mining concession is granted without a term, and is valid until total depletion of the deposit and mining closure.

⁴³ Articles 23 and 30 of the Mining Code

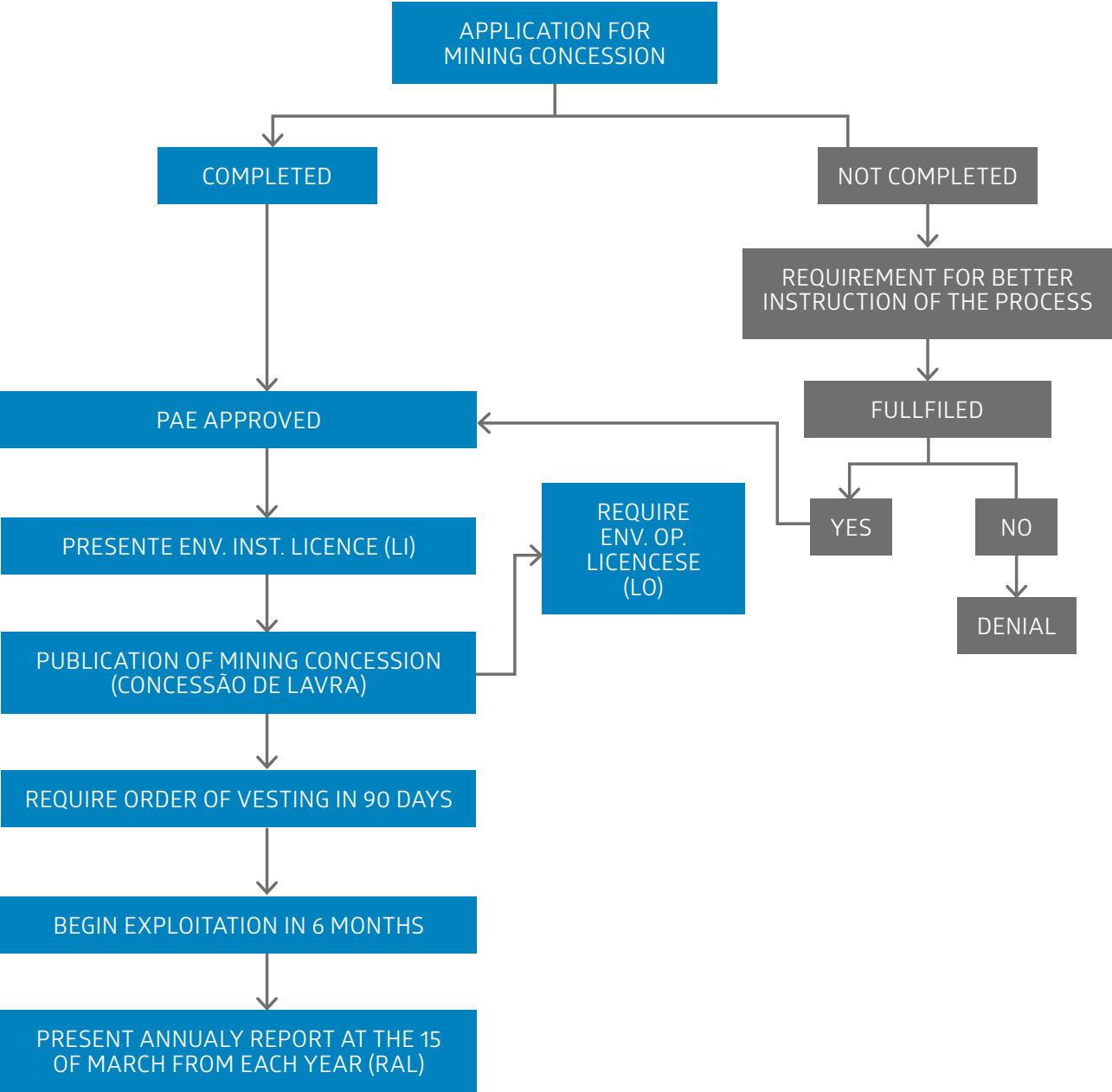
⁴⁴ Holders of mineral exploration authorizations may carry on exploration activities even after the delivery of the Report, as long as these activities have the purpose of converting the resources into reserves or further improve the level of knowledge about a deposit.

