IN-DEPTH

Mining Law

BRAZIL



LEXOLOGY

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Pinheiro Neto Advogados

In-Depth: Mining Law (formerly The Mining Law Review) is a practical, business-focused overview of the legal and regulatory regimes governing the mining sector in key jurisdictions worldwide. It also provides a 'year in review' analysis of recent changes, developments and their effects, and looks forward to expected future trends.

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Brazil

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Introduction

The mining sector plays an important role in the Brazilian economy and accounts for a large proportion of exports. In 2024, the mineral sector accounted for 47 per cent of the Brazilian trade balance. According to data from the Brazilian Mining Association, 93 mineral types were produced, including iron ore, gold, copper, bauxite, mineral water, granite, limestone, sand, phosphate, nickel, manganese and niobium. The mineral trade balance totalled US$34.95 billion in 2024, and the overall revenue of the Brazilian mining sector increased by 9.1 per cent compared to 2023.

Minerals in the ground are the property of the nation. The federal government has authority to grant exploration authorisations and mining concessions to Brazilian individuals or legal entities incorporated in Brazil, as a general rule regardless of the origin of the investor.

The main risk factors for the Brazilian mining industry relate to environmental and social concerns linked to mining operations. Environmental regulations and community engagement are critical components of mitigating these risks. Additionally, price volatility of mineral commodities on the global market can affect profitability. Infrastructure challenges and logistical issues in remote mining areas may also pose risks.

The Brazilian government is generally supportive of mining activities as a driver of economic growth, although the shift of political views of elected officers may influence mining policy, with more flexible or more stringent rules.

Brazil also encourages foreign investment, including in the mining sector. As a rule, there are no restrictions to foreign capital in the mining industry, except when the mining projects are located in the border area (i.e., a 150-km strip from the inland borders). For comments on border area restrictions, see the 'Operations, processing and sale of minerals' section herein.

Brazil has been a significant player in global mineral production and trade, particularly in iron ore. The country has strong trade ties with various countries, including China, which is a major importer of Brazilian minerals. China purchases seven out of the main eight minerals exported by Brazil and is the number one purchaser of Brazilian iron ore, manganese and niobium.

Notable features of the Brazilian mining industry include the vast Amazon rainforest, which contains substantial mineral resources. The environmental impact of mining in the Amazon region has been a subject of international concern, leading to increased scrutiny and regulation. Brazil also has relevant reserves of energy-transition minerals such as nickel, lithium, cobalt and rare earths, but the country is still working on creating public policies to foster investments and promote exploration and mining of these minerals.

In the context of the current debate on critical minerals, there has been growing discussion in Brazil regarding the need for specific regulatory frameworks aimed at promoting the production of these minerals. It is expected that, in due course, a national policy will be enacted to support critical mineral projects, potentially including tax benefits, minimum expenditure requirements in research and development, as well as measures to assist companies in navigating environmental licensing procedures.

Discussions have also touched on the possibility of establishing a national approval mechanism concerning foreign participation in the production of critical minerals. Government priorities in this context appear to be directed at ensuring value addition within Brazil, with an emphasis on domestic processing rather than the sole export of raw materials. The objective is to retain processing activities within the national territory so that the corresponding value is created locally.

Overall, the Brazilian mining industry is characterised by its scale, diversity of minerals and evolving regulatory framework, playing a crucial role in the country's economy and with the potential to play a large role internationally in the context of energy transition.

Year in review

Although the Brazilian mining sector has not yet regained the 2021 peak, recent performance shows signs of improvement. In 2024, the Brazilian mining industry outperformed 2023, with revenue rising by 9.1 per cent to 270.8 billion reais. Prior to that, the sector had recorded a slight decline in 2023, with revenues falling by 0.7 per cent in relation to 2022 numbers.

The outlook for 2025 and 2026 remain one of relative stability. Production and mineral exports are expected to hold at current levels, and the Brazilian Mining Association estimates that planned investments will total US$68.4 billion (2025–2029), about US$4 billion higher than previous forecasts.

Despite these significant figures, the Brazilian capital market for mining activities does not present the same level of sophistication as in other jurisdictions. Apart from a few companies that are listed on the São Paulo stock exchange (e.g., Vale, CSN, Gerdau, Magnesita and Ferbasa), most capital market transactions involving mining assets are structured in other markets through parent companies, which are usually listed on the Toronto Stock Exchange (TSX), the New York Stock Exchange (NYSE), Nasdaq or the Australian Securities Exchange (ASX).

