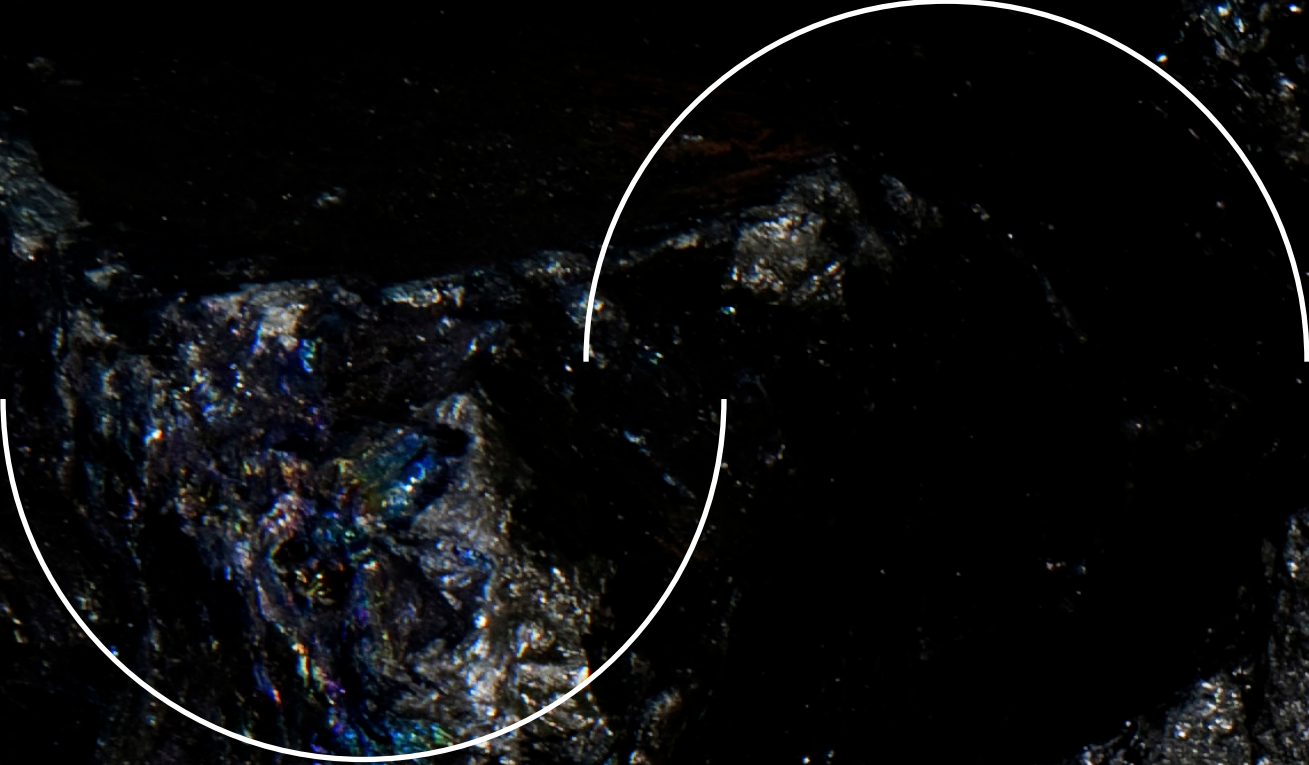



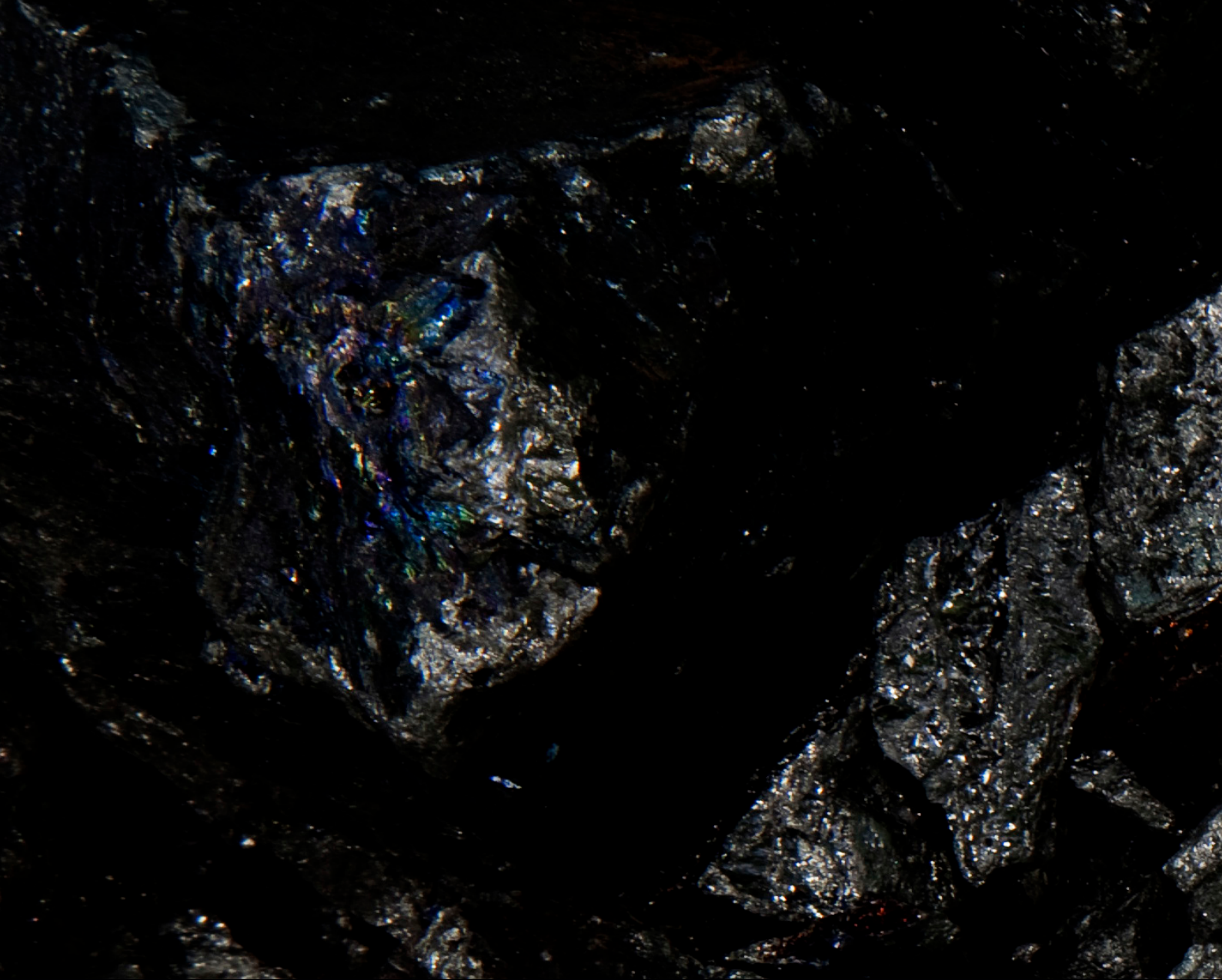
WHITEPAPER BRAZIL: 2025 MINING GUIDE

BRAZILIAN LAW OVERVIEW,
TRENDS, PERSPECTIVES
AND OPPORTUNITIES

CESCONBARRIEU



THE LEGAL INTELLIGENCE CENTER



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INTRODUCTION

Brazil is widely known as a major player in the global mining and metals industry, with an incredible range of natural resources and geo-diversity. From green field 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 2025¹, Brazil is the only Latin American country to rank within the top 10 largest producers of mineral fuels, iron, ferrous and non-ferrous metals, precious metals and industrial minerals. It is the 9th largest producer in the world, coming in between Canada and Iran. Brazil is constantly improving its business and regulatory environment to further attract foreign investments in this industry which is so important to the Brazilian economy.

¹ World Mining Data 2025. Federal Ministry of Agriculture, Regions and Tourism of Austria, 2025. <https://www.world-mining-data.info/wmd/downloads/PDF/WMD%202025.pdf>

TOTAL MINERALS PRODUCTION 2023, BY COUNTRY (BY PRODUCTION IN METR. T)²

COUNTRY	TOTAL (INCL. BAUXITE)	IRON, FERRO-ALLOYS	NON-FERROUS METALS	PRECIOUS METALS	INDUSTRIAL MINERALS	MINERAL FUELS
CHINA	5 275 323 353	195 472 739	50 417 029	3 780	206 871 000	4 757 042 505
UNITED STATES	2 412 274 729	28 445 900	2 957 983	1 203	91 617 290	2 289 204 123
RUSSIA	1 560 243 470	53 990 499	5 523 790	1 970	40 296 315	1 453 563 196
INDIA	1 363 189 440	173 038 350	5 234 660	740	64 289 387	1 097 265 508
AUSTRALIA	1 301 371 105	592 643 180	4 141 401	1 329	19 713 487	585 813 332
INDONESIA	878 954 445	2 847 000	1 189 634	376	4 865 466	860 162 400
SAUDI ARABIA	655 483 379	350 000	794 957	22	17 650 000	630 788 400
CANADA	556 620 832	40 359 368	3 878 393	455	34 708 494	477 674 122
BRAZIL	527 807 571	275 304 669	1 650 009	190	19 400 241	199 419 971
IRAN	502 490 262	37 747 680	1 250 807	96	33 780 346	428 840 260

In 2017, Brazil transformed the National Department of Mineral Production (**DNPM**) into the National Mining Agency (**ANM**), a more politically independent entity. ANM regulates, supervises, and promotes an investor-friendly mining environment by simplifying regulations and improving transparency.

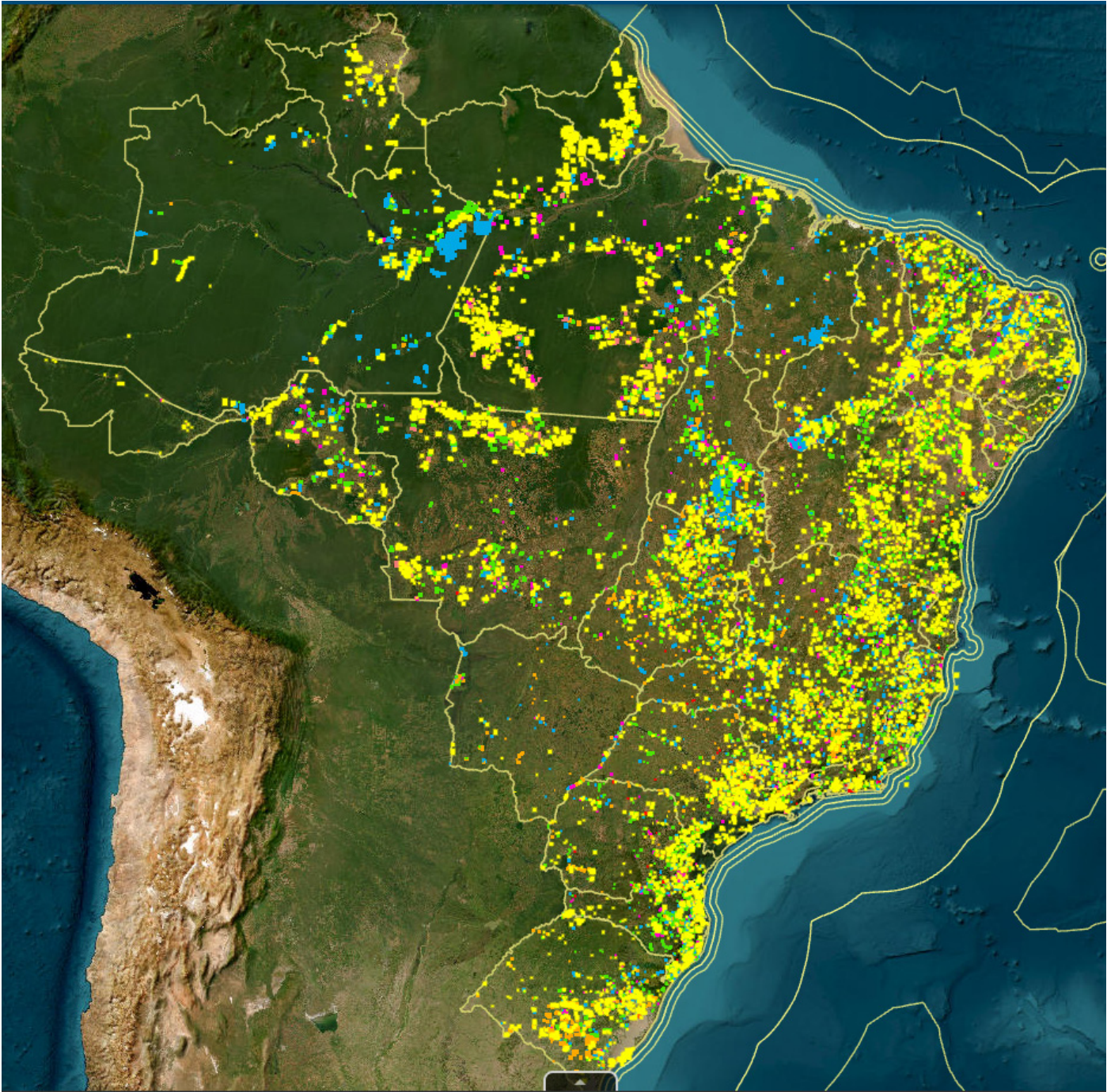
This transformation improved the regulator's response time and led to over 57,000 areas becoming available in the agency's portfolio. ANM has conducted eight offering rounds, collecting US\$ 23 million³ in the fifth round alone. As of June 2024, ANM's portfolio contained approximately 2,000 areas available for mining players.⁴

² World Mining Data 2025. Federal Ministry of Agriculture, Regions and Tourism of Austria, 2025. <https://www.world-mining-data.info/wmd/downloads/PDF/WMD%202025.pdf>