⁴⁵ Mining Code and Ordinance No. 155/2016.

PROCESSING OF APPLICATION FOR EXPLORATION AUTHORIZATION



PROCESSING OF APPLICATION
FOR MINING CONCESSION



Other Mining Systems

Licensing System

In Brazil, the exploitation of sand, gravel, grit, and crushed stones for immediate use in the construction industry; rocks and other mineral substances for paving blocks, curbstones, gutters, posts, and the like; clays for various industries; rocks, when crushed for immediate use in civil construction and the limestones used as soil corrective in agriculture; ornamental and cladding rocks; and calcium and magnesium carbonates used in various industries is authorized to be conducted by third parties under a licensing system (regulated by Law n. 6,567/1978 and Ordinance n. 155/2016). This system includes specific characteristics such as **(i)** the areas subject to the licensing system are limited to 50 ha, **(ii)** it is under the jurisdiction of the municipality; and **(iii)** it does not require prior mineral exploration authorization.

Small-Scale Mining Permit System

The small-scale mining permit is applicable to small-scale mining activities, and is an exception to the mining concession system. This simplified system allows individuals to perform mining activities in a specific area within the area covered by the mineral rights, and independent mining co-ops in areas of up to 1,000 ha.

The existence of other mining rights does not prevent the granting of a small-scale mining permit in the same area, which may be conceded upon the conclusion of an administrative procedure, as long as the original title-holder gives authorization and the coexistent activities are technically and economically feasible. In addition, interested parties must obtain permission from local authorities (mainly environmental licenses). Once granted, a small-scale mining consent is valid for [five years] and may be successively renewed at ANM's discretion. Further regulation is still to be enacted by ANM regarding procedures and requirements for the granting of small-scale mining permits.

Monopoly System

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



TAXES, ROYALTIES AND INCENTIVES IN BRAZIL (MINING)

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

Corporate Income Tax (“IRPJ – Imposto de Renda Pessoa Jurídica”): The IRPJ is payable on annual company profits at the rate of 15%, plus a 10% surtax on profits which exceed R\$240 thousand per year. Taxable income includes gross earnings minus allowable deductions. The term, “gross earnings,” includes operational and non-operational income (interest, capital gains, etc.). Deductions are allowed whenever expenses are considered ordinary and necessary to the company’s business activities. Business expenses, including interest paid to lenders, are generally deductible. Moreover, tax losses may be carried forward without any time restrictions, but compensation against future profits cannot exceed 30% of the profits obtained per year.

Social Contribution on the Net Profit (“CSLL – Contribuição Social sobre o Lucro Líquido”): CSLL is a type of IRPJ surtax, as both of these taxes adopt the same calculation basis. The CSLL is applied on the company’s net profits at the rate of 9%.

Gross Receipts Taxes – Contribution to the Social Integration Program (“PIS”) and Contribution to Finance Social Security (“COFINS”): Gross monthly revenue is subject to PIS and COFINS. Under current legislation, gross revenue includes not only operating revenues but also all types of earned revenue. The rates of the PIS and COFINS vary depending on whether or not the taxpayer is subject to the cumulative regime of the contributions. As a general rule, companies are subject to the noncumulative regime and the PIS and COFINS rates are 1.65% and 7.6%, respectively. Financial revenue obtained by taxpayers subject to this regime are taxed at 4.65%.

Furthermore, under the noncumulative regime, the acquisition of certain goods (raw materials, packing materials, intermediary products and fixed assets) and services used in the company’s operational activities grant PIS and COFINS credits at the same rates, making these charges similar to value-added taxes. These credits can be offset against the PIS and COFINS fees owed as a result of future operations. If credits exceed debits, the credit balance of one month can be carried forward to offset PIS and COFINS debits in subsequent months.

The export of goods or services is PIS and COFINS exempt, regardless of the calculation of the tax regime to which the company is subject. Lastly, it is worth noting that some companies may be subject to a specific PIS and COFINS regime, which may result in a total tax burden greater than that explained herein (regime monofásico).