Some factors may explain the slow development of Brazilian capital markets for mining, compared with other jurisdictions. The first is the lack of an investment culture in the mining business, in spite of a few recent successful offerings in 2020 and 2021. The second reason is the weight of the country's recent political history on economic confidence. Brazil went through two impeachment processes in the past 30 years, and the 2022 elections marked a shift with the return of President Lula. Now in the final portion of his term (2023–2026), Lula's administration has not yet introduced major changes to the legal or regulatory framework for mining, despite calls from some cabinet members for stricter oversight. In 2025, the policy debate has increasingly turned to strategic minerals. The federal government has announced its intention to advance a national policy still within this term, aimed at promoting domestic value addition and reducing dependence on raw ore exports. While broad themes such as production, processing and foreign participation are under debate, the specific design and scope of the policy remain uncertain.

The National Mining Agency (ANM), created in 2018, has continued to adopt measures attempting to improve the regulatory environment in the country. Since it was established, the ANM has enacted rules on tailings dams' safety, mineral rights as collateral in financial

transactions, mineral reporting requirements, mine closure, re-mining of tailings and waste, and prevention of financial crimes through mineral trading, to name a few.

As of 2025, two draft resolutions are under public consultation and are expected to be finalised by December 2025. Both initiatives are regarded as particularly relevant, as they directly affect cost structures and access to credit for mining companies.

One deals with the calculation of statutory royalties (CFEM), an issue that has long been debated between mining companies and ANM, and seeks to clarify the rules applicable in cases other than sales, such as internal consumption, intra-group transactions, or situations in which there is no effective commercialisation. The other addresses the encumbrance of mineral rights, expanding the list of mining titles that may be used as collateral, which previously included only mining concessions and mine manifests. Under the proposal, the scope would also cover, inter alia, exploration licences and pending applications for mining concessions. Importantly, the new regulation is designed to align ANM's framework with the Mining Code, which has admitted such encumbrances since 2022. Annotations of liens had been suspended because the existing resolution was not consistent with the law.

Legal framework

The legal framework governing mining activities in Brazil is primarily composed of federal laws and regulations. The main sources of Brazilian mining law include the Federal Constitution, the Mining Code, introduced in 1967, the Mining Code Regulations, enacted in 2018, and ancillary rules issued by the ANM.

Among various subjects, this legislation defines exploration and mining activities, establishes the procedures for obtaining mineral rights and outlines the rights and obligations of individuals and companies holding mineral rights, including obligations related to the safety of operations and environmental matters.

According to the Federal Constitution, mineral legislation can only be enacted at the federal level. Nevertheless, state and municipal regulations might at times affect mining activities, specially with respect to zoning, environmental permitting and state levies.

The central regulatory authority overseeing the mining sector in Brazil is the ANM. The Agency was created in 2018 to replace the National Department of Mineral Production (DNPM). The ANM is responsible for granting exploration licences, monitoring compliance with mining laws and collecting statutory royalties (CFEM). It also plays a crucial role in promoting sustainable mining practices.

The Ministry of Mines and Energy (MME) is another important governmental body with responsibilities in the mining sector. In addition to granting mining concessions, the MME sets the strategic direction for the mining industry, formulates public policies and works in coordination with the ANM and other agencies in the executive branch to develop the sector.

Since its creation in 2018, the ANM has been working to modernise the regulations applicable to the mining sector. Some of the main accomplishments have been the issuance of new regulations on public auction of areas and on reporting requirements,

overcoming a gap between reporting requirements under Brazilian mining law and other typical reporting standards adopted by the industry.

During the seven years since its creation, the ANM has worked towards the modernisation of the regulatory framework of the mining sector, enacting regulations on matters such as tailings dams safety, mine closure, reprocessing of waste and tailings, and the granting of mineral rights as security.

Mining rights and required licences and permits

Title

The Federal Constitution provides that:

1. property over minerals differs from property of the land where the minerals are located;
2. mineral resources are the property of the federal government;
3. exploration can be carried out by Brazilian individuals or legal entities incorporated in Brazil under the authorisation of the federal government;
4. mining can be carried out by legal entities under the concession of the federal government;
5. the mining concession holder has ownership of the extracted minerals; and
6. landowners, municipal, state and federal government are entitled to royalties.

There are a few legal regimes provided by the Brazilian Mining Code for exploration and mining by private parties. For industrial mining, the most usual ones are the authorisation regime for exploration and the concession regime for mining.