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

⁴ Rodadas de Disponibilidade. Dashboard. Available at <https://geo.anm.gov.br/portal/apps/dashboards/2706303fec9541bdafdad76eb5c1da7f>

AREAS (SOPLE)



GRAPHIC SUBTITLE

Stock of Areas
- Availability



Areas in Availability - Result

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

Territorial Structure

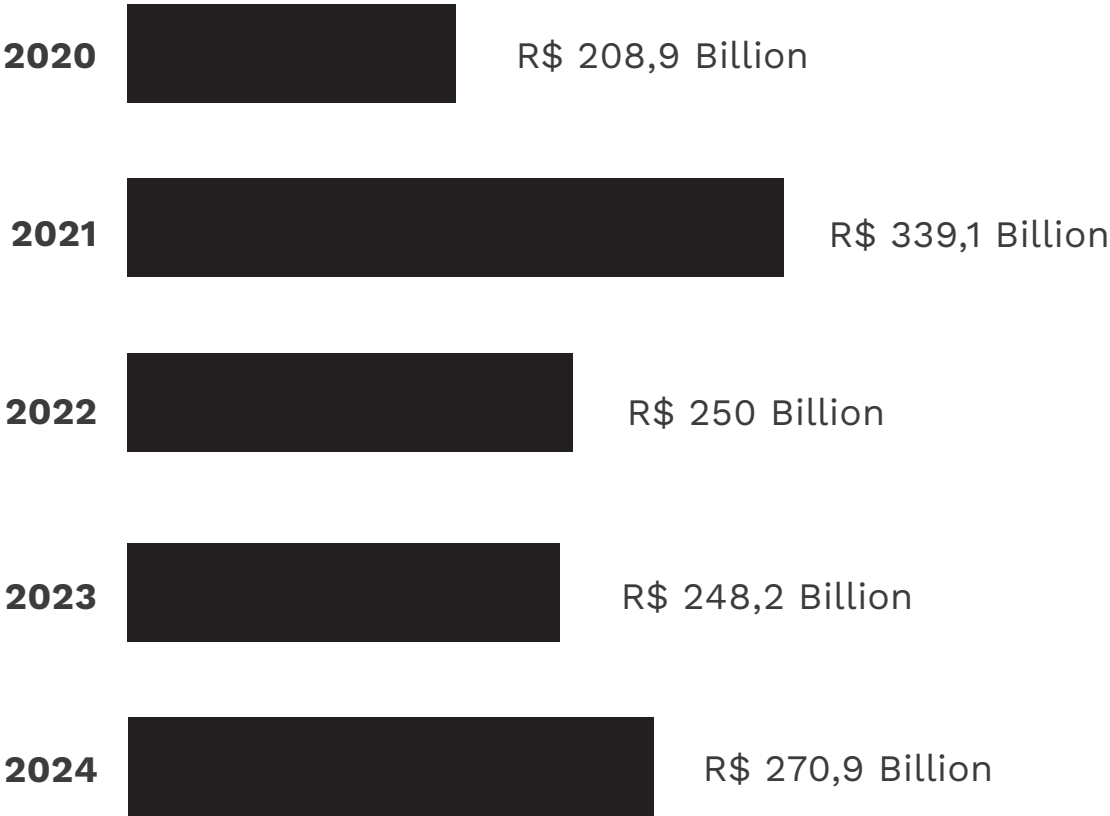
- | | |
|---|-------------------------|
|  | State network |
|  | Exclusive Economic Zone |

Interest from mining players in these areas grew from 33% in the first round to an average of around 50% over the next 3 rounds. ANM collected around US\$ 55 million with the first four rounds, demonstrating significant investment opportunities.

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

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

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



The Brazilian mining and metals industry showed strong resilience, positive results and growth during the past few years. There are significant investment opportunities available and a backlog of mining investments. For example, the Mineral Sector Bulletin of 2021⁶ reported that the known contained reserves of copper add up to 11,212 (x10³) t. When comparing this

5 Mining in Numbers – IBRAM. Available at: https://ibram.org.br/wp-content/uploads/2024/02/Info-final_ing.pdf
Accessed: June 16, 2025.

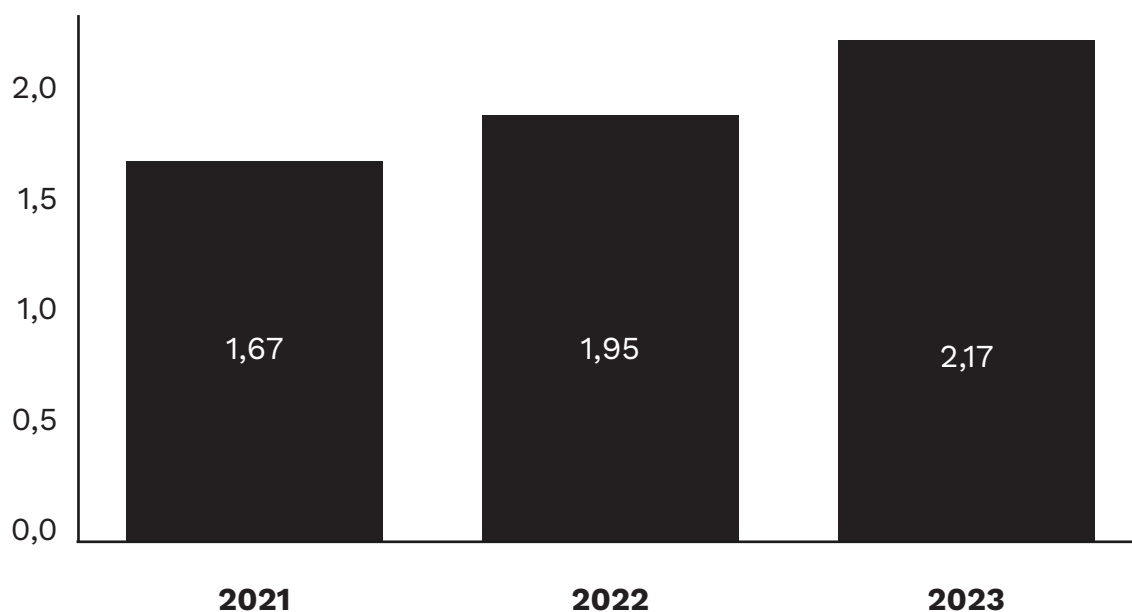
6 Mineral Sector Bulletin – 2021. Available at: https://www.gov.br/mme/pt-br/assuntos/secretarias/geologia-mineracao-e-transformacao-mineral/publicacoes-1/boletim-do-setor-mineral/boletim_sgm_dez2021_digital_7-edicao.pdf

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

Brazil represents approximately one-third of Latin America in terms of population, territory, economy, and other key metrics. Brazil continues to be the largest economy in Latin America. According to the International Monetary Fund – IMF⁸, the Brazilian gross domestic reserves of copper add up to 11,212 ($\times 10^3$) t. When colliding this number with the gross production indicated in the 2020 mineral yearbook, which was slightly above 554 ($\times 10^3$) t, we conclude that known reserves of copper have a lifespan of just above 20 years. With an area of over 8.5 million km² and the granting of just 9,952 exploration permits⁹ in 2023, Brazil has the geological potential to become an even greater player in the global mining and metals industry.

– IMF, the Brazilian gross domestic product (GDP – current prices) in the last three years demonstrated a continuous growth:

BRAZILIAN GROSS DOMESTIC PRODUCT (GDP) (TRILLION DOLLARS)



Due to its abundant natural resources, Brazil's economy is especially active in the agricultural, food, mining, steel, clean energy, and oil and gas industries, and serves as an emerging technology hub in the region, functioning as a gateway to Latin America for international companies.

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

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

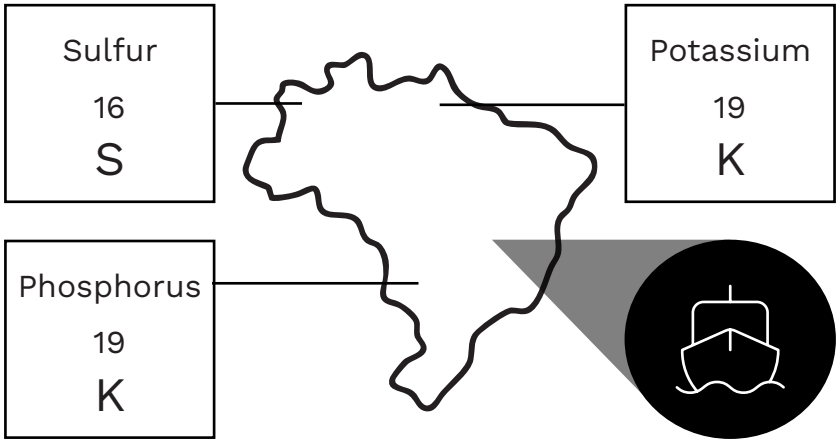
9 The World Bank. GDP (current US\$) - Latin America & Caribbean, Colombia, Chile, Mexico, Peru. Available at: <https://data.worldbank.org/indicator/ny.gdp.mktp.cd>

Recognizing this potential, the Brazilian government instituted the Policy to Support the Environmental Licensing for Strategic Minerals Projects “Pro Strategic Minerals”, through Decree no. 10.657/2021, aiming to create a supportive environment around those who seek to implement projects of strategic minerals for the development of the country. It organized strategic minerals into 3 groups:

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

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

MINERALS WITH HIGH DEPENDENCE ON IMPORTS



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

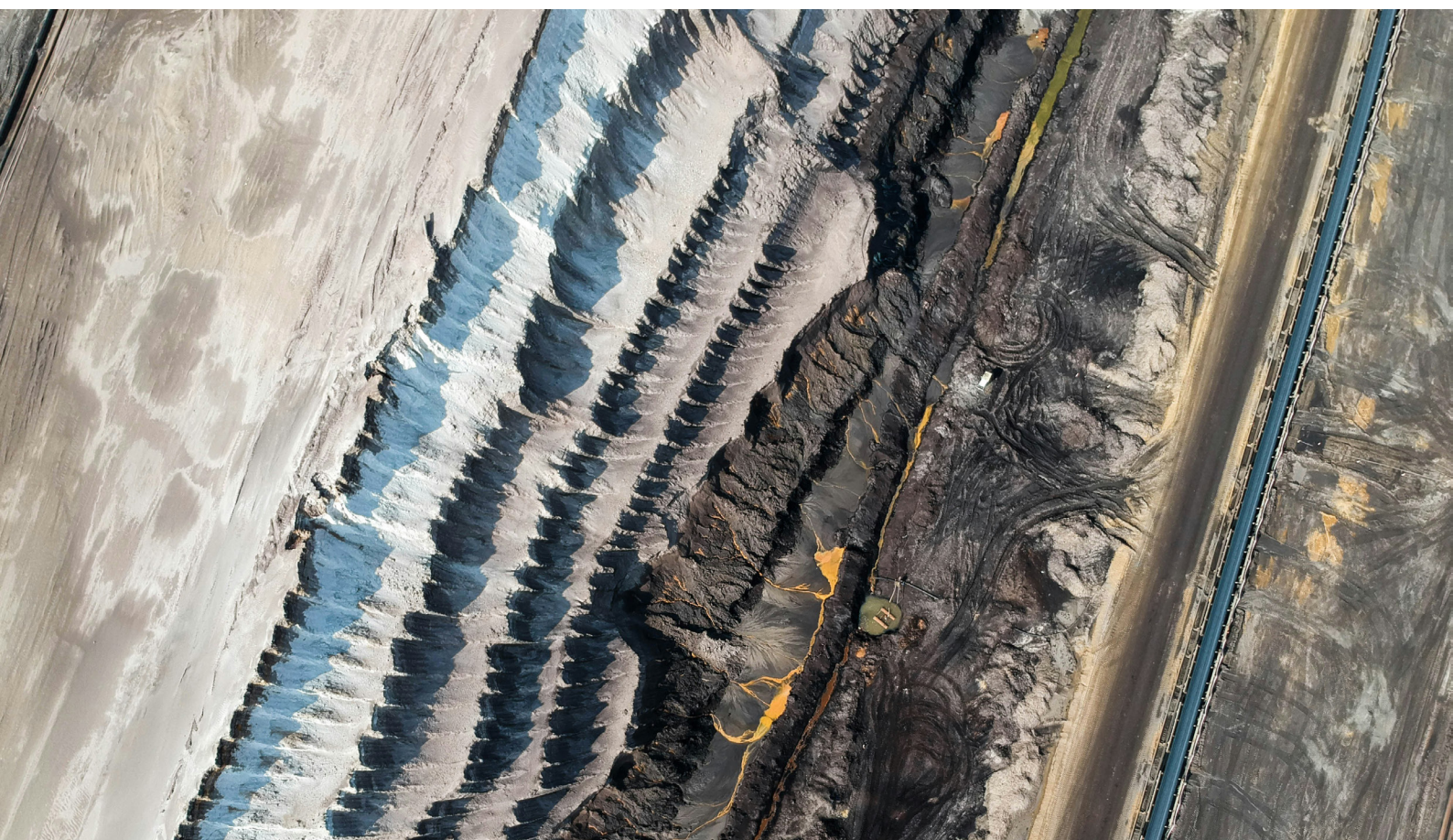
10 International Monetary Fund. GDP, current prices. Available at: <https://www.imf.org/external/datamapper/NGDPD@WEO/OEMDC/ADVEC/WEOWORLD/USA/BRA>

Regarding potassium, a recent survey carried out by the Federal University of Minas Gerais¹¹ concluded that the country has potassium reserves with the potential to sustain agriculture until the year 2100. This demonstrates the significant potential of the potassium value chain.