Tax on the Circulation of Goods, and on Interstate and Intermunicipal Transport and Communication Services (“ICMS”): ICMS is a value-added tax, applied across all stages of a product’s commercial life cycle and calculated in accordance with the “debit and credit” method. Thus, ICMS

debits owed on the sale of products may be offset against ICMS credits booked in connection to the acquisition of raw materials, intermediary products, packing materials and fixed assets used in connection with the company's operational activities. If credits exceed debits, the credit balance of one month may be carried forward to offset ICMS debits in subsequent months.

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

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

Tax on Financial Operations ("IOF – Imposto sobre Operações Financeiras"): This is a federal tax levied on credit, exchange, insurance and securities transactions executed through financial institutions.

IOF/Credit Tax is applied to financial transactions, with the exception of loans extended by foreign entities to Brazilian borrowers, which are not subject to IOF/Credit Tax.

Loans granted by Brazilian entities, either to Brazilian or foreign borrowers, are generally subject to a daily IOF rate of 0.0041%, calculated based on the amount which is lent. As of January 2008, any loan transaction is also subject to the additional rate of 0.38%.

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

Remittances made in connection with loans contracted with foreign lenders with a maturity date beyond 180 days are taxed at 0%. On the other hand, exchange transactions regarding loans with a minimum average maturity of less than or equal to 180 days are currently subject to a 6% rate.

Services Tax ("ISS – Imposto Sobre Serviços"): ISS is a municipal tax assessed on revenue derived from rendering general services, with an exception for intermunicipal and interstate transport and communication services, which are taxed by ICMS.

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

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

Controversy remains as to whether Software as a Service' ("SaaS") revenues should be taxed by the ISS or by the State VAT tax. This double-taxation issue derives from the fact that Municipal authorities usually qualify the SaaS provision as a service, while state authorities consider it a sale of a (digital) good subject to the VAT.

Due to this double-taxation issue, we advise any SaaS provider to carry out additional analysis on the tax treatment applicable to its revenues before starting its operations and, eventually, to define a litigation strategy in order to shelter itself from the risk described above.

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

There are additional contributions imposed at rates that usually vary from 3.5% to 8.8%, which are owed to other government agencies. The rates of these contributions vary depending on the company's line of business. Additional increases to the rates mentioned herein may also apply depending on the line of business.

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

Tax on Industrialized Products ("IPI – Imposto sobre Produtos Industrializados"): This federal tax, with rates from 2% to 6%, is not applicable to mining activities.

Import Tax ("II – Imposto de Importação"): In the case of imports of mineral products, the rates of this tax vary from 3% to 9%, set at 5% for ore and their concentrates, and at 7% for most other products, although there are several exceptions that are subject to higher or lower rates.

In addition to these taxes and any other taxes generally paid by Brazilian companies, such as those for environmental licenses, labor and social security expenses (average 20% on wages and other paid earnings) and FGTS ("Fundo de Garantia por Tempo de Serviço"), there are other taxes and fees payable by a mining company. The additional material tax and fees related to the mining sector are:

- ◆ **Financial Compensation for Exploiting Mineral Resources ("CFEM - Compensação Financeira pela Exploração de Recursos Minerais"):** The rate, which varies according to the mineral, ranges from 0.2% up to 3% and is calculated based on the mineral net revenue or its cost when used in industrialization.⁴⁶

⁴⁶ According to the Appendix of Federal Law 13,540/2017:

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

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

- ◆ **Land Owner Royalty:** During the exploitation phase, under the concession system, if the land does not belong to the concessionaire, royalty must be paid by the last business day of the month subsequent to the taxable event. The value of this royalty is normally 50% of the accrued value of the CFEM.⁴⁷
- ◆ **Annual fee per hectare (“TAH – Taxa Anual por Hectare”):** R\$ 3.70 (C\$ 0.83/US\$ 0.65) per hectare during the term of the mining exploration license and R\$ 5.56 (C\$ 1.24/US\$ 0,98) per hectare during any extended term.⁴⁸
- ◆ **TFRM:** In certain federal states, the holder may also be subject to the Controlling, Monitoring and Supervision Tax related to the Exploration, Production, Extraction, Transportation and Beneficiation of Mineral Resources (Taxa de Controle, Acompanhamento e Fiscalização das Atividades de Pesquisa, Lavra, Extração, Transporte e de Aproveitamento de Recursos Minerários [TFRM]) due on the mining activities of exploration, production, exploitation and development of mineral resources. The amounts of TFRM may vary from state to state.

