



## Brazil's Mining Reforms Target Environmental Impact, Public Safety, Royalty Payments

Brazilian President Michel Temer issued two decrees (Decrees Nos. 9.406/18 and 9.407/18) on June 12, 2018, amending Brazil's existing mining code and establishing additional environmental and public safety regulations.

Brazil's new mining code adopts current mining industry practices and incorporates international standards. The decrees establishing Brazil's new mining code follow President Temer's creation last year of a new government agency—the Brazilian National Mining Agency (*Agência Nacional de Mineração*) ("ANM")—to oversee mining regulation and inspection in Brazil.

### New Environmental Protections

While Brazil's old mining code covered most mining activities, Brazil's new mining code now regulates the reuse of tailings and provides for mine closure procedures.

### Environmental Recovery and Mine Closure Plans

Brazil's new mining code imposes liability on mining companies for environmental recovery of degraded mining areas. It also establishes mandatory mine closure work plans, which include: (i) recovery of areas degraded by mining activities; (ii) decommissioning of mining facilities and equipment; (iii) recovery and repurposing of mining areas; and (iv) monitoring of waste disposal systems, geotechnical stability, aquifers, and water drainage.

### Pledge of Mining Concession

Brazil's new mining code also facilitates financing for new mine development by providing that the mining concession title (*Portaria de Lavra*) can be pledged to lenders. The decrees provide that ANM will promulgate regulations for recording the assignment, transfer, and pledge of mining concession rights.

### Electronic Auction

Brazil's new mining code provides that any mining areas reverting to the Brazilian government will be offered to new investors through an electronic bid procedure using objective criteria established by ANM.

### New Royalty Payment Structure

The new mining code also establishes new royalty payments rules (*Compensação Financeira pela Exploração de Recursos Minerais*) ("Cfem") for mining activities. Cfem are royalties paid by mining companies and used to offset the effects of mining activities. Previously, only Brazilian states and cities where the actual mine was located received Cfem royalties. Under the new mining code, states and cities that are affected by transportation, shipment, or presence of industrial mining facilities will receive 15 percent of any Cfem royalty payments.

These reforms to the Brazilian mining code strengthen the rule of law necessary to foster investment in the Brazilian mining sector. They also establish additional environmental protection and planning obligations on Brazilian mining companies to address governmental and public safety concerns in the mining sector.



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