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

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

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



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

12 Cescon Barrieu. 2022. Available at: <https://cesconbarrieu.com.br/publicado-decreto-no-11-120-de-5-de-julho-de-2022-que-permite-as-operacoes-de-comercio-exterior-de-minerais-e-minerios-de-litio-e-de-seus-derivados/>

LEGAL SYSTEM AND FOREIGN INVESTMENTS IN BRAZIL

Legal System. Brazil is a Federal Republic comprising 26 states, the Federal District (Brasília, founded in 1960), and 5,564 municipalities. Each state has the authority to adopt its own regulations and laws, primarily concerning local taxation and administrative matters, although their legislative autonomy is limited by principles and rules established in the Federal Constitution. Municipalities operate under restricted autonomy, and their legislation must comply with both State and Federal Constitutions.

Mining activities are governed by federal legislation, including the Brazilian Mining Code and, from a foreign investment perspective, the Foreign Investment Rules and Regulations. Additional federal, state, and municipal legislation applies to taxation, environmental, and administrative matters.

As a civil law jurisdiction, Brazil's judiciary is organized into federal and state branches. Court decisions are based on applicable Brazilian laws, most of which are federal. Where no specific legal provisions exist, courts decide cases based on analogy, usage and custom, and general principles of law. Judicial precedent plays a key role in court decisions but does not have the same binding status as in common law jurisdictions.

Mining projects in Brazil may take various legal structures to meet specific project or investment requirements. Except for prospecting, mining, and reprocessing of nuclear ores, which constitutes a government monopoly, exploitation of other mineral resources may only be conducted by Brazilian nationals or entities incorporated in Brazil (which may be foreign controlled).¹³

Mining rights are acquired through an administrative procedure conducted by ANM. Brazil's jurisdiction system includes judicial review of administrative actions, whereby the Judiciary has exclusive authority to render definitive decisions. All administrative decisions may be appealed through the exhaustion of administrative jurisdiction, after which matters may be submitted to judicial courts.

Local and foreign investors generally receive equal treatment under Brazilian law. Brazil's Federal Constitution provides equal treatment for local and foreign investors. No restrictions exist for foreign-controlled companies developing mining activities in Brazil, provided they are incorporated under Brazilian law and the mining site is not located in border zones.¹⁴ Furthermore, several

¹³ Article 176 of the Brazilian Constitution.

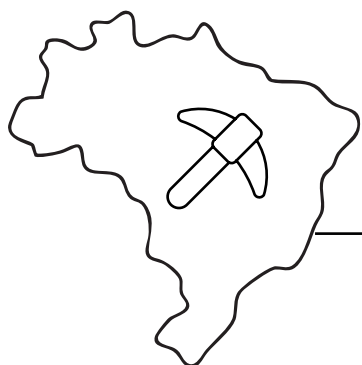
¹⁴ In addition to mining being considered a national policy matter, Brazilian legislation provides special restrictions for mining activities within the so-called Brazilian border zones. It states that mining companies with operations within 150 km from the Brazilian border zone must have **(i)** at 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.

tax benefits are available exclusively to foreign investors, including tax exemptions and reduced rates for income taxes.¹⁵

To improve the regulatory framework and business environment, ANM issued its regulatory agenda in compliance with the “Law of Agencies.” The regulatory agenda provides predictability to the sector by listing priority themes for regulation during each biennium. Additionally, on August 17, 2020, the Brazilian government launched a national economic recovery plan following the COVID-19 pandemic, aimed at fostering foreign investment through increased government transparency and regulatory certainty.¹⁶

Foreign investments in Brazil. According to the Direct Investment Report of the Brazilian Central Bank¹⁷, by the end of 2023, the Direct Investment Position (DIP), representing the passive position of direct investment, reached its highest recorded value, surpassing US\$1.3 trillion.

Brazil ranked 21st in the 2025 Kearney FDI Confidence Index as one of the markets likely to attract significant investment over the next three years.¹⁸ The Brazilian mining sector is projected to receive US\$ 68.4 billion in investments by 2029.¹⁹



21ND

in the 2025 Kearney FDI Confidence Index as one of the markets likely to attract the most investment over the next three years

**US\$ 68,4
BILLION**

Expected in investments in the Brazilian mining sector by 2029

¹⁵ For example, we have portfolio investments under CVM Resolution 4,373 providing reduced tax rates for capital gains recognized and exemption for dividends paid abroad. Also, we point out the FIP (Private Equity Funds) which has an income tax exemption for income paid abroad, if 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.

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

¹⁷ Relatório de Investimento Direto 2024. Banco Central do Brasil. Available at: <https://www.bcb.gov.br/publicacoes/relatorioid>

¹⁸ A.T. Kearney. The 20252 Foreign Direct Investment Confidence Index. Available at: <https://www.kearney.com/service/global-business-policy-council/foreign-direct-investment-confidence-index>

¹⁹ “Brasmin 2025 deve gerar mais de 1 bilhão em negócios” IBRAM, 2025. <https://ibram.org.br/noticia/brasmin-2025-deve-gerar-mais-de-r-1-bilhao-em-negocios/>

Foreign investments in Brazil are regulated by Law No. 4,131, as amended by Law No. 14,286 (the “Foreign Capital Law”),²⁰ which requires registration with the Central Bank²¹ to ensure foreign remittance of profits and/or interest on equity, repatriation of foreign capital invested in Brazil, and reinvestment. Additionally, within 30 days of closing an exchange contract, capital remittances must be registered with the Brazilian Central Bank’s online electronic system RDE-IED (“Registro Declaratório Eletrônico de Investimentos Estrangeiros Diretos”).²² Foreign capital may take the form of cash, goods, services, or intangibles, with cash investments being the most common form of initial investment.²³

Under the Foreign Capital Law, foreign capital includes any goods, values, rights, and assets of any nature held in national territory by non-residents, as well as any funds brought into Brazil for use in economic activities or owned by individuals or companies residing or headquartered abroad.

Profit remittances to non-resident foreign investors must comply with Central Bank requirements. The Central Bank regulates and monitors Brazilian capital abroad and foreign capital in the country, including their flows and stock.²⁴

Capital market investments by non-resident individuals or legal entities are subject to registration with both the Brazilian Central Bank and the Brazilian Securities Commission (CVM).²⁵

20 Law no. 4,131/1962, which was regulated and amended by Law no. 4,390/1964, Decree no. 55,762/1965, Decree-Law no. 37/1966, Decree-Law no. 94/1966, Law no. 8,383/1991, Law no. 8,685/1993, Law no. 9,069/1995 and Decree-Law no. 2,073/1983 (Lei N° 4.131, Brasil, 3 de setembro de 1962, Palácio do Planalto, online: https://www.planalto.gov.br/ccivil_03/leis/l4131.htm

21 The registration of foreign capital with the Central Bank of Brazil (Banco Central do Brasil or BACEN) is provided for by Law 4,131/1962 and Law 4,390/1964, which guarantees equal treatment of foreign and national capital (Ibid; Lei no. 4,390, Brasil 29 August 1964, Palácio do Planalto, online: https://www.planalto.gov.br/ccivil_03/leis/L4390.htm

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

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

24 Law No. 14.286, article 10.

25 Non-resident investors (individuals or legal entities) may invest their funds in the same financial and capital market instruments and operational modalities available to resident investors. See CVM Resolution 13/20, Joint Resolution BCB/CMN No. 13/24. For additional information please see generally ANBIMA, “Non-Resident Investors Guide” ANBIMA (July 2016), online: <https://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 form the foundation of the production chain, providing materials required to build, maintain, and improve infrastructure and objects used in everyday life. Following a geological discovery, comprehensive studies and assessments must be conducted to evaluate the economic potential of the discovery, its social and environmental impacts, and the necessary logistics and infrastructure before developing and operating a mine.

These studies and assessments may lead to the completion of a definitive feasibility study, construction and operation of a mine, and eventual mine closure with degraded area recovery. Each phase presents technical, economic, and social challenges requiring substantial investment to transform a geological discovery into mineral production.

Multiple stakeholders participate in each phase: explorers or miners, neighboring communities, governmental and supranational authorities, national and international institutions and associations, financial institutions, logistics operators, and buyers or consumers. This section provides a general overview of the Brazilian mineral exploration and mining regulatory framework.

Brazil, recognized for its natural resources and as Latin America's largest economy, possesses extensive mineral deposits and provides a favorable environment for foreign investment, particularly in mining. The Brazilian Constitution designates mining as a national policy matter that must be conducted in the national interest. The federal government has jurisdiction to control, regulate, and grant rights to explore and exploit Brazil's mineral resources.²⁶ The Brazilian Constitution establishes that all mineral resources are owned by the federal government and are distinct from land ownership.

The subsoil and soil are subject to distinct legal treatment. The holder of a mineral exploration license or mining concession has the right to conduct mineral exploration or mining activities even where disputes exist with the landowner. Under Brazilian law, the mining rights holder has guaranteed access to the area covered by the title, provided the landowner receives compensation for its use.²⁷

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

27 Brazilian Mining Code. Please note that generally the compensation payable by the mining rights owner to the landowner for the use of its land is half of the royalty payable to the Brazilian Government, plus compensation for any damage and loss caused or that may be caused as a result of such activities.

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

As mining is treated under Brazilian law as a national policy matter, the federal government holds exclusive regulatory authority over the sector through a system of authorizations, concessions, licenses, and permits established in the Brazilian Mining Code, which is periodically reviewed and amended.²⁸ State and municipal governments have supplementary authority to regulate certain mining aspects, including environmental and zoning matters, and other aspects related to planning, implementation, operation, safety, taxation, and decommissioning of tailings dams.

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

In addition to the Constitution and the Mining Code, the main federal legislation governing exploration and mining activities in Brazil includes:

LEGISLATION	PURPOSE
LAW NO. 13,575/2017	Created the National Mining Agency – ANM and extinguished the old National Department of Mining – DNPM.
LAW NO. 6,567/1978	Regulated the Licensing System.
LAW NO. 7,805/1989	Created the small-scale independent mining permit.
LAW NO. 8,176/1991	Defined illegal mining as an economic crime.
LAW NO. 7,990/1989	Created Financial Compensation for Exploiting Mineral Resources.
LAW NO. 8,001/1990	Regulated Financial Compensation for Exploiting Mineral Resources.

²⁸ Decree-Law no. 227/1967.

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

LAW NO. 13,540/2017	Altered the Financial Compensation for Exploiting Mineral Resources regulation.
LAW NO. 12,334/2010	Created the National Policy for Dam Safety, updated by Law n. 14,066/2020.
LAW NO. 14,514/2022	Addresses the encumbrance of mining titles, the exploitation of nuclear minerals by private parties, and the declaration of availability of resources of the miner.

In addition to these main federal laws, extensive administrative rules, ordinances, and regulations exist, primarily issued by the ANM (and its predecessor DNPM) and the MME. Main regulations include:

ORDINANCE 155/2016	Consolidation of ANM normative acts;
RESOLUTION 1/2018	Regulates the exploitation system known as extraction;
DECREE 9,406/2018	Amended by Decree 10,965/2022 (Regulates the Mining Code);
RESOLUTION 24/2020	Regulates the mining rights availability procedure;
RESOLUTION 68/2021	Regulates the Mining Closure Plan;
RESOLUTION 85/2021	Regulates the procedures to reuse mining waste;
RESOLUTION 90/2021	Regulates the offer of mining rights as collateral for financing operations;
RESOLUTION 94/2022	Regulates the Brazilian System of Resources and Reserves;
RESOLUTION 95/2022	Merges the normative acts addressing the safety of mining dams;
RESOLUTION 102/2022	Bylaws of ANM;
RESOLUTION 119/2022	Creates REPEM, an electronic system for exploration applications;
RESOLUTION 120/2022	Regulates the annual fee per hectare (“TAH – Taxa Anual por Hectare”);
RESOLUTION 122/2022	Regulates the sanctions for non-compliance to mining norms;

DECREE 11.310/2022	Regulates the National Dam Safety Policy – Law no. 12,334/2010;
RESOLUTION 129/2023	It establishes rules to combat money laundering and financing of terrorism and the proliferation of weapons of mass destruction.
RESOLUTION 155/2024	Regulates the granting of installment payments for credits of the ANM before their registration as active debt.
RESOLUTION 156/2025	Replaces the CFEM Calculation Record Form with the new Economic and Fiscal Information Declaration (DIEF) for reporting CFEM.

A meaningful change for regulated sectors was the enactment of **Law No. 13,874/2019, the “Economic Freedom Law.”** This law established that in specified situations, after a period without formal response from the government entity, certain applications and requests are considered tacitly (automatically) approved. This tacit approval was recently reaffirmed by changes in the Mining Code Regulation, which provided for tacit approval of tailings reuse requirements.

As of December 2021, significant economic aspects of mining were regulated by ANM through three Resolutions that entered into force.

Resolution ANM No. 85/2021 regulated the exploitation of mining tailings and waste. Its entry into force resulted from efforts by ANM and stakeholders to develop solutions for sustainable management of tailings and waste.

The matter was surrounded by legal uncertainty due to reasonable doubts concerning the rights to reuse such material. Given that mining activity is expensive, the regulation provided necessary direction to the sector for sustainable material management solutions.

Two main aspects of the Resolution merit highlighting: first, the linkage between waste and the mine where it was generated, even when deposited outside its polygon; and second, no new mining right is necessary to exploit such material. However, the title holder must fulfill specific requirements to exploit under this system. Non-compliance subjects the exploitation to regular legal regimes for mining.

In December 2024, **Resolution No. 189/2024** amended Resolution No. 85/2021, establishing procedures for utilizing tailings and waste rock and introducing new requirements for utilizing materials deposited outside the concession area.

This adjustment stems from CS/ANM Vote 456/2024, adopted at the 30th Extraordinary Public Meeting of the Collegiate Directorate on November 22, 2024, which established clear understanding regarding timelines and ownership of waste and tailings from mining operations.