⁴⁷ Property tax (IPTU) is levied annually abased on the fair market value and it varies by Municipality (range from 0.3% to 1.5%).

⁴⁸ The TAH value is updated yearly by ANM. The values shown above are valid until February 28, 2022, according to ANM's Resolution No. 58/2021.



ENVIRONMENTAL LAW IN BRAZIL (MINING)

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

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

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

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

There are three types of environmental licenses in Brazil:

- ◆ **Advance (also called provisional) Licenses (LP):** Certify the viability of the project (including approval of the site and planning) and establish the basic requirements and conditions that must be fulfilled in subsequent phases.
- ◆ **Installation Licenses (LI):** Authorize commencement of construction (installation of the enterprise or activity) according to the specifications set out in the approved plans and programs, and define the environmental control measures, etc.
- ◆ **Operating licenses (LO):** Conceded when the project is ready and able to function following an assessment of compliance with the terms of the preceding licenses. The licensing of projects that could potentially or effectively cause degradation is subject to submission to and approval by the environmental authorities of the environmental impact study.

Any and all types of environmental licenses have a defined term and cannot be transferred. The holder of an environmental license must apply for its renewal no more than 120 days before its term is due to end. In the case of a change in control of a company holding mineral rights and assets, or in the event of a sale of assets and mineral rights, a company is required to file a request to issue a new license with the state environmental authority. Under the existing regulations, the cost of a new license may range from C\$2,000 to C\$20,000. This is in addition to expenses relating to visits and a 5% administrative fee.

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

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

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

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

- ◆ Law n. 6,938/1981, regarding the national environmental policy;
- ◆ Law n. 9,605/1998, regarding environmental crimes;
- ◆ Decree n. 6,514/2008, regarding administrative penalties;
- ◆ Law n. 9,433/1997, regarding water resources;
- ◆ Law n. 12,305/2010, regarding the solid wastes policy; and
- ◆ Law n. 12,651/2012, regarding the forest code.

The main environmental agencies are:

- ◆ the Ministry of the Environment, which is responsible for the national environmental policy;
- ◆ the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA), which is responsible for the execution of the national environmental policy at the federal level;
- ◆ the National Council for the Environment (CONAMA), which is a committee responsible for consultative and deliberative measures regarding the national environment system (SISNAMA); and state (and sometimes also municipal) environmental bodies.

For example, in the State of Minas Gerais (one of the most important states in the Brazilian mining industry), a technical committee specialized in mining activities – Council of Environmental Policy (COPAM) – is responsible for giving opinions on environmental licensing requirements and the analysis of administrative appeals regarding the penalties imposed by State Law n. 7,772/1980 and State Decree n. 47,383/2018.



BRAZILIAN MINERAL EXPLORATION AND MINING COMPANIES ON THE B3

According to the Brazilian Mining Institute (*Instituto Brasileiro de Mineração* or “IBRAM”), over the next four or five years, the mining sector is expected to receive R\$40 billion in investments, mainly through the Brazilian stock exchange.⁴⁹ B3 S.A. – Brasil, Bolsa, Balcão (“B3”) is currently the only stock exchange operating in Brazil and is the largest stock exchange in Latin America.

Currently there are 4 mining companies listed on B3:

- ◆ **Vale S.A. (“Vale”)**, with a market capitalization of R\$499,330,021,017.30;
- ◆ **CSN Mineração (“CSN”)**, with a market capitalization of R\$6,076,929,760.20
- ◆ **MMX Mineração e Metálicos S.A. (“MMX”)**, with a Market capitalization of R\$47,079,611.52; and
- ◆ **Aura Minerals Inc. (“Aura”)**, with primary listing on the Toronto Stock Exchange and Brazilian Depositary Receipts (BDRs) listed on B3.

Both Vale and MMX are listed in the Novo Mercado corporate governance segment. This segment is intended for shares issued by companies that choose to comply with higher corporate governance practices and transparency requirements, in addition to those set forth by Law n. 6,404, dated December 15, 1976, as amended (“Brazilian Corporate Law”) and by the Brazilian Securities Commission (*Comissão de Valores Mobiliários* or “CVM”).