Surface and mining rights

Property over minerals is different from property over the lands where they are located. Therefore, in addition to the applicable mineral rights, companies aiming at operating mineral projects in Brazil must secure access to lands.

Mineral rights

Exploration activities are defined by the Brazilian Mining Code as the work required to locate and define a deposit and to determine its economic feasibility. Mineral exploration can be performed by Brazilian individuals or legal entities incorporated in Brazil, under the authorisation of the ANM.

As a rule, exploration licences are granted on a first come, first served basis, provided that the application covers areas that were not previously staked by third parties, covered by valid mineral rights or subject to ANM auctions. Ground that was previously covered by

mineral rights and returns to the ANM is offered through an auction process, on a highest financial offer award criterion.

Authorisations granted by the ANM are valid for up to four years, with one extension allowed. During this period, the licence holder has an exclusive right to carry out exploration in the area. Further extensions may be allowed in exceptional cases, at ANM's discretion.

Mining can be carried out by legal entities under a concession, in various cases granted by the MME. A mining concession allows companies to commercially develop and use a deposit up to its depletion.

Surface rights

As exploration and mining activities are carried out in the national interest, the law ensures that holders of mineral rights will have access to private and public lands. Exploration and mining can take place on land of public or private domain, provided that the holder of mineral rights makes certain payments to landowners.

During the exploration stage, landowners are entitled to rent for the occupation of their properties, as well as compensation for any damage and loss caused by exploration works. At the mining stage, landowners are also entitled to a royalty.

Brazilian legislation imposes restrictions to the acquisition and lease of rural land by foreigners, namely:

1. foreign investors may only acquire rural land with the prior approval of the federal government;
2. only 25 per cent of the territory of a given municipality can be owned or leased to foreigners;
3. foreigners of the same nationality cannot own more than 10 per cent of the territory of a given municipality; and
4. National Congress consent is also required in cases where the land in question exceeds a certain area.

Since 2010, the interpretation of the federal government is that the restrictions on foreigners are also applicable to Brazilian companies controlled by foreign capital. This reasoning also applies to share deals, with the acquisition of direct or indirect control of Brazilian companies that own rural lands by foreign companies. Although the interpretation does not arise from law, it is binding upon all federal public administration.

Additional permits and licences

As an activity that uses environmental resources and creates potential environmental damage, mining is subject to environmental licensing. In general, licensing of mining projects happens in three phases:

1. preliminary licence, which approves the project location and design;
2.

installation licence, which authorises the installation of the facilities and premises; and

3. operation licence, which allows actual operation and mining activities.

Such licences usually provide for specific conditions to be met by the company on a case-by-case basis, considering the particulars of the project and its impacts to the environment.

Recently, Brazil enacted a new General Environmental Licensing Law (Law No. 15,190/2025), intended to streamline the environmental permitting process. However, the Executive Branch vetoed 63 provisions of the congressional text. In parallel, the Executive Branch issued Provisional Measure No. 1,308/2025 to institute an Environmental Special License with immediate effect for projects designated as strategic, and sent to Congress a follow-on bill (PL 3,834/2025) to adjust parts of the law affected by the vetoes. As of September 2025, Congress is examining both the vetoes and the new proposals, and there is still uncertainty regarding the implementation of the new law.

Closure and remediation of mining projects

Closure and remediation of mining projects in Brazil are subject to regulations to minimise the environmental and social impacts of mining activities. The primary goal is to ensure that mining sites are rehabilitated and returned to a state that is as close as possible to their pre-mining condition. Since the application for a mining concession, holders of mineral rights must prepare and present to ANM a mine closure plan, outlining the measures and strategies to be implemented during and after mining operations to rehabilitate the site.

Mine closure plans submitted to the ANM must contain at least the following:

1. documentation describing the overall situation in the mining area;
2. information on infrastructure for the mining project to be installed in the mining area;
3. a conceptual project for decommissioning;
4. actions already taken to rehabilitate the area;
5. the main monitoring and maintenance actions planned for the site; and
6. physical and financial schedule for the mine closure plan, including measures for the pre-closing, closing and post-closing stages.

Further documents and information may be required depending on the stage of each mining project and timing of closing.

Environmental, social and governance considerations

Sustainable development

According to Brazilian mining law, the holder of mineral rights is responsible for the prevention, mitigation and compensation of environmental impacts arising from its activities, including those related to the well-being of communities and to sustainable development around the mine. Nevertheless, there are no specific sustainability requirements or reporting guidelines applicable to mining companies.