The amendments are to be immediately implemented in pending cases, with potential discussions regarding legal viability and responsibilities for tailings use.

Resolution ANM No. 90/2021 established cases in which mining rights may be offered as collateral for financing operations and the requirements and conditions for assigning these titles. The regulation authorized use as a collateral of mining concessions and mining claims. In both cases, the encumbrance must be requested from ANM with the financing agreement in which the mining right was granted as collateral.

The regulation establishes titleholder duties during the encumbrance term and conditions for discharge. This represents progress toward legal certainty and an investor-friendly environment.

Due to ANM's previous understanding that only mining concessions could serve as collateral, the Mining Code was amended in 2022 to allow all legal regimes of mining rights to serve as collateral for financing transactions. The encumbrance may be created through pledge, fiduciary transfer for security purposes, or other contractual arrangements agreed upon by parties considering transaction specifics.

Although ANM Resolution 90/2021 does not establish procedures for encumbering mining rights other than mining concessions, the recent Mining Code amendment eliminates doubt that such encumbrance is possible.

Current regulations provide that security over mining claims ("*manifestos de mina*") must be granted through public deed or instrument, whereas security over mining concessions ("*concessão de lavra*") may be created through private instruments. The lien must then be registered with ANM through an online procedure.

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

Upon enforcement of the collateral interest, the secured creditor must sell the mining rights to a third party through public or private sale. The sale must be reported to ANM, and its effects are conditioned upon ANM's consent. The new mining rights owner must **(i)** be a company headquartered in Brazil and **(ii)** assume the legal position of the previous holder (the

original collateral provider), including responsibility for debts relating to the period prior to foreclosure (however, the previous owner remains jointly and severally liable for those debts). Parties may contractually agree on redress rights, which are not enforceable against third parties, including ANM.

In 2022, ANM implemented additional changes through **Resolutions ANM no. 94, 95, 102 and 122**.

Resolution ANM No. 94/2022 regulated the Brazilian System of Resources and Reserves. Published on February 7, 2022, it entered into force on August 7. The regulation enhances legal certainty and transparency regarding publication of mining exploration results. Combined with mining rights collateral regulation, it serves as a tool to strengthen the Brazilian mining sector.

Resolution ANM No. 95/2022 consolidated dam safety standards, unified normative acts related to the matter and revoked prior regulations. The Resolution incorporated innovations from Federal Law No. 14,066/2020, as discussed later in this guide. The Resolution introduced significant changes regarding automatic classification of mining dams in emergency situations, primarily to regulate dams through effective safety measures by owners. Provisions for embargoes, suspension, and interdiction are also included.

Resolution No. 102/2022 Resolution No. 102/2022 amended ANM's bylaws and reorganized the agency's structure, modernizing its branches with clearer hierarchy, competences, and centralization of strategic decisions to enhance certainty, particularly important in a country as large as Brazil.

Resolution ANM No.122/2022 established procedures for determining infractions, sanctions, and fine amounts imposed for non-compliance with mineral legislation obligations. Fine amounts may now reach up to 1 billion BRL.

Law No. 14,514/2022, published in December 2022, amended the Mining Code to allow mining rights, regardless of phase, to be encumbered and offered as collateral by their holders. This changes is expected to encourage and facilitate sector financing.

Another important change introduced by Law No. 14,514 concerns the possibility for entrepreneurs to declare their commitment to seek financing necessary for compliance with the Economic Operational Plan (*Plano de Aproveitamento Econômico - PAE*) and mine operation, as an alternative to immediately proving fund availability, as previously required by Article 38, VII of the Mining Code (Decree-Law 227/1967).

In 2023, **Resolution ANM No. 129** was promulgated to prevent money laundering, terrorism financing, and proliferation of weapons of mass destruction. The regulation's primary objective was introducing new tools enabling ANM and other regulatory bodies to exercise effective control in combating laundering of gemstones and precious metals, preventing illicit activities in the mining sector.

Despite the Resolution's publication only in 2023, ANM had already been actively engaged in promoting various projects to combat illegal mining and associated crimes.

The Federal Government has adopted measures to restrict trade of gold from illegal mines to deter such activities. One measure under government consideration is requiring gold transportation to always be accompanied by electronic invoices, facilitating metal traceability and origin identification. Currently, the law only mandates traditional invoices and copies of mining authorization titles.

Another significant regulation enacted in 2024 was Resolution ANM No. 155/2024, governing installment grants for paying ANM credits before their registration as outstanding debt. This regulation updated previous debt installment rules under ANM and aims to reduce judicial enforcement needs while assisting miners in debt settlement.

On November 4, 2024, Resolutions No. 187/2024 and 188/2024 updated ANM's crisis and risk management policies. Resolution No. 187/2024 introduces a Crisis Management Policy emphasizing strategic decision-making, public trust, and a structured Crisis Management Plan with protocols for mining accidents, regulatory failures, safety issues, cyber incidents, and other crises. It also regulates crisis communication and defines agency responsibilities.

Resolution No. 188/2024 revises ANM's Corporate Risk Management Policy, expanding risk categories to include strategic, regulatory, and socio-environmental risks and integrating risk management with strategic planning.



MINING RIGHTS & SURFACE RIGHTS IN BRAZIL

1	Identification Phase: Identification and definition of the location and type of mineral resource for exploration. In this initial prospecting phase, no mining title is required.	
2	Exploration Permit Application: Submit an exploration application to the National Mining Agency (ANM), which should include a detailed description of the financial resources to be used in the activities and the exploration plan.	
3	Exploration Permit Phase: Upon issuance of the Exploration Permit (Alvará de Pesquisa) by the ANM, the title holder must conduct exploration activities in the designated location. These activities include drilling, sample collection, laboratory testing, and other tasks aimed at confirming the existence, extent, and economic feasibility of mineral resources.	Environmental Licensing Phase (concurrent with the mining phases): Obtain the necessary environmental licenses for the mining operation.
4	Final Exploration Report Phase: Submit the Final Exploration Report (RFP) to the ANM, containing detailed data on mineral resources and reserves, as well as their economic feasibility.	
5	Mining Concession Application: Once the RFP is approved by the ANM, submit the documentation required by law and apply for a mining concession, which is the formal title granting the holder the right to conduct mining operations and exploit the mineral resources in the area.	
6	Mining Concession Phase: Upon receiving the Mining Concession, the titleholder must commence mining activities within 6 months. The concession has no expiration date and remains valid as long as the obligations and provisions outlined in the rules and regulations are complied.	

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

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

At the end of the exploration license term, a report of the work performed must be submitted to the ANM (the Final Mineral Exploration Report), which must be approved or rejected by the ANM in the following cases:

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

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

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

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

The granting of a mining concession is subject to the fulfilment of the following conditions, but not limited to: exploring the area, obtaining an approved Final Mineral Exploration Report and

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

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

- i. certificate of incorporation of the company;
- ii. description of the minerals (quality, reserve calculation, volume, density, etc.) and an indication of the exploration license and the approved technical report.
- iii. description and information related to the area and the main aspects of the deposit (maps, plants, roads, railways, rivers, topography, neighboring areas, surface landowners, etc.).
- iv. graphic definition of the area.
- v. areas in which a mining easement (*servidão mineral*) shall be instituted;
- vi. the PAE; and
- vii. proof of financial capacity required to conduct the mining.

After a mining concession is published in the official gazette, the mining company has six months to start the preparatory work for commencing mining activities, as established in the PAE. Once mining has commenced, it cannot be interrupted for a period of six consecutive months. The mining company must file detailed annual mining reports with ANM. To exploit the mine, an operating license from the applicable environmental authority(ies) must also be obtained.

Throughout this process, the surface rights remain in the hands of the landowners, who can also be the owner of the respective mineral rights, and are typically farmers, ranchers or companies.³²

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

31 The PAE must contain a detailed description of the project and all technical and economic information defined by article 39 of the Mineral Code (Decreto-lei nº 227/67, Brasil 28 February 1967, Planalto, online: https://www.planalto.gov.br/ccivil_03/decreto-lei/del0227.htm

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

If the mining company does not hold the title to the underlying surface rights (nor the property of the land itself), the surface rights must be individually negotiated to allow the holder of an exploration license or a mining concession to access the land and conduct exploration and/or mining activities. The landowners are obliged by law to provide access to the exploration license holders to conduct the exploration works. If the parties cannot reach an agreement through mutual negotiations, there are legal mechanisms to enforce the entry of the miner onto the land.

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

Original Acquisition of Mining Rights. Mining rights may be acquired originally, upon an administrative procedure with ANM and according to the principle of priority, under which the first applicant has assured priority to obtain exploration rights over a clear area if the other applicable requirements are met (first-come, first-served principle). ANM also conducts bidding processes for areas in which there is a certain level of geological information allowing the agency to put such areas up for bidding. This is a 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 bidding. 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 on these occasions a bidding procedure will take place, if the area is not auctioned, it will return to the initial stage in which the first-come, first-served principle guides the acquisition.

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

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

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

Lease of Mining Rights. In addition to the original acquisition and assignment of mining rights, and subject to the authorization of ANM, mining rights may be leased to third parties without the definitive assignment of the mining rights. The documents which must be submitted with the request for the lease of mining rights include:

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

BRAZILIAN MINERAL EXPLORATION AND MINING REGIMES

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

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

EXPLORATION LICENSE AND MINING CONCESSIONS

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

REQUIREMENTS FOR CONDUCTING MINERAL EXPLORATION IN BRAZIL

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

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

To conduct mineral exploration activities in Brazil, the holder of an exploration license 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 of access to the land covered by its mineral rights (if it is not also the holder of the surface rights nor the land property).

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

In the event the holder of an exploration license or mining concession does not reach an agreement with the landowners of the area covered by said mining rights, there is a specific

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

legal court proceeding in Brazil to compel the landowner to give access to the property to allow the miner to conduct activities within the areas covered by said mining rights.

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

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



34 Articles 23 and 30 of the Mining Code

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

LICENSING

In Brazil, the exploitation of sand, gravel, grit, and crushed stones for immediate use in the construction industry; rocks and other mineral substances for paving blocks, curbstones, gutters, posts, and the like; clays for various industries; rocks, when crushed for immediate use in civil construction and the limestones used as soil corrective in agriculture; ornamental and cladding rocks; and calcium and magnesium carbonates used in various industries is authorized to be conducted by third parties under a licensing system (regulated by Law no. 6,567/1978 and Ordinance no. 155/2016). This system includes specific characteristics such as

(i) the areas subject to the licensing system are limited to 50 ha, **(ii)** it is under the authority of the municipality; and **(iii)** it does not require prior exploration license.

SMALL-SCALE MINING PERMIT

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

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

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

MONOPOLY REGIME

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

REQUIREMENTS TO CONDUCT MINING ACTIVITIES IN BRAZIL

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

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



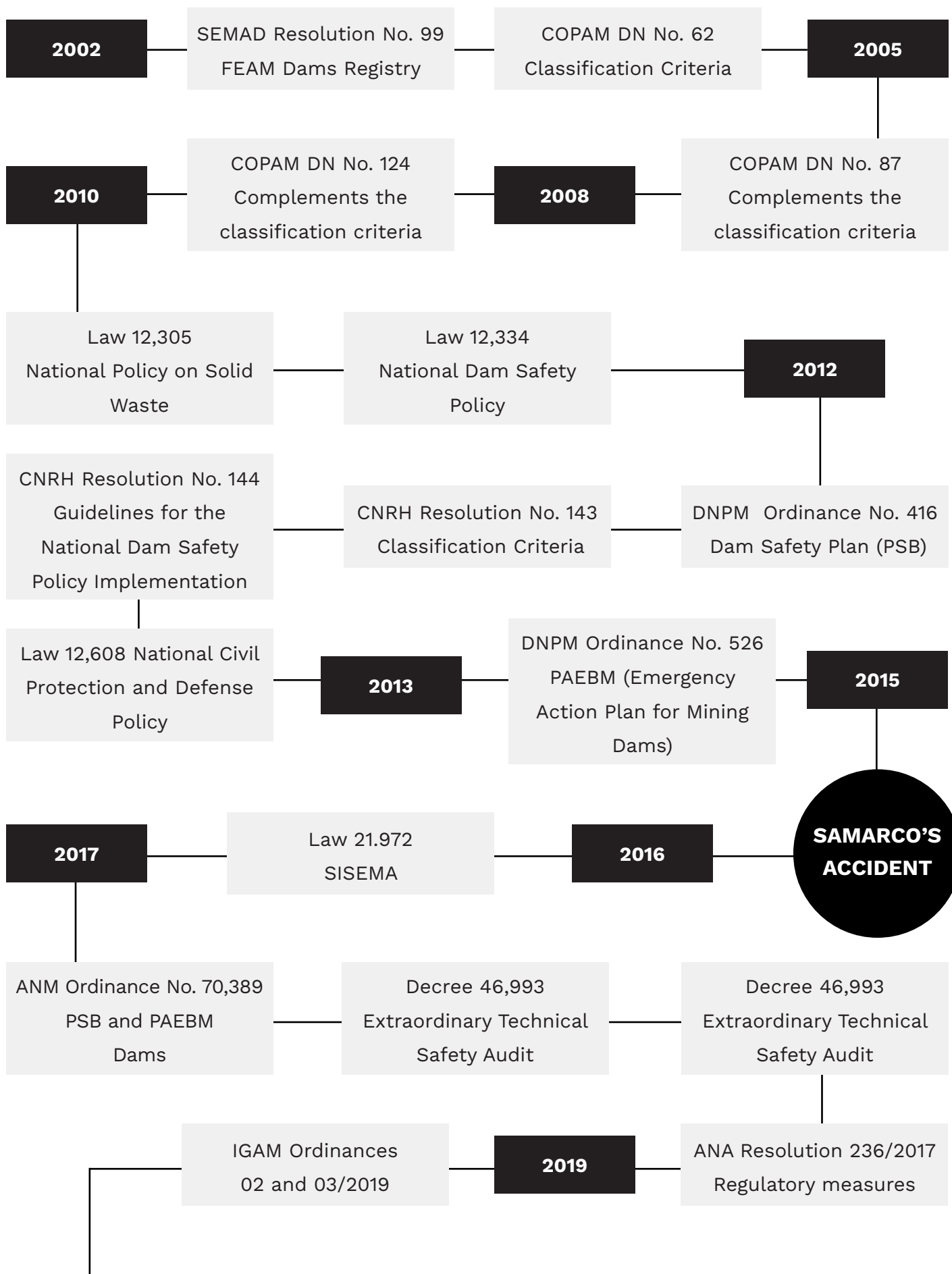
36 Mining Code and Ordinance no. 155/2016.

