



Mining Newsletter

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the **Mining** practice of TozziniFreire Advogados.

BILL No. 2,780/2024: REGULATING CRITICAL AND STRATEGIC MINERALS IN BRAZIL

This newsletter provides an overview of Bill No. 2,780/2024, which aims to establish a regulatory framework for critical and strategic minerals in Brazil, highlighting the policy background and the central role of national sovereignty as a guiding principle. It outlines the key definitions introduced by the bill, clarifying distinctions between related concepts, as well as the incentives proposed to strengthen the domestic supply chain. The content also addresses potential obligations for market participants, including the requirement to allocate a portion of gross operating revenue, offering a concise analysis of the bill's main provisions and their potential implications for the mining and related sectors.

Background

Bill No. 2,780/2024 was introduced on July 8, 2024 by Representatives Zé Silva (Solidariedade), Keniston Braga (MDB) and Duda Ramos (MDB), with the purpose of establishing the National Policy on Critical and Strategic Minerals (PNMCE), aimed at fostering the exploration, mining and processing of critical and strategic minerals.

The text also creates the National Council for the Industrialization of Critical and Strategic Minerals (CIMCE), responsible for formulating guidelines, planning and coordinating the national policy on critical and strategic minerals, including the definition of priorities, approval and supervision of projects and relevant corporate transactions in the sector.





Sovereignty as guiding principle

Bill No. 2,780/2024 has as its guiding principle national sovereignty and the supremacy of public interest (Article 3, §2 of the Bill). Under the Federal Constitution, mineral resources belong to the Federal Government (Article 20, IX combined with Article 176). The extreme relevance of the discussions raised by the Bill stems, among other aspects, from the need to preserve national sovereignty in a geopolitical context in which the concentration of the critical minerals processing chain in a few countries poses a risk to supply and national security.

In this regard, the PNMCE seeks to ensure that Brazil develops its own capabilities for the exploration, mining and processing of critical and strategic minerals found within its territory, promoting the verticalization of the production chain and avoiding the mere export of raw resources. The government policy aims to prevent a purely extractivist model, promoting local beneficiation, traceability, ESG standards and value-added processing.

Definitions set forth by the Bill (the terms are related but not interchangeable)

Critical Minerals. Mineral resources necessary for key sectors of the national economy, subject to current or potential supply risk, the scarcity of which may severely affect the economy, the energy transition, food and nutritional security, or national security and sovereignty (Article 2, I of the Bill). The concept is demand-driven and context-dependent: a mineral may be critical in one jurisdiction and not in another. Brazil does not yet have specific regulations listing critical minerals.

Strategic Minerals. Mineral resources with significant reserves in the country and essential to the trade balance or to technological and regional development, even if unrelated to topics such as energy transition or reduction of greenhouse gas emissions (Article 2, II of the Bill). They are defined by national priorities rather than by global scarcity. Resolution No. 2/2021, of the Inter-Ministerial Committee for the Analysis of Strategic Mineral Projects (CTAPME), listed the strategic minerals for Brazil, classifying them into 3 categories:

- a. Strategic minerals for which Brazil relies on imports in a high percentage to supply vital sectors of the economy: Sulfur, Phosphate, Potassium and Molybdenum;
- b. Strategic minerals whose relevance is concentrated in their applicability to high-technology products and processes: Cobalt, Copper, Tin, Graphite, Platinum Group, Lithium, Niobium, Nickel, Silicon, Thallium, Tantalum, Rare Earths, Titanium, Tungsten, Uranium and Vanadium; and
- c. Strategic minerals that hold comparative advantages and generate a surplus in the Brazilian trade balance: Aluminum, Copper, Iron, Graphite, Gold, Manganese, Niobium and Uranium.

Energy Transition Minerals. Minerals necessary for the energy transition and decarbonization, used in batteries, electric vehicles, wind turbines, solar panels, transmission infrastructure and other low-carbon technologies. This category is functional and oriented more by technology than by supply risk. Ordinance MME No. 120/2025, based on Decree No. 11,964/2024, listed the mineral substances eligible for the issuance of incentivized debentures: cobalt, copper, lithium, nickel and rare earth elements, specifically for processing projects that generate battery-grade or magnet-grade products (lithium carbonate/hydroxide, cobalt/nickel sulfate, copper foil at battery thickness, rare earth oxides, chlorides and alloys).

Update of Lists. The review of the lists of substances classified as critical minerals and strategic minerals shall be conducted every 4 years, in alignment with the Multi-Year Plan, through regulations that shall observe economic, socio-environmental and climate criteria (Article 3, §3 combined with Article 41, §4 of the Bill).