In practice, mining companies adopt sustainable development initiatives as part of their operations, mainly in preparation for mine closure. Most of these initiatives have the purpose of observing international best practices in ESG, as well as meeting tasks of the United Nations' Sustainable Development Goals.

Environmental compliance

As a rule, larger mining activities are subject to a prior, three-phase environmental permitting process. The process begins with the preparation, by the mining company, of an environmental impact assessment and corresponding environmental impact report (RIMA) assessing the potential environmental and social impacts of the mining project, to be submitted to the environmental authorities.

The state environmental authority is usually in charge of permitting a mineral project. The federal environmental authority will be in charge on an exceptional basis whenever mining activities will be undertaken in, or cause an impact on, areas deemed as federal, such as national environmental conservation units or indigenous lands, as well as in cases where mining activities will be carried out in two or more states.

The time frame for obtaining environmental permits can vary widely depending on the complexity of the project, its potential environmental impact, the location and the efficiency of the regulatory process. While the new General Environmental Licensing Law (Law No. 15,190/2025) was designed to shorten the duration of environmental permitting procedures, its future application remains uncertain in light of the federal government's extensive vetoes and subsequent legislative initiatives, as mentioned above.

Indigenous and third-party rights

The Federal Constitution affirms the inherent rights of indigenous peoples, granting them exclusive land use rights within their traditionally occupied territories. However, indigenous populations do not have ownership of mineral resources within traditionally occupied territories; these remain property of the nation. The Federal Constitution allows for exploration and mining activities within indigenous areas, but these require infra-constitutional regulations that were never enacted. Further, mining in indigenous lands requires consultation and compensation to the indigenous community, and approval from the National Congress.

Additionally, Brazil recognises and legally safeguards the rights of descendants of former slaves who have formed organised communities, known as *quilombolas*. While mining activities are permissible within *quilombolas* territories, they undergo specific review before mineral rights are granted.

Prior and informed consultation is also required as part of the environmental permitting process for projects such as mining activities that may affect indigenous or *quilombola*

communities. As of October 2025, the National Council of Justice (CNJ) is consulting on a draft resolution to set minimum standards for Free, Prior and Informed Consultation with indigenous, *quilombola* and traditional peoples. Grounded in Brazil's Constitution and ILO Convention 169, the proposal defines parameters for participation and training of members of the Judiciary Branch to ensure communities are meaningfully involved in decisions that may affect them.

Additional considerations

In the environmental field, the accidents involving the Mariana tailing dam in November 2015 and the Brumadinho tailings dam in January 2019 resulted in more stringent regulation on environmental issues, and more specifically on the use of dams by mining operations, as well as more severe supervision by environmental authorities and public prosecutors. New laws and regulations on tailings dams issued at the federal and state levels after the incidents contain more requirements for companies that operate such dams, such as the ban on upstream raising methods, and the need to decommission upstream dams over a few years, as well as to remove most of the premises located downstream of tailing dams. Legislative proposals pending in Congress also aim at requiring environmental bonds and insurance for environmental damage from mining companies.

A final comment should be made with regard to the social and environmental liability of financial institutions that provide funds for mining and infrastructure projects in general. Although no legal provisions impose such a liability, the general practice is that such institutions are deemed increasingly responsible for the use of funds borrowed by companies, particularly those that use environmental resources and could potentially create a social and environmental footprint. The implementation of a National Monetary Council regulation involving the liability of financial institutions started in 2015. This regulation requires each financial institution to put in place a social and environmental policy. This may result in increasing the possibility of financial institutions facing liability claims in the future.

Operations, processing and sale of minerals

Employment, health and safety

Brazilian labour law provides that employers bear a general responsibility for safeguarding the well-being and safety of not only their employees but also anyone working within their premises, such as visitors and contractors. According to Brazilian law, among other preventive measures, companies must:

1. adhere to and ensure compliance with health and safety regulations;
2. provide guidance to employees on necessary precautions to prevent workplace accidents or illnesses;
3. provide both collective and individual protective equipment; and
4.

give employees comprehensive information concerning the potential risks they may encounter.