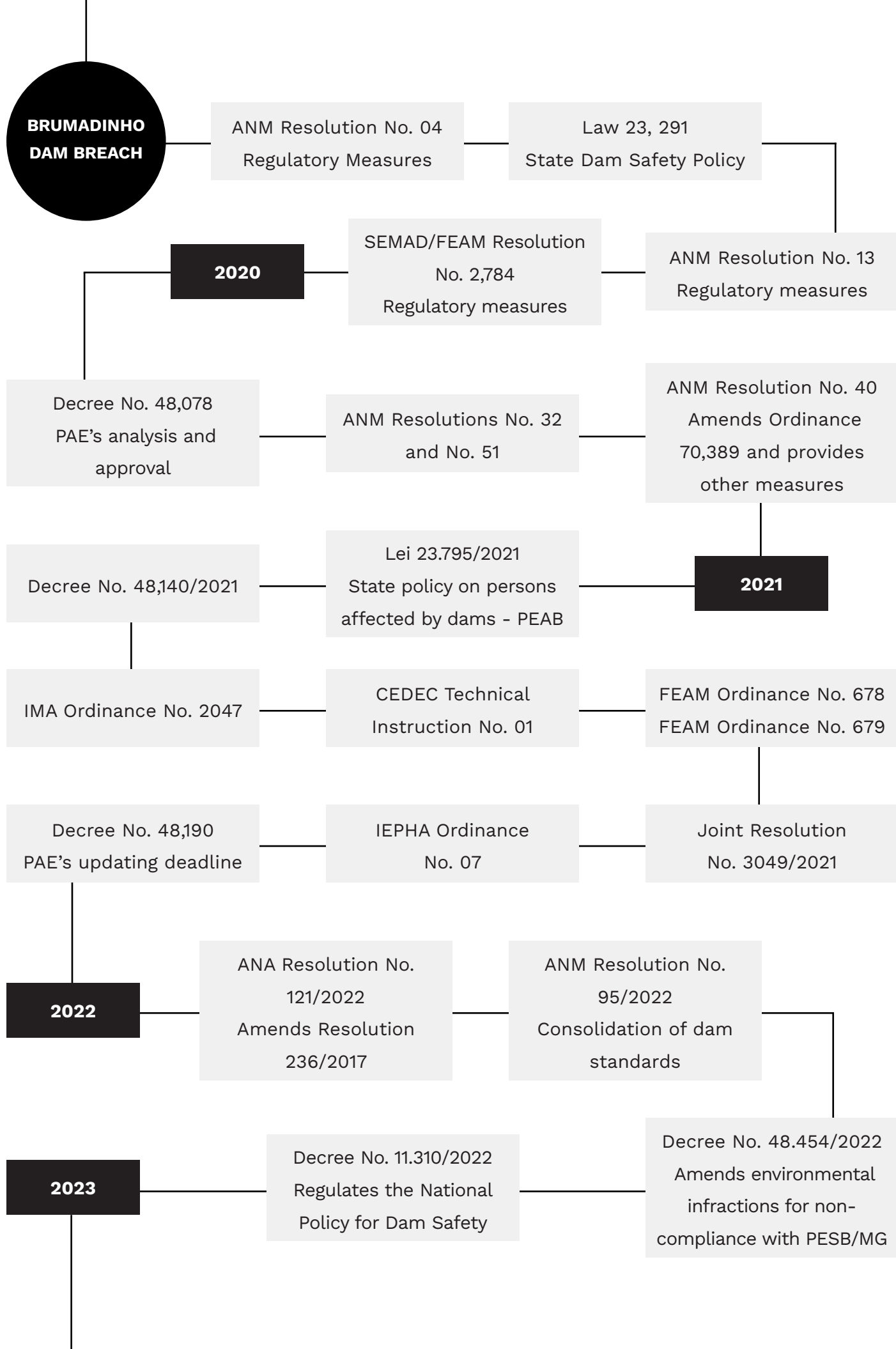
TAILING DAMS IN BRAZIL (MINING)

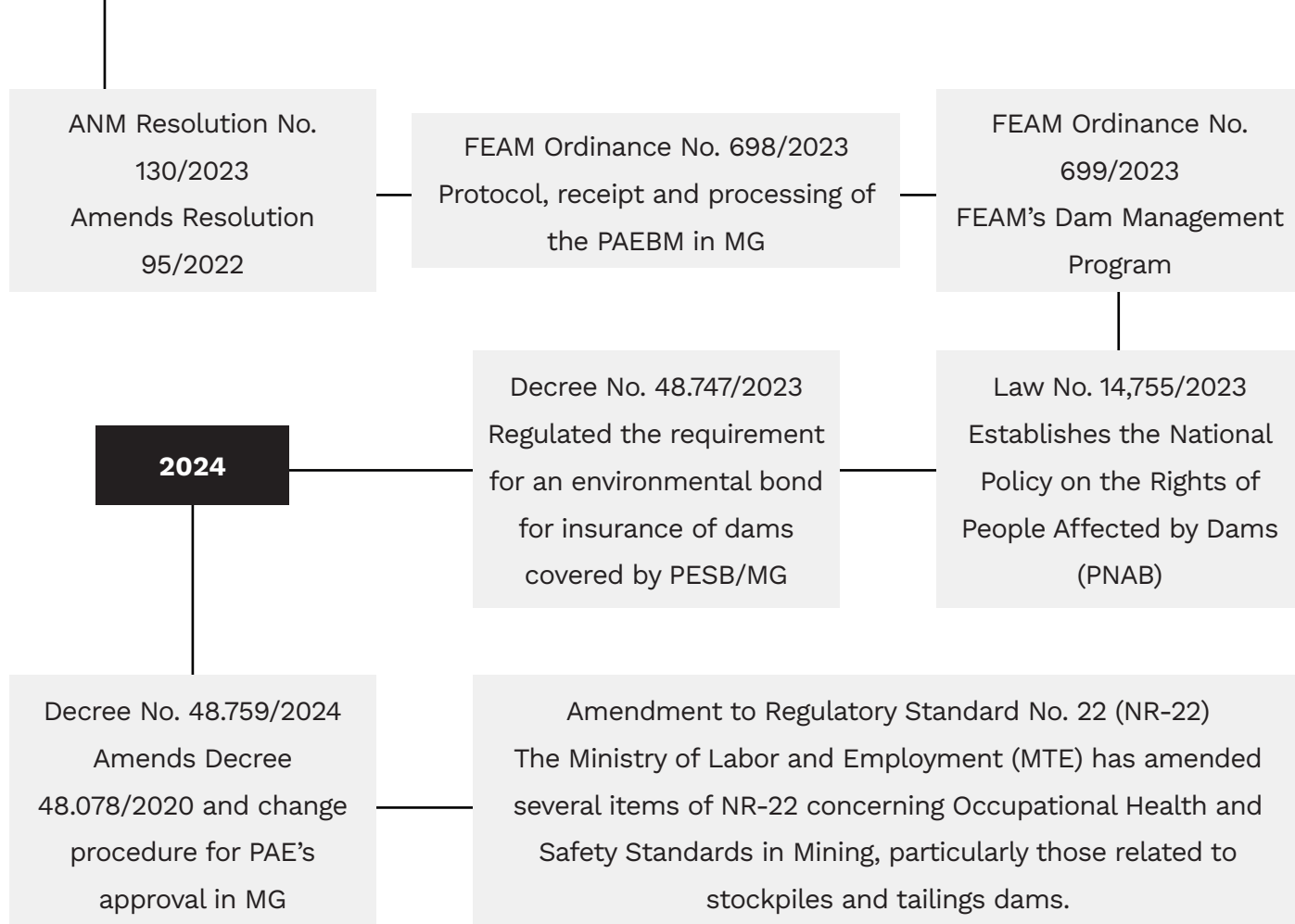
HISTORY OF ACCIDENTS IN BRAZIL

YEAR	DAM	MUNICIPALITY	LEGISLATION
1977	Euclides da Cunha	São Paulo	Decree no. 10,752/1977
1986	Fernandinho	Rio Acima	-
2001	Rio Verde	Macacos	Normative deliberation no. 62/2002
2003	Indústria de Papel Cataguases Ltda	Cataguases	Bill no. 1181 (PNSB)
2006	Mineração Rio Pomba	Miraí	Normative deliberaton no. 87/2005
2007	Mineração Rio Pomba	Miraí	Normative deliberaton no. 124/2008
2014	Herculano	Itabirito	-
2015	Fundão	Mariana	ANEEL's Resolution no 696/2015; ANA's Resolution no 236/2017; Ordinance 70,389/2017
2019	Córrego do Feijão – B1	Brumadinho	PESB; ANM'S Resolution no. 13/2019; Review of Ordinance 70,389/2017
2022	Dique Lisa	Belo Horizonte	NBR n.º 13.029
2025	Satinoco	Turmalina	Further possible regulation for tailing piles

THE PROGRESS OF LEGISLATION







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

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

Although the federal government holds exclusive authority to regulate the mining sector, which might suggest that only the federal government can enact laws regarding mining aspects, some states, including Minas Gerais, have created their own Dam Safety Policies.

Since 2012, ANM, as a competent agency overseeing and regulating mining activities, has further regulated tailings dam aspects. Recently, it issued a new regulation, Resolution ANM No. 95/2022, which consolidated and modernized all rules concerning the safety of tailings dams. This regulation aligns the regulatory framework with the changes introduced to the National Policy on Dam Safety by Law No. 14,066/2020, as well as with international dam safety guidelines.

Law No. 14,066/2020 significantly changed the PNSB. One change was the inclusion of Engineering Best Practice Guides in dam safety management as an instrument of the National Policy. An example of such guides is the Global Industry Standard on Tailings Management issued by the International Council on Mining & Metals (ICMM).

This inclusion reflects the Brazilian legislator’s intent to align tailings dam management in Brazil with international best practices.

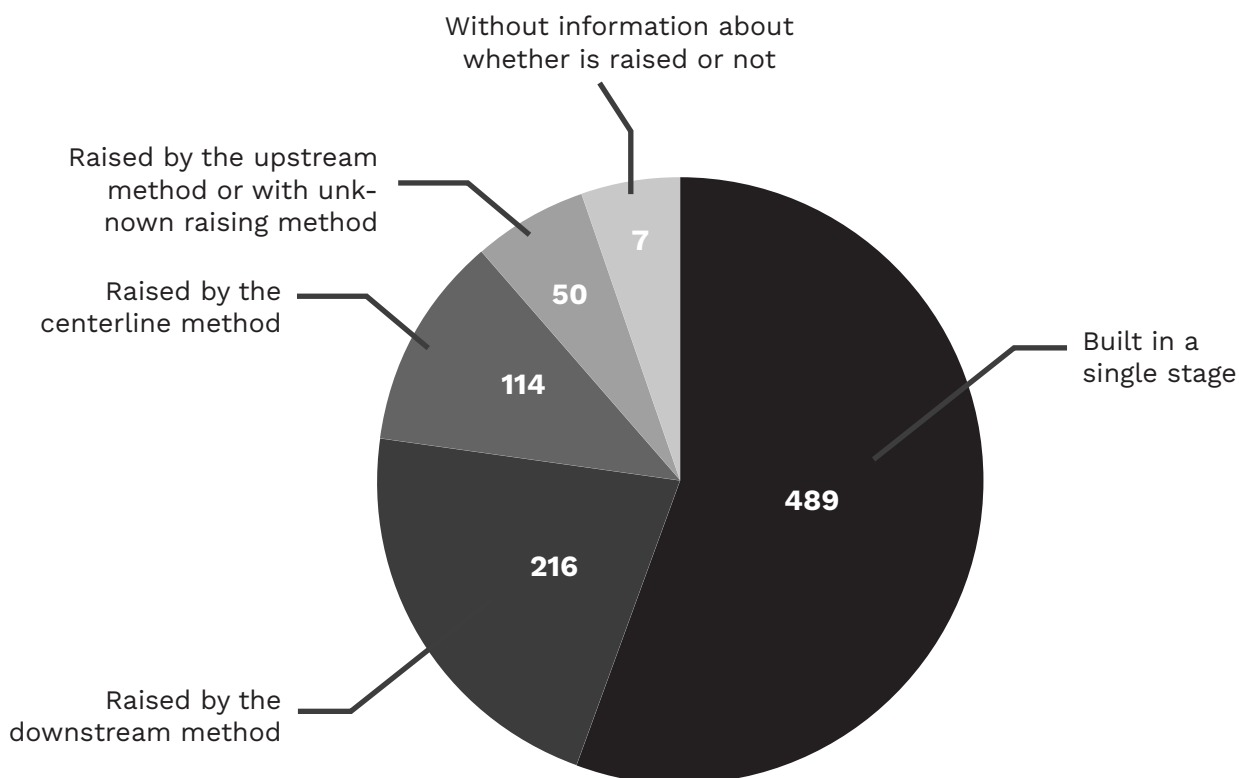
Beyond aligning with PNSB changes introduced by Law No. 14,066/2020, Resolution No. 95/2022 introduced additional significant changes and concepts. These include the definition of ALARP (As Low as Reasonably Practicable), the identification of critical controls, the requirement for high-risk dams to be overseen by an Engineer of Record, and the implementation of a Risk Assessment Program.