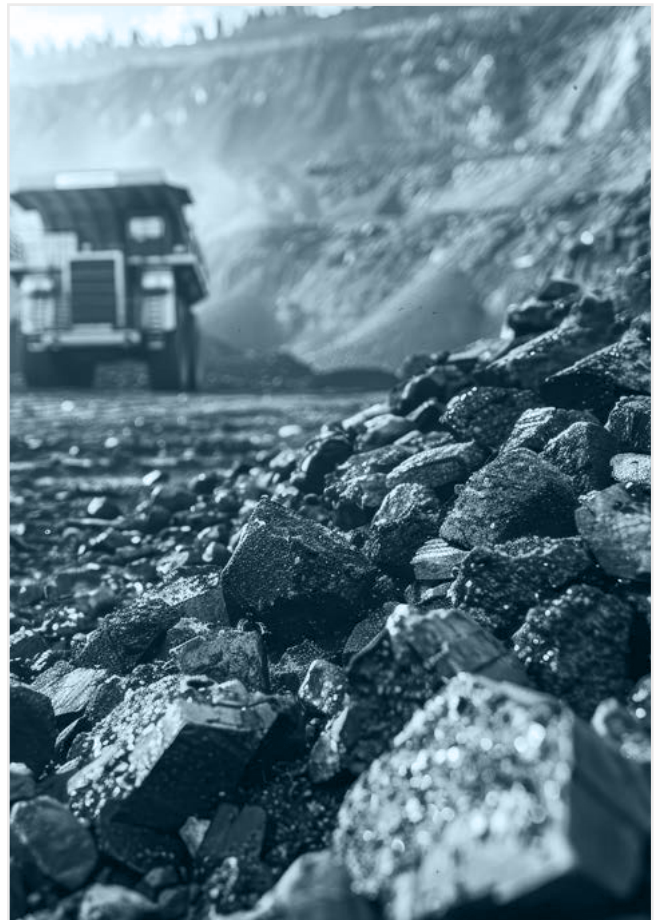
KEY POINTS OF ATTENTION OF THE BILL

Matters Subject to Approval by CIMCE and ANM:

The Bill provides that the following transactions and/or contracts involving companies and/or assets of critical or strategic minerals shall be subject to approval by CIMCE and ANM (Article 3, §2):

- a. direct or indirect change of control, including through corporate reorganization, of a company holding mining rights related to critical and strategic minerals;
- b. access to geological information of strategic interest or **relevant participation** or **significant influence** of foreign legal entities in companies holding mining rights over the minerals referred to in items I and II of Article 2¹;

- c. contracts, agreements or international partnerships involving the supply of critical and strategic minerals under conditions that may affect the economic or geopolitical security of the Country; and
- d. sale, assignment or encumbrance of mining titles covered by this law belonging, directly or indirectly, to the Federal Government.



¹The terms "relevant participation" and "significant influence" are not defined in the Bill or in ancillary legislation. For reference, "significant influence" is defined in §§4 and 5 of Article 243 of the Brazilian Corporation Law as the situation in which the investor holds or exercises the power to participate in the decisions regarding the financial or operational policies of the investee, without controlling it, and it is presumed when the investor holds 20% (twenty percent) or more of the votes conferred by the investee's capital, without controlling it. The term "relevant participation," in turn, finds correspondence in §1 of Article 12 of CVM Resolution No. 44, referring to direct or indirect participation above 5%, from which threshold the shareholder must be included in the Reference Form.



This is the main point of attention of the Bill, as it may generate legal uncertainty and deter investments in the sector. If this mechanism is maintained in the Senate's review of the Bill, it will be very important that the rules governing this approval process (to be defined by specific regulations) are clear and objective and do not create room for discretion by the Executive Branch.

With respect to item "b" above, M&A transactions involving companies in the mining sector engaged in activities with critical and/or strategic minerals may become subject to an additional stage of regulatory approval, impacting the timeline and predictability of transactions.

Regarding item "c" above, the breadth of this list of contracts may generate uncertainty for foreign investors and require greater attention to governance structures, especially regarding the definition of contractual conditions that may be interpreted as sensitive from a geopolitical or economic perspective. This measure may also create an additional layer of bureaucracy and regulatory uncertainty, potentially discouraging foreign investment in the sector.

Incentives linked to the supply chain in Brazil

The tax incentives and credits provided for in the Bill, such as the Federal Program for Beneficiation and Processing and the incentivized debentures (i.e. *debêntures incentivadas*), are contingent upon the performance of mineral beneficiation and processing activities in Brazil. However, mineral processing depends on the entry of other agents into the production chain, meaning it is not

carried out by the mining company itself. The question that remains is: how can the mining company ensure compliance with these requirements when the processing stage is outside of its direct control? This dependence on third parties may hinder access to the incentives and generate uncertainty regarding the maintenance of benefits over time.