Occupational health, hygiene and safety regulations are primarily outlined in regulatory standards enacted by the Ministry of Labour, which may be amended from time to time. In practice, the relevance of these obligations and observance by each company will depend on various factors, including the nature of the company's operations and the extent to which employees may be exposed to health risks, such as noise, heat, electricity, explosions and so forth, the quantity of employees present in each facility, or the degree of risk associated with the company's specific activities.

The Ministry of Labour regulatory standards dealing with occupational health and safety in mining have been amended in early 2024. Among other matters, the amendment prohibits the design, construction and operation of facilities in the areas downstream of tailing dams, allowing only essential sanitary facilities for workers in these areas. Additionally, the installation of any structures within the safety perimeter of waste piles or tailing piles and dams, to be defined in the stability project, is prohibited.

The modifications to the regulatory standards also deal with issues related to emergency exits, outsourcing, risk management, inspection schedules, safety training, access to facilities, material transportation, self-propelled machines, conveyor belts, use of explosives and internal movement of explosives.

Processing and operations

When it comes to the import of equipment and machinery, Brazil has a complex and often lengthy customs clearance process. Importers are required to comply with specific documentation and licensing requirements, such as obtaining an import licence from the Ministry of Economy. Brazilian law provides for tax incentives for the import of machinery for which there is no equivalent in the domestic market and that will be used in the production of goods for export.

In their daily operations, companies carrying out industrial activities, such as mining, must observe a proportion of two-thirds of Brazilian employees, according to Brazilian labour laws. Specialised technical positions can be exempted from the proportionality criterion, provided that there is a lack of Brazilian nationals able to occupy these positions.

Sale, import and export of extracted or processed minerals

At present, Brazil imposes no specific restrictions on the sale, import or export of extracted or processed minerals, other than those applicable to nuclear substances. Brazil has traditionally maintained a strict monopoly over nuclear minerals, including uranium and thorium, as a means to safeguard its nuclear programme and control the production and export of these strategic resources. This monopoly allowed the government to regulate and monitor the entire nuclear supply chain, from mining to processing and export. In 2022, Brazil took steps towards relaxing this monopoly, by lifting export quotas for lithium (considered a mineral of interest to the nuclear industry) and enacting legislation to allow private companies to participate in the exploration and mining of nuclear minerals, in association with Indústrias Nucleares do Brasil (INB), a state-owned company that

exercises the monopoly on the production and marketing of nuclear materials. This shift in policy was driven by the desire to attract investment, stimulate economic growth and tap into the commercial potential of nuclear resources, especially in the context of global demand for clean energy sources like nuclear power. While the government continues to maintain strict control over nuclear activities for security and non-proliferation purposes, the opening up of the sector to private enterprise marks a significant departure from the historical monopoly.

Foreign investment

Foreign investors are not subject to any legal restrictions on acquiring stakes in Brazilian mining companies in general, although the government interprets the restrictions on non-Brazilian ownership as applying to border areas (i.e., areas within a 150km-wide strip of land parallel to national borders), as in other countries of the region. Hence, for those companies based in or that have mining assets in a border area, non-Brazilian equity interest is limited to 49 per cent, directly or indirectly.

The Brazilian government also understands that Brazilian companies that are directly or indirectly controlled by non-Brazilians are subject to certain requirements to acquire rural land, such as the prior approval of the National Institute for Colonisation and Agrarian Reform (see the 'Mining rights and required licences and permits' section herein). Because access to land is important to the mining sector, non-Brazilian investors should bear in mind this element in channelling their investment.

Financing

Overview

Investors in the mining sector are both Brazilian nationals and non-Brazilians. The number of Brazilian investors is not as high as in other sectors of the economy, but their importance should not be downplayed. Vale accounts for a relevant part of the investment in mining, and so do other mining companies, such as Nexa. In addition, private equity funds are frequently seen in the market, as are pension funds and companies in general.

Non-Brazilian investors are usually international mining companies, global funds, private equity funds or pension funds that seek to reinvest and expand their portfolios, or companies that seek to secure the supply of raw materials for their industries.

Given the investment culture in the mining business in Brazil is not as developed as in other jurisdictions, alternative methods of access to funding have been developed and have become more popular.

Royalty transactions are common and there are now more companies specialising in acquiring royalties. The main hurdle is the fact that Brazilian mining legislation does not provide for the registration of the royalty against title, so the royalty remains a contractual obligation that cannot be imposed on a third-party acquirer of the mining property unless the party expressly acknowledges that it is bound by the royalty. Consequently, a series

of legal mechanisms and securities need to be put in place to reduce the exposure and provide more assurances to the royalty creditor.