These changes align the Brazilian dam safety regulatory framework with global best practices. Additionally, good practice guides have been considered a vital tool for implementing the National Dam Safety Policy since 2020.

Alongside these new aspects, it is noteworthy that the provisions now require the automation of alert siren triggering mechanisms. The system must be integrated with the dam’s automated monitoring so that the alert system triggers automatically in emergencies.

According to SIGBM³⁷, Brazil currently has 876 tailings dams classified as follows: 489 built in a single stage, 216 raised by the downstream method, 114 by the centerline method, 50 by the upstream method or with unknown raising method, and 7 without information regarding raising method.

BRAZIL CURRENTLY HAS 876 TAILINGS DAMS



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

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

Although regulatory responses were necessary, the deadlines established for completing the de-characterization posed potential risks as intensive activities near the dams could trigger liquefaction. For this reason, recent amendments to federal legislation governing tailings dams enabled the Mining Agency to extend the deadline for the de-characterization, initially set for February 25, 2022. However, such an extension can only be granted in cases of technical infeasibility and must be approved by the licensing authority within SISNAMA.

The National Mining Agency (ANM), consistent with sustainability principles and international best practices in mining, regulated the reuse of mining waste through Resolution ANM No. 85/2021. This regulation, later amended by Resolution ANM No. 189/2024, enhanced legal certainty regarding this practice and represented a significant advancement toward sustainable mining operations.

Recently, Minas Gerais State published Decree 48,747, which regulates the requirement for environmental collateral for dams covered by the State Policy for Dam Safety (PESB-MG). The collateral amount is calculated based on: **(i)** the reservoir area of the dam, including the area occupied by tailings or residue and water, in square meters; **(ii)** the dam's classification and purpose, in accordance with Decree 48,140/2021; and **(iii)** the estimated cost of dam decommissioning projects per area. Non-compliance with these obligations during the licensing phase results in denial of the environmental license.

In 2024, the Ministry of Labor and Employment (MTE) amended Regulatory Standard No. 22 (NR-22), introducing new obligations regarding Occupational Health and Safety Standards in Mining, particularly those related to stockpiles and tailings dams.

The amendments impose significant restrictions on mining activities in areas below tailing dams, potentially affecting numerous operating mines. Given the regulation's potential impact, the MTE is reviewing the text, and the sector is actively discussing measures to prevent unintended industry harm.

In December 2024, the MTE published Ordinance No. 2,105/2024, which revised an NR-22 provision addressing the restrictions applicable to areas downstream of mining dams that are subject to flooding.

Key changes include: **(i)** restrictions now apply only to Self-Rescue Zones (ZAS) rather than all downstream areas; **(ii)** the new provisions permit worker presence only for essential dam operation and maintenance activities while prohibiting other activities during imminent risk

situations; and **(iii)** the updated rules take immediate effect for upstream-raised dams and apply to other dams after 60 months, during which existing restrictions remain in effect. Essential sanitary facilities for workers are exempt from certain prohibitions.

The new regulation narrows the restriction scope to Self-Rescue Zones (ZAS) and focuses on worker presence rather than facilities. While upstream-raised dams must comply immediately, other dams have a five-year transition period before the new rules take full effect.

In March 2025, IBRAM filed a lawsuit seeking to compel MTE compliance with ANM technical standards for mining dams. The primary argument contends that the new NR-22 rules may enable MTE intervention in matters under ANM's exclusive authority. Therefore, the outcome of this legal action may influence the legal treatment of the subject.



TAXES, ROYALTIES AND INCENTIVES IN BRAZIL (MINING)

Brazilian tax legislation operates across three jurisdictional levels: Federal, State, and Municipal. The principal taxes imposed are:

Corporate Income Tax (“*Imposto de Renda Pessoa Jurídica - IRPJ*”): IRPJ is levied on annual company profits at 15%, plus a 10% surtax on profits exceeding R\$240,000 per year. Taxable income comprises gross earnings minus allowable deductions. Gross earnings include operational and non-operational income (interest, capital gains, etc.). Deductions are permitted for expenses considered ordinary and necessary for business activities. Business expenses, including interest paid to lenders, are generally deductible. Tax losses may be carried forward indefinitely, but compensation against future profits cannot exceed 30% of annual profits.

Social Contribution on Net Income (“*Contribuição Social sobre o Lucro Líquido - CSLL*”): CSLL is levied on company net income at 9% and shares the same tax basis as IRPJ.

Gross Receipts Taxes – Social Integration Program Contribution (PIS) and Social Security Funding Contribution (COFINS): PIS and COFINS are levied on gross monthly revenue, including operating revenues and other accrued revenues. Rates vary depending on whether the taxpayer is subject to the cumulative or non-cumulative system. Under the non-cumulative system, PIS and COFINS rates are 1.65% and 7.6%, respectively. Financial revenue is taxed at 4.65%.

Under the non-cumulative system, the acquisition of certain goods (raw materials, packaging materials, intermediate products, and fixed assets) and services used in operational activities generate PIS and COFINS credits at the same rates, functioning similarly to value-added taxes. Financial revenue taxation does not permit tax credit recognition. Credits may be offset against future PIS and COFINS obligations. Excess credits may be carried forward to offset debits in subsequent months.

Export of goods or services is exempt from PIS and COFINS regardless of the applicable tax system. In specific situations, export companies may use accumulated PIS and COFINS credits to offset other federal tax liabilities. Some companies may be subject to a specific PIS and COFINS system (*regime monofásico*), which may result in a higher total tax burden.

State Value-Added Tax on Services and Circulation of Goods (ICMS): ICMS is a value-added tax applied across all stages of a product’s commercial lifecycle, calculated using the debit and credit method. ICMS debits on product sales may be offset against ICMS credits from acquisition of raw materials, intermediate products, packaging materials, and fixed assets used in operational activities. Excess credits may be carried forward to offset debits in subsequent months.

ICMS is assessed based on product sale price. The tax basis includes the tax amount itself (tax-on-tax), making the effective ICMS rate higher than nominal rates. ICMS rates vary by state within federal limits and depend on the product and destination: internal transactions (within the same state) are typically taxed at 19%, 18%, or 17%, depending on state legislation. Interstate transactions are taxed at 7% or 12%.

Some states impose additional rates beyond standard ICMS rates, potentially increasing the total ICMS burden. Export transactions are ICMS exempt.

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

IOF/Credit Tax applies to financial transactions, except loans from foreign entities to Brazilian borrowers, which are IOF/Credit Tax exempt.

Brazilian law imposes IOF/Exchange Tax on foreign exchange transactions involving conversion between reais and foreign currency. The current rate for most foreign currency exchange transactions, including investments in Brazilian companies outside the Brazilian stock exchange, is from 0.38% to 3.5%, depending on the transaction.

Services Tax (“*Imposto Sobre Serviços - ISS*”): ISS is a municipal tax on revenue from general services, excluding intermunicipal and interstate transport and communication services, which are subject to ICMS.

Services subject to ISS are those expressly included in a federal taxable services list, which municipalities must observe. ISS rates vary by municipality and service type but cannot exceed 5% or fall below 2%. The tax base is the service price.

ISS is generally owed to the municipality where the service provider is located, except for certain services such as civil construction, where ISS is owed to the municipality where services are rendered.

Payroll and Other Social Security Contributions: Social security contributions are owed to the Internal Revenue Service on company payroll at 20%.

Additional contributions are imposed at rates typically ranging from 3.5% to 8.8%, owed to other government agencies. Rates vary by business line, with potential additional increases depending on the company’s activities.

Companies must make monthly *FGTS* contributions at 8% of each employee’s base salary plus benefits.

Excise Tax (“*Imposto sobre Produtos Industrializados - IPI*”): IPI does not apply to mining activities.

Import Tax (“*Imposto de Importação - II*”): For mineral product imports, rates typically range from 0% to 9%, with various exceptions subject to higher or lower rates.

Beyond these taxes and other taxes generally applicable to Brazilian companies, including environmental license fees, labor and social security expenses (averaging 20% of wages and earnings), and *FGTS*, mining companies are subject to additional sector-specific taxes and fees.

Additional taxes and fees specific to the mining sector include:

Financial Compensation for Exploiting Mineral Resources (Compensação Financeira pela Exploração de Recursos Minerais - CFEM): CFEM rates vary by mineral with a maximum of 4%, calculated on mineral net revenue or cost when used in industrialization.³⁸

Landowner Royalty: Under the mining concession regime, when land does not belong to the miner, a royalty must be paid by the last business day of the month following the taxable event. This royalty typically equals 50% of the accrued CFEM value.³⁹

Annual fee per hectare (“Taxa Anual por Hectare - TAH”): R\$ 4.74 per hectare during the mining exploration license term and R\$ 7.11 per hectare during extended terms.⁴⁰

TFRM: In certain states, holders may be subject to the Control, Monitoring and Inspection Fee for Exploration, Production, Extraction, Transport and Use of Mineral Resources (*Taxa de Controle, Acompanhamento e Fiscalização das Atividades de Pesquisa, Lavra, Extração, Transporte e de Aproveitamento de Recursos Minerários - TFRM*) on mining activities. TFRM amounts vary by state.

Tax reform: Constitutional Amendment No. 132/2023, enacted December 20, 2023, modifies consumption taxation in Brazil.

The main changes, to be implemented over the coming years, include: **(i)** ICMS and ISS will be gradually reduced until 2032 and replaced by the Tax on Goods and Services (IBS) under shared state and municipal jurisdiction from January 1, 2033; and **(ii)** PIS and COFINS will be abolished in 2027 and replaced by the Contribution on Goods and Services (CBS), under federal jurisdiction. Brazil will thus adopt a Dual VAT model.

IPI will be reduced to zero for products without encouraged industrialization. A selective tax (IS) will be created for goods and services harmful to health or the environment, potentially increasing taxation on mining activities.

Income Tax reform is under discussion in the National Congress and is expected to be completed in 2025.

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

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

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

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

40 The TAH value is updated yearly by ANM. The values shown above are valid until February 29, 2025, according to ANM's Resolution No. 196/2025. Available at: Resolução 196/2025 DG/ANM/MME - ANMlegis (datalegis.net).

ADDITIONAL TAXES AND FEES FOR MINING COMPANIES

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

ENVIRONMENTAL LAW IN BRAZIL (MINING)

Under Brazilian law, federal, state, and municipal governments have authority to legislate and require authorizations, licenses, and permits for the control and protection of the environment and historical and cultural heritage.

Federal and state governments in Brazil have concurrent jurisdiction over: **(i)** protection of the natural environment, including forests, fauna, nature conservation, soil and natural resource protection, and pollution control; **(ii)** protection of the cultural environment, including historic, artistic, and landscape environments; and **(iii)** liability for environmental damages. Municipalities share this jurisdiction regarding matters of specific local interest.

Environmental liability is divided into civil, administrative, and criminal categories depending on the nature, extent, and conduct of the responsible party, and may occur cumulatively or separately.

Mineral exploration and mining in Brazil require environmental licensing, which consists of an administrative procedure whereby the relevant environmental authority evaluates the project and authorizes the company to conduct exploration or exploitation activities.

There are three types of environmental licenses in Brazil:

Advance (also called provisional) Licenses (LP): Certify project viability (including site approval and planning) and establish basic requirements and conditions for subsequent phases. Projects that could potentially or effectively cause environmental degradation must submit environmental impact assessments for approval by environmental authorities.

Installation Licenses (LI): Authorize commencement of construction (installation of the enterprise or activity) according to approved plans and programs and define environmental control measures.

Operating Licenses (LO): Granted when the project is ready to operate following assessment of compliance with the terms of preceding licenses.

All environmental licenses have defined terms. License holders must apply for renewal no more than 120 days before expiration. In cases of change of control or sale of assets and mineral rights, companies need not obtain new licenses but must file requests with state environmental authorities to alter the license holder.

Under Brazilian law, a company that acquires a business with environmental liabilities becomes its successor and assumes those environmental liabilities, although parties to an acquisition transaction may negotiate and limit their respective liabilities.

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

Use of water resources typically requires authorization from environmental agencies. Environmental compensation of several types may apply to projects (not limited to mineral projects) that may significantly affect the environment.

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

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

The main environmental agencies are:

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

For example, in Minas Gerais (one of Brazil's most important mining states), a specialized technical committee for mining activities – the Council of Environmental Policy (COPAM) – provides opinions on environmental licensing requirements and analyzes administrative appeals regarding penalties imposed under State Law No. 7,772/1980 and State Decree No. 47,383/2018.

BRAZILIAN MINERAL EXPLORATION AND MINING COMPANIES ON THE B3

B3 S.A. – Brasil, Bolsa, Balcão (“B3”) is currently the only stock exchange operating in Brazil and is the largest stock exchange in Latin America. As of the date referenced in footnote⁴¹, there are 4 mining companies listed on B3 with shares traded:



with a market capitalization of
R\$ 227.22 billion



with a market capitalization of
R\$ 27 billion



with a market capitalization of
R\$ 2.8 billion



with primary listing on the Toronto
Stock Exchange and Brazilian Depository
Receipts (BDRs) listed on B3.

Vale is listed in the Novo Mercado corporate governance segment. This segment requires companies to comply with enhanced corporate governance practices and transparency requirements beyond those mandated by Law No. 6,404 of 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 globally and a major mining company in Brazil. Vale is included in the Bovespa Index, which comprises companies with the highest trading volumes on B3.

Aura is a Canadian mining company focused on the production of gold and copper and is listed on the Toronto Stock Exchange (“TSX”). The company completed its initial public offering of BDRs in 2020 through a restricted offering.