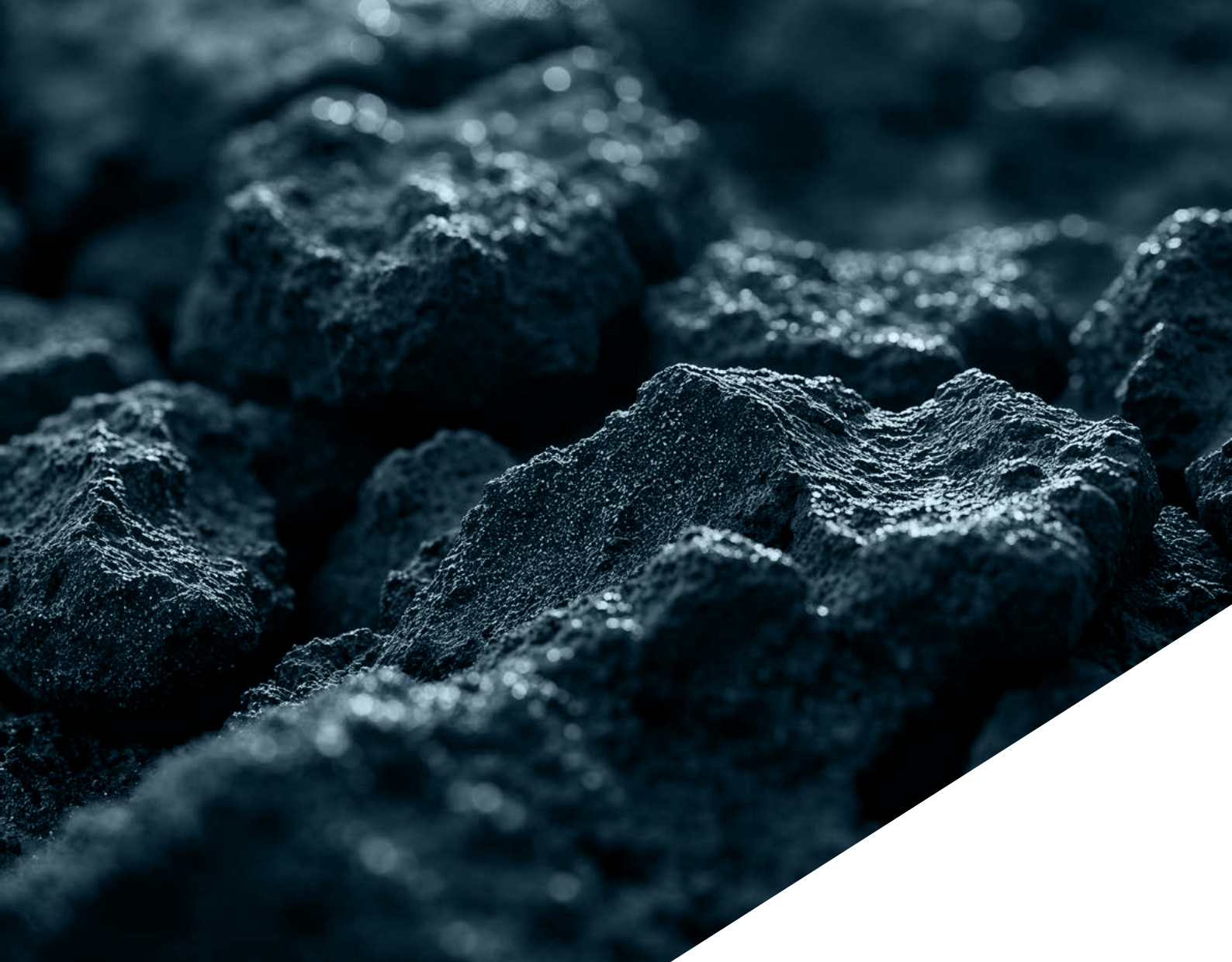
Obligation to allocate a portion of gross operating revenue

Article 15 of the Bill establishes that companies engaged in the exploration, mining, beneficiation and processing of critical or strategic minerals in Brazil are required to annually invest a portion of gross operating revenue derived from said activities, net of taxes, as follows:

a. During the first 6 years from the regulation of Article 15: (a) minimum annual investment of 0.3% in RD&I projects related to the exploration, mining, beneficiation and processing of critical or strategic minerals; and (b) minimum annual investment of 0.2% allocated to the payment of quotas in the FGAM; and

b. From the 7th year after the regulation of Article 15: minimum annual investment of 0.5% in RD&I projects related to the exploration, mining, beneficiation and processing of critical or strategic minerals.

Although investment in RD&I is positive for the sector, the mandatory percentage may be disproportionate and excessive in certain cases, especially for companies in early stages of production; this obligation may represent a significant burden, impacting cash flow precisely at the moment of greatest need for investment and lowest revenue generation.



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