During the past few years, there have also been significant streaming transactions in Brazil. Streaming arrangements are contracts for the regular supply of mineral production under which, upon advance payment of a premium, the buyer agrees to purchase, at a fixed discounted and predetermined price, all or part of the mineral production to be extracted by a mining company during a certain period or even throughout the life of the mine. The mining company receives payment upfront, which enables it to develop, construct and operate or expand the mine. This arrangement allows the mining company to capitalise based on proven but still unexplored mineral reserves at a cost usually below that of a loan.

These streaming arrangements have been praised by companies as they have access to additional fundraising mechanisms to develop the mineral project and have a purchaser for all or part of future production (depending on the agreement). Moreover, contrary to capital investment financing, streaming arrangements avoid debt-financing costs, particularly at times when credit access conditions are unfavourable.

Capital raising

Capital raising in Brazil in general is subject to federal corporate laws, capital markets laws and regulations issued by the Securities and Exchange Commission of Brazil (CVM).

Foreign direct investment plays an important part in the Brazilian economy and the legislation imposes few requirements[1] for such investments. According to data from the Organisation for Economic Co-operation and Development (OECD), Brazil was the second most popular destination for foreign direct investment in 2023, in the amount of US$64 billion.

Listing in Brazil

There are no specific requirements for raising capital for mining activities in Brazil. Mining companies listed on the São Paulo stock exchange will be subject to the usual requirements in terms of governance and disclosure that are applicable to other industries.

In addition, there are no incentives tailored for the mining sector. Mechanisms such as flow-through shares that may be common in other jurisdictions still have no equivalent in Brazil, although the government has repeatedly stated that measures to foster financing available to the mining sector are being considered. As a consequence, the absence of specific rules considering the particularities of the sector, coupled with high costs in terms of governance and disclosure requirements, discourage exploration companies, juniors and companies with smaller projects or operations from listing in the Brazilian market.

In October 2024, B3 (Brazil Stock Exchange) and the Toronto Stock Exchange/TSX Venture Exchange signed a memorandum of understanding to evaluate pathways for dual listings of Brazilian mining companies. The arrangement seeks to facilitate access by Brazilian issuers to Canadian capital markets, while also broadening opportunities for international investors. Although still non-binding and under discussion, the initiative reflects an effort to expand financing options available to the Brazilian mining sector.

Debt

One of the main sources of funding for mining projects is through debt transactions. The National Bank for Economic and Social Development (BNDES) has had a key role in financing major mining projects at more favourable rates. It operates in strengthening the capital structure of private companies and provides more favourable conditions for financing intended for projects that contribute to social, cultural and technological development.

In early 2024, BNDES announced the Strategic Minerals Investment Fund, aiming to support junior and mid-sized companies. The fund could mobilise up to 1 billion reais, with a contribution of up to 250 million reais from BNDES, and will be managed by a consortium formed by Ore Investments and a joint venture between JGP and BB Asset. Ore Investments is a Brazilian asset management company focused on mining projects, with 400 million reais in assets under management. JGP is a capital markets entity managing 41 billion reais, while BB Asset, part of semi-public bank Banco do Brasil, has a portfolio totalling 1.7 trillion reais.

In parallel, BNDES and Finep (a federal agency focused on financing science, technology and innovation projects) launched a separate public call focused on transformation and industrialisation of strategic minerals, which in 2025 resulted in the selection of 56 business plans totalling approximately 45.8 billion reais in proposed investments.

Brazilian commercial banks also provide finance for projects, but in many cases the internal requirements make it harder for projects at the exploration stage to be funded. Banks not based in Brazil may also provide funding for mining projects and usually do so through pre-export finance mechanisms that ensure more favourable taxation.

One key aspect in financing of mining projects and operations is the security package required by banks and other financing institutions. As part of its continuous efforts to enhance and modernise the Brazilian regulatory framework, the ANM regulated the mechanism of creating and enforcing security interests over mineral rights in late 2021, which is currently being reviewed as recent legislative developments now allow the granting of exploration rights as security.

Royalties, taxes and duties

Royalties

Mining activities are subject to a statutory royalty (the Financial Compensation for the Exploitation of Mineral Resources, or CFEM) calculated based on the revenue arising from the sale of the mineral product. The rate varies depending on the substance and, in most cases, the applicable rate is 2 per cent. The highest rate currently is applicable to iron ore, at 3.5 per cent (although it may be reduced to 2 per cent for marginal projects).