⁴¹ Considering their values on June 26th, 2025. “Valor de mercado das empresas listadas”. B3, 2023. Available at: https://www.b3.com.br/pt_br/market-data-e-indices/servicos-de-dados/market-data/consultas/mercado-a-vista/valor-de-mercado-das-empresas-listadas/bolsa-de-valores-diario/

Other major Brazilian conglomerates and steel companies listed on B3 also conduct mining operations, including Gerdau S.A., Cia de Ferro Ligas da Bahia – Ferbasa, and Usinas Siderúrgicas de Minas Gerais S.A. – USIMINAS.

All these companies are listed in the Nível 1 corporate governance segment, which requires companies to maintain a free float of at least 25% of share capital, promote capital dispersion in public offerings, and enhance their quarterly financial reports (ITR Form) to include disclosure of related party transactions with special audit review.

Brazilian equity capital markets have been accessed by a limited number of major companies, creating potential opportunities for other mining companies, particularly medium- sized entities, to access this funding alternative. B3 is currently evaluating alternatives to make it possible for smaller companies (including from the mining sector) to go public on the Brazilian stock market.

Discussions have occurred among Brazilian mining associations, mining companies, securities regulators, and the Brazilian mining agency.⁴² These discussions focus on improving Brazilian capital markets to facilitate access to public equity capital for Brazilian mineral exploration and mining companies. In the meantime, listing on the Toronto Stock Exchange, Toronto Stock Exchange – Venture, and issuing BDRs in Brazil seems to be an interesting alternative for Brazilian mineral exploration and mining companies.



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

SETTING UP A MINING COMPANY IN BRAZIL

MAIN TYPES OF COMPANIES IN BRAZIL: SUMMARY

To establish a mining company in Brazil, it is necessary to analyze the existing corporate types to assess which structure is most suitable for the intended objectives.

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

Generally, the *Sociedade Limitada* is a simpler and less expensive structure, typically adopted by foreign entities commencing activities in Brazil. *Sociedades Anônimas* are suitable when an entity requires a complex management/ governance structure, stock option plans, sophisticated capitalization structures, or plans to conduct public offerings of securities. However, the *Sociedade Anônima* subject to higher disclosure and publicity standards.

Which corporate type is faster to incorporate?

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

Foreign entities establishing operations in Brazil as a branch (as opposed to incorporating a local entity) are subject to additional formalities in their establishment and daily management.

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

	LIMITED LIABILITY COMPANY (LTDA.)	CORPORATIONS (S.A.)
MAIN ADVANTAGE	Simpler and less expensive structure.	Suitable for more complex management/governance structure.
FUNDING	Cannot access debt or equity capital markets: the <i>Sociedade Limitada</i> cannot have its quotas traded on stock exchanges.	Can access capital and debt capital markets, which may require the company to register as a listed company.
LIMITATION OF LIABILITY	Liability of each partner is limited to its respective subscribed capital, but all partners are jointly liable for full payment of the corporate capital.	Shareholder liability is limited to the amount paid for the shares subscribed by each shareholder.
VOTING RIGHTS	Voting power according to the percentage the quotas held by each partner represent in the capital stock. Generally, simple majority of the partners present at a partners' meeting may approve matters. However, under Brazilian law, there are specific key matters that require special supermajority.	One vote per share rule, but the company may issue preferred shares without voting rights up to the limit of 50% of all shares. Generally, simple majority of shareholders present at shareholders' meeting may approve matters (bylaws of privately held companies may provide for the supermajority). Under Brazilian law, there are specific matters that require 50% plus one of the voting shares.
CAPITAL STOCK	Capital stock is divided into quotas.	Capital stock may be divided into common and preferred shares - nonvoting preferred shares may have certain political or financial privileges.

	LIMITED LIABILITY COMPANY (LTDA.)	CORPORATIONS (S.A.)
MANAGEMENT	A <i>Sociedade Limitada</i> must be managed by one or more individuals, whether partners or not, appointed in the company's articles of association or elected by a quotaholder's meeting. The installation of a board of directors in <i>Sociedade Limitada</i> is allowed, applying, by analogy, the rules provided for <i>Sociedades Anônimas</i>. The members of the executive board and the board of directors (if any) do not need to be Brazilian citizens nor domiciled in Brazil. If the executives are not domiciled in Brazil, they must appoint a legal representative residing in Brazil with powers to request and receive notices and/or summons of legal processes.	<i>Sociedade Anônima</i> must be managed by one or more individuals, whether shareholders or not, elected by a shareholders' meeting or by the board of directors (if installed). The company may have a board of directors responsible for approving major decisions. The members of the executive board and the board of directors do not need to be Brazilian citizens nor domiciled in Brazil. In case the executives are not domiciled in Brazil, they must appoint a legal representative residing in Brazil with powers to request and receive notices and/ or summons of legal processes. Brazilian corporations must also have a statutory oversight board (conselho fiscal) composed of Brazilian residents, which may not be permanently installed and may only operate when installation is required by the shareholders.
PROFIT DISTRIBUTION	Allocated according to the articles of association. Disproportional distribution may be allowed.	Shareholders must receive equal treatment if holders of preferred shares may be entitled to special dividends as provided in the bylaws. Before any allocation, at least 5% of net profits must be applied to the formation of the statutory legal reserve (which must not exceed 20% of corporate capital).

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

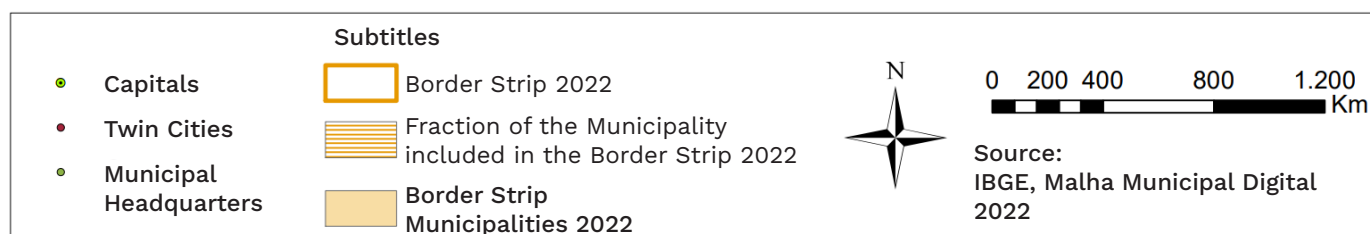
Liability of Shareholders or Partners. Obligations, liabilities and contingencies of civil or commercial nature arising in connection with the company's (either *Ltda.* or *S.A.*) financings and activities are a risk to be borne solely by the company's own assets, goods and rights, except in the case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

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

Foreign Investment. Generally, no restrictions apply to foreign investment, except for mining activities in border zones.

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

MUNICIPALITIES OF BORDER STATE 2022 (IBGE)



Border zone areas are subject to specific rules for exploitation consent, as regulated by Law No. 6,634 of 1979 and related legislation. These laws prohibit licensing and exploitation procedures for non-Brazilian companies.

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

Brazil's regulations regarding foreign investment in border zones reflect national security considerations and impose significant restrictions on foreign investment companies operating in these areas.

1. LIMITED LIABILITY COMPANY – *SOCIEDADE LIMITADA*

Sociedades Limitadas are regulated by Law No. 10,406/02, as amended ("Brazilian Civil Code") and residually, whenever set forth in their articles of association, by Law No. 6,404/76, as amended (the "Brazilian Corporations Act"), which regulates Brazilian corporations.

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

1.1 INCORPORATION REQUIREMENTS

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

Single Quotaholder?

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

Partners, whether individuals or legal entities, may be domiciled outside Brazil. If a partner is domiciled or headquartered abroad, such partner must grant a power of attorney to a Brazilian resident with authority to receive service of process and to represent the partner before tax authorities.

Filing. The incorporation process begins with the execution of the articles of association by the partners (or their attorneys-in-fact domiciled in Brazil) and the subsequent filing of this document with the respective state Board of Trade, followed by registration with other applicable governmental bodies. The *Sociedade Limitada* is formally deemed as incorporated upon registration of its articles of association with the relevant Board of Trade.

Title and Ownership. The existence and the ownership of the quotas are evidenced by the articles of association (a *Sociedade Limitada* does not issue share or quota certificates).

Capital Stock. The capital of a *Sociedade Limitada* is divided into quotas, which must have a par value. Generally, there is no legal requirement concerning the minimum or maximum capital for it to be incorporated. Accordingly, except in the case of regulated industries, such as certain financial services, there is no requirement that a minimum amount of the capital be paid initially, nor is there any mandatory time limit in which the capital must be fully paid in (such deadline is established by the partner(s) in the articles of association).

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

Funding. With respect to equity funding, no public offering of securities is allowed and a *Sociedade Limitada* cannot be listed companies, issue certain kinds of bonds or list on a stock exchange.

Profit Distribution. There is no compulsory or minimum threshold for distribution of profits. The distribution may be disproportional among partners if provided under the articles of association or if unanimously approved by partners.

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

(a) name of partners;

(b) words of common use in national or foreign language; and/or

(c) with fantasy expressions. Prior to filing the incorporation documents with the Board of Trade, the partners shall perform a search to confirm the availability of the chosen corporate name. If available, the corporate name may be reserved for use for a short period of time while the incorporation documents are being analyzed by the Board of Trade.

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

1.2 GOVERNANCE STRUCTURE

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

Is it possible to appoint foreign individuals as officers?

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

The management structure of the *Sociedade Limitada* is stated in the articles of association, which shall set forth the management powers as well as the acts and corresponding thresholds that require prior authorization by the partners.

Board of Directors. Although it is legally permitted that a *Sociedade Limitada* have a Board of Directors, it is less usual that such corporate body be adopted by *limitadas*.

Voting Rights. The voting power of a partner corresponds to the percentage that his quotas represent in the capital stock (rather than by the number of quotas held by a partner, since quotas may have different par values). Generally, simple majority of the partners present at a partners’ meeting may approve matters (articles of association may also provide for supermajority). Pursuant to the Brazilian Civil Code, the following decisions by the partners of a *Sociedade Limitada* require a special quorum to be approved, as follows:

REQUIRED QUORUM	MATTER
SIMPLE MAJORITY (MORE THAN HALF OF THE CORPORATE CAPITAL)	Transformation (into a corporation/ <i>Sociedade Anônima</i> or other type of corporate entity), except if otherwise provided in the articles of association Appointment of managers, when done by means of a separate instrument (i.e., not in the articles of association)
	Removal of manager
	Appointment of non-partner managers, after the capital has been fully paid up
	Compensation for management in case of omission by the articles of association
	Request for <i>recuperação judicial</i> or <i>extrajudicial</i> (the former a court-supervised reorganization similar to U.S. Chapter 11 procedure and the latter its out-of-court equivalent)
	Amendment to the articles of association (including increase and reduction of the capital)
	Merger, dissolution or cessation of liquidation proceedings
	Removal of minority partners for cause
THREE-FOURTHS OF THE CORPORATE CAPITAL	Appointment of non-partner managers, in the event the capital has not been fully paid in
UNANIMOUS VOTE	Transformation (into a corporation/ <i>Sociedade Anônima</i> or other type of corporate entity), except if otherwise provided in the articles of association

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

Liability of the Partners. The liability of each partner is limited to its respective subscribed capital, but all partners are jointly liable for full payment of corporate capital. However, they will have no further liability once all the quotas have been fully paid in, except for certain cases of violation of law, the articles of association and fraud, in which case the company's legal personality can be disregarded ("piercing the corporate veil") or in which the law provides for jointly or subsidiary liability to partners. If necessary, we can provide further details about situations that could lead

to the piercing of the corporate veil or specific liability to partners in Brazil. As mentioned above, the Brazilian Civil Code provides the hypotheses in which a judge can determine the piercing of a company's corporate veil, to access the personal assets of the partners.

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

Disclosure Obligations. In case a *Sociedade Limitada* **(i)** owns assets in excess of R\$240,000,000; or **(ii)** registers annual gross revenue in excess of R\$300,000,000, the company may be classified as a *Sociedade de Grande Porte* under the terms of Law No. 11,638/2007, and thus be required to disclose and publish its financial statements (which implies more costs and disclosure of information to the market).

Dissenting Quotaholder. In the event of disagreement between the partners (if more than one), the minority partners can, in certain cases, request the partial dissolution of the company and withdraw from it.

Transfer of Quotas. Transfers of quotas are legally binding and effective against third parties when executed by means of an amendment to the articles of association. Nevertheless, the Board of Trade authorities recognize the assignment of quotas through separate assignment instruments. A partner may freely transfer quotas unless partners holding more than 25% of the capital object to the transfer. If the articles of association grant other partners a right of first refusal, partners may be restricted from transferring quotas, particularly when such mechanisms are clearly provided in the articles of association.

2. CORPORATION – SOCIEDADE ANÔNIMA

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

2.1 INCORPORATION REQUIREMENTS

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

Shareholders, whether individuals or legal entities, may be domiciled outside Brazil. If a shareholder is domiciled or headquartered abroad, such shareholder must grant a power of attorney to a Brazilian resident with authority to receive service of process on the shareholder's behalf and to represent the shareholder before governmental authorities.

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

Title and Ownership. Title and ownership of the shares of a privately held corporation is evidenced by means of an annotation in the company's Share Register Book, or, in case of a publicly held corporation, by the certificate issued by the bookkeeping agent.

Capital Stock. The capital stock of a *Sociedade Anônima* may be divided into common and preferred shares, with or without par value. The shareholder must make a deposit in cash equivalent to at least 10% of the capital stock to be paid-in. In case of foreign shareholders, such deposit requires a foreign exchange transaction to provide the remittance of funds to Brazil. The paid-in capital stock must be deposited with a commercial bank (i.e., Banco do Brasil) until all incorporation formalities have been completed and prior to the filing of the incorporation act with the Board of Trade.