Vale is one of the largest mining companies in the world⁵⁰ and the one of the most lucrative in Brazil.⁵¹⁻⁵² The mining giant is also part of the Bovespa Index, an index comprised of companies with the highest trading volumes.

Aura is a Canadian mining company focused on the production of gold and copper, and it is listed on the Toronto Stock Exchange (“TSX”). The company recently completed its initial public

⁴⁹ “Brasil pode ter investimento de US\$ 40 bilhões em mineração” *Diário do Comércio*, 2020. Available at: <https://diariodo-comercio.com.br/economia/brasil-pode-ter-investimentos-de-us-40-bilhoes-em-mineracao/> . Access: November 3, 2020.

⁵⁰ Vale S.A.’s Formulário de Referência, Section 6.3. Available at: <http://www.vale.com/brasil/PT/investors/services-investor/Paginas/default.aspx>

⁵¹ “Bradesco é empresa Latina que mais lucrou no primeiro semestre”. *Folha de São Paulo*, 2020. Available at: <https://www1.folha.uol.com.br/mercado/2020/08/bradesco-e-empresa-latina-que-mais-lucrou-no-primeiro-semester.shtml> . Access in: November 3, 2020.

⁵² “Os 20 maiores lucros e os 20 maiores prejuízos das empresas de capital aberto em 2018”. *InfoMoney*, 2019. Available at: <https://www.infomoney.com.br/mercados/os-20-maiores-lucros-e-os-20-maiores-prejuizos-das-empresas-de-capital-aberto-em-2018/> . Access in: November 3, 2020.

offering of BDRs with restricted selling efforts, as per CVM Instruction No. 476, dated January 16, 2009, as amended.

It is important to mention that other major Brazilian conglomerates and steel companies listed on B3 also include mining operations, such as Gerdau S.A., Cia de Ferro Ligas da Bahia – Ferbasa, Companhia Siderúrgica Nacional (“CSN”), and Usinas Siderúrgicas de Minas Gerais S.A. – USIMINAS. All of these companies are currently listed in the Nível 1 corporate governance segment, in which the companies are obliged to, among other requirements, maintain a free-float of at least 25% of the share capital; promote capital dispersion on public offerings and improve their quarterly financial reports – ITR Form to include the disclosure of relevant party transactions with special audit revision.

As for CSN, on February 18, 2021, the company carried out its initial public offering for its mining subsidiary, CSN Mineração S.A., on the B3 stock exchange.

As described above, Brazilian equity capital markets have been accessed by a few major companies and therefore have a significant growth potential if other mining companies (especially medium-sized ones) are able to access this funding alternative. B3 is currently evaluating alternatives in order to make it possible for smaller companies (including from the mining sector) to go public on the Brazilian stock market. There have been several discussions involving Brazilian mining associations, mining companies, securities regulators and the Brazilian mining agency.⁵³ There is a real interest in improving Brazilian capital markets to create the environment needed for Brazilian mineral exploration and mining companies to access public equity capital. In the meantime, listing on the Toronto Stock Exchange, Toronto Stock Exchange – Venture, and issuing BDRs in Brazil seems to be an interesting alternative for Brazilian mineral exploration and mining companies.

⁵³ “How stock exchange operator B3 is seeking to incorporate Brazil’s mining juniors”. BNAméricas, 2020. Available at: <https://www.bnamericas.com/en/news/how-stock-exchange-operator-b3-is-seeking-to-incorporate-brazils-mining-juniors>. Access in: November 3, 2020.

Contact Information

Marcelo Mendo

Marcelo.Mendo@cesconbarrieu.com.br
+55 (31) 2519-2245

Frederico Viana

Frederico.Rodrigues@cesconbarrieu.com.br
+55 (31) 2519-220

Mauricio Pellegrino

Mauricio.Pellegrino@cesconbarrieu.com.br
+55 (31) 2519-2248

Paula Azevedo

Paula.Azevedo@cesconbarrieu.com.br
+55 (31) 2519-2246

CESCON, BARRIEU, FLESCH & BARRETO ADVOGADOS

SÃO PAULO | RIO DE JANEIRO | BELO HORIZONTE | BRASÍLIA | SALVADOR |
TORONTO

www.cesconbarrieu.com.br

**CESCON
BARRIEU**