Allowable deductions are restricted to marketing taxes. External transport and insurance costs are not deductible, which increases significantly the CFEM payable by those producers that have logistics associated with their mining business.

For those companies that use a mineral substance in their industrial process to create an industrialised product, the statutory royalty will be calculated based on current market prices or a reference price, both to be defined by the ANM. With companies that export ore, the revenue arising from the sale of the ore must be consistent with the minimum prices set by the Federal Revenue for each mineral substance (otherwise, the calculation basis of the royalty will be estimated revenue based on the Federal Revenue's minimum standards).

In addition, four states (Minas Gerais, Pará, Goiás, Mato Grosso and Amapá) have created inspection fees. A close review of these state fees shows that they are actually proportionate to the mine production and are tantamount to an additional royalty.

Taxes

Brazilian legislation does not provide for any tax advantages or incentives to persons engaged in mining activities, or their investors and lenders. The main taxes levying at the federal, state and municipal levels are the following.

Corporate income tax

Corporate income tax is levied at the rate of 15 per cent on taxable profits. A 10 per cent surcharge is levied on the actual profits, presumed profits or profits determined by the tax authorities, in excess of 240,000 reais per year. Taxable profits are ascertained by deducting the operating costs and expenses from the gross income originating from the company's core activity and incidental businesses. Some of these costs and expenses are not deductible because of their nature or the amount involved. There are also provisions for tax exemption once a company's taxable profit has been ascertained.

Moreover, Brazilian legal entities are allowed to carry forward losses indefinitely, which is of paramount importance for companies that undertake exploration, development and later mining activities; however, such losses can only offset 30 per cent of taxable profits, which can result in deferral of the utilisation of the losses in the event that the legal entity sustains material losses and profits that are not substantial.

As a general rule, the income, capital gains and other earnings paid, credited, delivered, employed or remitted by a Brazilian source to a foreign-based individual or legal entity are subject to withholding tax at a general rate of 15 per cent.

Social contribution on net profits

Social contribution on net profits (CSL) applies to Brazilian companies and is calculated on the net profits before the allowance for income tax, adjusted by the additions, exclusions and offsets prescribed by tax law. The CSL rate is 9 per cent and the figures paid are not deductible from the income tax base (actual profits).

PIS and COFINS

The programme of social integration (PIS) and contribution for the financing of social security (COFINS) are levied at the combined rate of 9.25 per cent, assessed over the gross billings of the company.

Tax on financial transactions

Tax on financial transactions (IOF) is a tax on foreign exchange, securities, credit, gold and insurance transactions. The Ministry of Finance sets the rates of the IOF tax, subject to limits set out by law. The IOF/exchange is currently imposed on a variety of foreign-exchange transactions. Currently, for most exchange transactions, the rate of IOF/exchange is 0.38 per cent.

Tax on distribution of goods and services

Tax on distribution of goods and services (ICMS) is a value-added tax levied by the state on the circulation of goods (thus covering the entire chain of trades from the manufacturer to the end consumer) and on the provision of intrastate and interstate transportation and communications services. Normally, the transaction value serves as the ICMS tax base. The ICMS is paid by the trader or provider of carrier or communications services. ICMS is a non-cumulative tax and, as such, generates a tax credit to be offset by the product or service recipient against the tax payable on future transactions. Each Brazilian state is free to establish its own ICMS rates (generally between 17 and 18 per cent).

Tax on services

Tax on services (ISS) is assessed on the services provided by a company or independent contractor or professional, in accordance with a list of services attached to a federal supplementary law. ISS is levied by the local municipality at a rate of between 2 per cent and 5 per cent on the service value.

The National Congress is currently reviewing a significant and comprehensive tax reform with the main purpose of rationalising the tax system and easing tax management both from the perspective of companies and the government. After years of discussion, the proposal passed the House of Representatives in July 2023 and is pending review at the Senate.

Tax reform

In December 2023, Brazilian Congress passed a consumption tax reform, introducing a dual value added tax (VAT) system to Brazil's tax framework, aligning it with international standards, particularly those of OECD member countries. It establishes two new taxes: the contribution on goods and services (CBS), which will be collected by the federal government, and the tax on goods and services (IBS), to be jointly collected by states and municipalities. Additionally, an excise tax (IS) will apply to specific goods and services deemed as harmful to health or the environment. All of them will replace existing consumption taxes (i.e., IPI, PIS, COFINS, ICMS and ISS).