After the incorporation process is concluded this initial capital can be withdrawn and transferred to a company's account. There is no mandatory time limit within which the capital must be fully paid in (such deadline is established by the shareholder(s)), except for the minimum of 10% to be initially paid in. Nonetheless, the company may only increase the capital stock with issuance of shares once at least $\frac{3}{4}$ of the corporate capital is fully paid in. The shareholders may pay in the interest in a *Sociedade Anônima*, in cash (Brazilian currency), assets or credits.

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

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

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

Generally, only proportional distributions are allowed.

Corporate Name. The corporate name must include the words "*sociedade anônima*" or "*companhia*" or their respective abbreviations, "S.A.", "S/A" or "Cia.". Prior to filing the incorporation documents with the Board of Trade, the shareholders shall conduct a search to confirm the

availability of the chosen corporate name. If available, the corporate name may be reserved for use for a short period of time while the incorporation documents are being analyzed by the Board of Trade.

Duration. The *Sociedade Anônima* may be incorporated for a determined or undetermined term. Its duration will be stated in the bylaws.

2.2 GOVERNANCE STRUCTURE

Management. A *Sociedade Anônima* must be managed by one or more individuals (the so called “*diretores*”). If the company is privately held, a Board of Directors is optional. Publicly held companies must have a board of directors.

Officers (Diretoria). The officers shall be elected by a shareholders’ meeting or by the board of directors (if the company has such board), for the term set forth in the bylaws, not to exceed three years. The duties and titles of the officers must be set forth in the bylaws and their compensation fixed periodically by the shareholders’ meeting. It is not necessary for the officers of a *Sociedade Anônima* to be Brazilian nationals nor domiciled in Brazil. However, in case the officers are not domiciled in Brazil, they shall appoint an individual domiciled in Brazil with powers to request and receive notices and/or summons of legal processes.

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

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

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

Oversight Board (Conselho Fiscal). A *Sociedade Anônima* must have, by law, an oversight board, composed of a minimum of three and a maximum of five members with an equal number of alternates, who must be resident in Brazil. The oversight board does not have to permanently be installed and will only operate when requested by the shareholders. It is mandatorily installed, though, during liquidation.

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

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

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

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

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

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

The officers of the company are not liable for obligations of the company unless they exceed their powers or violate the law or the bylaws, in which case they will be liable to the company.

Disclosure Obligations. The *Sociedade Anônima* must annually publish its balance sheet and other financial statements in a local newspaper along with simultaneous disclosure of the entirety of the documents on the respective newspaper's website, except for privately held

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

companies with annual gross revenue of up to R\$78,000,000.00. The publications of financial statements may be carried out in a summarized form, provided that they contain, at least, the information provided for in Article 289, item II, of the Brazilian Corporations Act - publicly-held companies must comply with the guidelines issued by the Brazilian Securities and Exchange Commission (CVM) on the subject.

Dissenting Shareholder. A dissenting shareholder does not have a general right to withdraw from the company. The shareholder will have such rights, however, if the disagreement was caused as a result of any of the following matters:

- issuance of preferred shares or increase of the existing classes thereof, without maintenance of the proportion with other types and classes, except if such an issuance or increase had been provided or authorized in the bylaws.
- changes in the preferences, advantages and conditions of redemption or amortization of one or more classes of preferred shares, or creation of a new and more favored class.
- reduction of the minimum dividends set forth in the bylaws.
- merger of the company into or by another one or merger of shares, except as provided for in the law in some specific situations involving publicly held corporations.
- participation of the company in a conglomerate, except as provided for in the law in some specific situations involving publicly held corporations.
- change of the stated business purposes.
- spin-off (but only if: **(i)** the company being spun-off is publicly held and if the resulting corporation is not or is no longer registered as a publicly held company - providing for the admission of new shares in the secondary market, if this is the case - within 120 days from the resolution approving the transaction, or **(ii)** any time the spin-off results in the change of the business purposes, reduction of the mandatory dividends or participation in a conglomerate).

3. MANAGEMENT VISA

Managers of a *Sociedade Limitada* and officers of a *Sociedade Anônima* who are not Brazilian citizens must obtain a resident visa to perform such functions if domiciled in Brazil. Since this is a prerequisite, foreign citizens resident in Brazil cannot be appointed to such positions before obtaining the respective visa. As the visa can only be obtained after the company is incorporated in Brazil, it is not possible to incorporate a company with a foreign manager resident in Brazil from inception.

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

1. at least R\$600,000 for each applicant or
2. higher than R\$150,000 for each applicant, plus the generation of 10 new jobs for Brazilian citizens within two years after the company's establishment or the applicant's entry into Brazil.

To obtain the visa, the applicant must **(i)** prove that the function to be exercised relates to the company's management; **(ii)** prove the relationship between the applicant and the company; and **(iii)** provide the Brazilian Central Bank with the applicant's indication to assume the office.

4. REGISTRATIONS APPLICABLE TO PARTNERS/SHAREHOLDERS

Federal Revenue Secretariat. Under applicable Brazilian tax regulations, foreign legal entities or individuals that hold equity in a Brazilian company must obtain a Legal Entity's Taxpayer Registration Number ("*Cadastro Nacional de Pessoas Jurídicas – CNPJ*") or Individual's Taxpayer Register ("*Cadastro de Pessoas Físicas – CPF*"), respectively. To establish their activities in Brazil, foreign companies must be enrolled with the *CNPJ* to be able to invest in Brazilian companies. The enrollment does not imply that the company is headquartered in Brazil, neither does it require tax return.

With respect to foreign individuals, their registration with the Brazilian tax authorities can be obtained:

- directly, at any Brazilian consulate or embassy with jurisdiction over his/her place of residence, by presenting an enrollment application form, available at the website of the Federal Revenue Secretariat, and a photocopy of any identification document; or
- through an attorney in fact in Brazil.

When companies (legal entities) holding foreign investments are registered with the Central Bank of Brazil, they have their *CNPJ* automatically issued, based on the information available in the Brazilian Central Bank Information System. For such registration to be completed, the foreign legal entity will be required to present the power of attorney granting powers to an individual to be responsible therefore before the tax authorities, as well as the applicable corporate documents proving its legal existence in the country of its incorporation.

Beneficial Owner. Upon enrollment with the *CNPJ*, the entity will be required to inform its beneficial owner to the Federal Revenue Office within 30 days.

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

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

Significant influence is deemed to exist if the individual: owns, directly or indirectly, more than 25% of the company or entity; or directly or indirectly detains or exercises the preponderance

in the decision-making process of the entity and has the power to elect most of its board of directors, without controlling it.

Disclosed Information. If there is a beneficial owner, its identity shall be disclosed, including: name, date of birth, nationality, and country of residence. If no individual meets the beneficial owner definition, the entity will only be required to inform that there is no individual falling within the definition of beneficial owner. The documentation attesting such information must be submitted by means of an online statement.

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

- a Brazilian and/or a non-Brazilian is a listed company located in non-tax haven countries that discloses the company's significant shareholders.
- a not-for-profit entity located in non-tax haven countries that do not act as fiduciary owners of property, if such company is regulated and supervised by the public authority.
- multilateral organizations, central banks, sovereign funds or any State-owned entity, as well as the entities controlled by such organizations.
- pension funds and similar institutions, if such companies are regulated and supervised by public authority.
- Brazilian investment funds meeting certain tax-related reporting obligations; and
- foreign investment vehicles with a minimum of 100 shareholders (among other requirements to be observed).

5. OTHER REQUIRED REGISTRATIONS AND ENROLLMENTS

National Social Security Institute (INSS). *INSS* is a government authority which collects taxes for the National Social Security system. Even if a company does not own employees, it shall be registered with such authority.

Caixa Econômica Federal. *Caixa Econômica Federal* is an official bank that manages the Employee Severance Indemnity Guarantee Fund (*FGTS*), into which employers must make monthly deposits into individual accounts for all their workers.

The company must register with *INSS* and *Caixa Econômica Federal* even if it has no registered employees. There is no legal requirement that the company maintain employees in Brazil.

Municipal Authorities. To operate, the company also need to apply for an Operation Permit (*Alvará de Licença de Estabelecimento*) with the Municipal Authority of the location where the company will operate. Obtaining this permit is not mandatory for all companies. The necessity to obtain the permit will vary according to the corporate purpose of each company.

State Authorities. Apart from enrolling with the Municipal Authority, the register of the company with the State Authority may also be required if its activities involve the circulation of goods and services. Only companies that will develop such activities are subject to this register. Procedures for the registration of the company with both Municipal and State Authorities may be performed simultaneously with the company's enrollment with the Federal Revenue Secretariat.

Fire Department Inspection Certificate (AVCB). The AVCB issued by the Military Fire Brigade of the competent State is required for every commercial. This certifies that the building of the company meets the safety requirements against fire or other situations that may be prejudicial for the real property. The timing to obtain this license varies depending on the municipality and the current workload.

Professional Boards/Class Entities. Entities performing specific services that are subject to supervision or regulation by professional or class entities may need to enroll with such bodies. For example, entities performing engineering services may need to enroll with *CREA - Conselho Regional de Engenharia e Agronomia*.

Goods Declaration (SISCOMEX). Entities performing export and import activities, as well as dispatchers, dispatchers' assistants, depositaries, cargo agents, port operators and transporters must register before *Sistema Integrado de Comércio Exterior (Siscomex)*, an integrated system controlled by the Federal Revenue Office. The timing to register and access such system may vary according to the volume of imported goods.

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

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

6. CENTRAL BANK – FOREIGN INVESTMENT REGISTRATION

All foreign exchange transactions in Brazil must be conducted through authorized local financial institutions. The foreign exchange market encompasses the purchase and sale of foreign currency, international transfers of Brazilian Reals, holdings of Brazilian capital abroad, and holdings of foreign capital in Brazil.

Foreign direct investments in Brazilian companies can be made in two⁴⁴ different manners:

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

The Central Bank of Brazil controls and registers foreign investments and oversees capital repatriation and profit remittances abroad. Registration of foreign investment with the Central Bank electronic registry system is essential to ensure the right to repatriate invested capital and to make remittances or reinvestments of profits and other forms of capital remuneration.

To operate the electronic registry system (“RDE-IED”), both the investee and the foreign investor must obtain a “CDNR code” from the Central Bank by enrolling the investor/ investee and their respective representatives’ data with the “*Cadastro Declaratório de Não Residentes*” (Foreign Investors Declaratory Registry).

Foreign investment registration is conducted electronically by the company receiving the investment and the foreign investor (through its Brazilian representative) within 30 days of the investment’s entry into Brazil.

Foreign investments are registered in the currency that enters Brazil. Profits are remitted in the currency of the country where the investor is resident, has its head office, or where the investing branch is located. Profit reinvestments are registered in the currency of the country to which the respective profits would have been remitted under these rules.

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

There is no minimum period during which registered funds must remain in Brazil. Foreign investors may sell equity or liquidate investments and repatriate capital at any time after investment. Foreign investors may freely repatriate proceeds from share/quota sales or company liquidation without prior Central Bank approval. However, repatriation is subject to demonstrating that the amount corresponds to the fair market value of the sold or liquidated investment.

There are no limits on dividend transfers abroad, if dividends distributed by the Brazilian company are paid to Brazilian and foreign partners under similar and non-discriminatory conditions.



ESTIMATED TIMELINE

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

1 D+0	Receipt in Brazil of documents related to foreign partners/shareholders (powers of attorney, corporate documents proving legal existence)
2 D+1	Complete sworn translation of foreign partner/shareholder documents (provided digital copies were available beforehand)
3 D+1	Apply for enrollment of investor/investee and representatives with Central Bank's "Cadastro Declaratório de Não Residentes - CDNR"
4 D+3	Deposit mandatory initial capital (10% of cash amount for company capital). Provisional RDE may be required, affecting timing. Not applicable for Ltda.
5 D+4	File power of attorney, articles of organization/bylaws, and DBE (CNPJ enrollment request) with Board of Trade
6 D+14	Register articles of association/bylaws with Board of Trade and enroll in National Registry of Legal Entities (CNPJ)
7 D+19	Register with SISCOMEX in "EXPRESS" category (import/export volume up to USD 50,000 per semester)
8 D+20	File for bank account opening at chosen commercial bank. Account opening may take longer depending on bank procedures.
9 D+20	Create RDE-IED (investor/investee code to inform bank for foreign currency exchange agreement)
10 D+21	Enroll with Caixa Econômica Federal to obtain FGTS registration
11 D+28	Remit funds to Brazil (if applicable) and execute foreign currency exchange agreement with Brazilian bank
12 D+29	Register foreign direct investment with Central Bank of Brazil
13 D+38	Completion of registration with municipal and/or state tax authorities
14 D+79	Update of SISCOMEX registration to "UNLIMITED" category (import and export volume above USD 150.000,00 per semester)

15 D+91	Appointment of the beneficiary owner before the Brazilian Federal Revenue Office
16 UP TO D+194	Issuance of environmental licenses. The term to issue the preliminary license can vary from 6 (six) to 12 (twelve) months, depending on the complexity of the project and the technical feasibility studies

PRELIMINARY QUESTIONNAIRE⁴⁵

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

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

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

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

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

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

5. Quotaholder(s)/Shareholders.

a. Please inform what entities/individuals shall act as NewCo’s quotaholder(s)/shareholders and their corresponding equity percentage. The *Limitada* may be formed by one or more individuals or legal entities, whereas the *Sociedade Anônima* requires at least two shareholders.

b. In case such quotaholder(s)/shareholders are domiciled outside Brazil, who shall act as local representative of the quotaholder(s)/shareholders? In case you do not have any presence in Brazil yet, we can recommend a few service providers that may be engaged by you to act as attorney-in-fact of the quotaholders/shareholders.

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

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

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

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

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

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

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

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

For more information, contact our Mining Law team:

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