The CBS and IBS feature three main attributes:

1. a broad tax base that covers both tangible and intangible goods (along with any associated rights) and services;
2. a non-cumulative structure that enables taxpayers to claim credits on most expenses; and
3. a limited number of tax rate bands.

Each federative entity will set its own uniform tax rate for transactions involving goods and services, although some may qualify for lower or zero rates under the CBS and IBS. Furthermore, the Senate will have the authority to establish reference rates for these taxes at all government levels.

The tax reform, as approved by Congress states that IS shall apply to mining activities, which can increase the tax burden on mining companies. The sregulation of the IS is currently set forth in Complementary Law No. 214/2025, which defines its application on the production, extraction, commercialisation, or importation of specified goods and services. For the mining sector, the impact is significant, as the new framework establishes the levy on the extraction of natural resources, in particular iron ore, oil and natural gas. Notably, the law provides for taxation even on export transactions, raising questions of compatibility with the Federal Constitution, which grants immunity to such operations. In this context, a wave of judicial challenges is expected.

The transition to the new tax system will occur over an eight-year period. During this time, CBS and IBS will be gradually introduced, while existing consumption taxes and their related incentives will be phased out, aiming for full implementation by 2033.

Beginning in 2026, CBS will be set at a trial rate of 0.9 per cent, and IBS will start at 0.1 per cent. By 2027, the PIS and Cofins will be extinguished, and the CBS rate will increase to a reference rate determined by the Ministry of Finance. Concurrently, IPI rates will be reduced to zero in 2027, except for goods produced in the Manaus Free Trade Zone. From 2029 to 2032, ICMS and ISS will be gradually phased out, with rates decreasing to 90 per cent in 2029, 80 per cent in 2030, 70 per cent in 2031 and 60 per cent in 2032. By 2033, the new tax system will be fully in effect, resulting in the complete abolition of the previous taxes and related legislation. Additionally, from 2029 to 2078, there will be a gradual transition from origin-based to destination-based tax collection over a span of 50 years.

Duties

The federal import duty in Brazil, also known as import tax (II), is imposed on goods brought into the country permanently. II rates typically range from 10 to 20 per cent, with a maximum consolidated rate capped at 35 per cent. Generally, the tax basis for this duty is calculated using the cost, insurance and freight value of the product, which includes the product's cost, international insurance and international freight expenses, following the guidelines outlined in the World Trade Organization's Customs Valuation Agreement.

Exports generally enjoy tax breaks in terms of ICMS and export taxes.

Other fees

In addition to taxes, royalties due to the federal government and landowners, holders of mineral rights at the exploration stage must also pay an annual fee to the ANM while the exploration licence is valid, calculated based on the number of hectares covered by such mineral rights.

Special considerations

The tax reform on consumption aimed at introducing a more rational and modern framework, with measures such as full non-cumulative taxation, comprehensive crediting and the elimination of fragmented regimes. While the transition may bring legal and operational challenges, these structural changes are expected to enhance predictability, legal certainty and competitiveness for the mining sector in the long run. The main point of concern for the mining sector in the context of the recent tax reform is the new IS, which moves in the opposite direction. Its current structure, levying in the extraction with no provision of immunity for exports, creates significant risks for the mining sector, and may offset much of the progress achieved by the broader reform.

Outlook and conclusions

Going into 2025–2026, the Brazilian mining sector faces both promising openings and significant risks. The government's recent emphasis on critical minerals as strategic assets has raised expectations for policy incentives, domestic processing requirements and selective regimes. Coupled with ongoing reforms in tax and environmental regulation, the landscape is constantly evolving.

Against this backdrop, ANM has consolidated itself as the sector's regulatory authority, operating with collegiate decision-making, public consultations and transparent procedures. One of its most relevant initiatives has been the framework for public offerings of mining areas returned to the government's administration, which has reopened long blocked opportunities for exploration and development. Currently, the ANM is preparing the ninth round of public offer, including areas of critical minerals, with substances for energy transition and food security. To modernise the process, in early 2025, ANM entered into an agreement with B3 (Brazil Stock Exchange) to organise and operate the auctions, a move expected to increase transparency and investor confidence.

Endnotes

1 For instance, the periodic reporting of investments to the Brazilian Central Bank and, for investments over US$100,000, the online registration of the investment within 30 days of the date the funds are converted into Brazilian currency. ^ Back to section

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