

WHAT YOU NEED TO KNOW ABOUT THE PROPOSED BRAZILIAN CARBON MARKET

On December 21, 2023, the Brazilian House of Representatives approved the new text of Bill 2.148/15 (PL), which aims to create the Brazilian Greenhouse Gas Emissions Trading System (SBCE), i.e. the regulated carbon market in Brazil. The text will still be sent to the Brazilian Federal Senate and could return to the House of Representatives if further changes are made.

Access the official text (in Portuguese) [here](#).

Our **Environment, Sustainability and Climate Change team** is following every step of the process and has prepared this infographic to help you understand the main aspects of the new proposed legislation.

SCOPE

The SBCE aims to comply with the National Climate Change Policy (PNMC) and Brazil's commitments under the Paris Agreement. In this context, the SBCE provides for a ETS system to limit greenhouse gas emissions and trade assets that represent emissions, emission reductions or removals of greenhouse gases in the country. The model adopted is cap- and-trade, similar to the European and California markets.

ASSETS

The SBCE provides for four types of assets:

1

Carbon credit: "a tradable, autonomous asset, representing an effective reduction in emissions or removal of one ton of carbon dioxide equivalent, with the legal nature of a civil fruit, obtained from projects or programs to reduce emissions or remove greenhouse gases developed on the basis of an asset, with a market approach, submitted to national or international methodologies that adopt criteria and rules for measurement, including forest maintenance and preservation, carbon retention in the soil or vegetation, reforestation, sustainable forest management or the restoration of degraded areas, recycling, composting, energy recovery and environmentally appropriate disposal of waste, among others" (art. 2, VIII, as amended by Amendment 14).

2

Certificate of Verified Emissions Reduction or Removal (CRVE): "a fungible, tradable asset, representing the effective reduction of emissions or removal of greenhouse gases of one ton of carbon dioxide equivalent, following an accredited methodology and with registration carried out within the scope of the SBCE, under the terms of a specific act by the SBCE management body" (art. 2, IV).



3

Brazilian Emissions Quota (CBE): "a fungible, tradable asset representing the right to emit one ton of carbon dioxide equivalent granted by the SBCE management body, free of charge or onerous, to regulated facilities or sources" (art. 2, VII).

4

Certificate of Receivables of Environmental Credits (CRAM): "nominative credit title, freely negotiable, representing a promise to pay in cash or in the delivery of carbon credits, which constitutes an extrajudicial executive title" (art. 2, III).

KEY PLAYERS

1. Operator:

"regulated agent in the SBCE, a natural or legal person, Brazilian or incorporated in accordance with the laws of the country, who directly owns, or through some legal instrument, an installation or source associated with any greenhouse gas emitting activity" (art. 2, XXII). In practice, they are those responsible for activities, sources and facilities located in national territory that emit or may emit greenhouse gases, excluding primary agricultural production.

2. Certifier of carbon credit projects or programs:

"entity that owns carbon credit methodologies, verifies the application of these methodologies, and has monitoring, reporting and verification criteria for projects or programs to reduce emissions or remove GHG" (art. 2, V).

3. Developer of a carbon credit project or Certificate of Verified Emissions Reduction or Removal (CRVE)

"entrepreneurial legal entity, plurality admitted, which implements, based on a methodology, through funding, technical assistance or other means, a project to generate carbon credits or a Certificate of Verified Emissions Reduction or Removal (CRVE), in association with its generator" (art. 2, IX).

4. Carbon credit project generator or Certificate of Verified Emissions Reduction or Removal (CRVE):

"natural or legal persons, indigenous peoples or traditional peoples and communities who own or use property that is the basis for GHG emission reduction or removal projects" (art. 2, XV).

WHO IS OBLIGED?

Operators of facilities and sources that emit more than 10,000 tCO₂e per year: must submit a monitoring plan to the management body and send a report on greenhouse gas emissions and removals, in accordance with the approved monitoring plan.

Operators of installations and sources emitting more than 25,000 tCO₂e per year: above obligations and submission of a periodic reconciliation of obligations report.



The above levels may be increased by the management body, taking into account: **(i)** the cost-effectiveness of the regulation; **(ii)** compliance with the PNMC and the commitments made; and **(iii)** other criteria defined by the management body.

The obligations apply only to activities for which consolidated measurement, reporting and verification methodologies exist, as defined by the managing body, taking into account specific factors applicable to each particular type of activity, under the terms of the regulation.

SBCE IN PRACTICE

The CBE will be distributed by the management body to operators subject to the duty of periodic reconciliation of obligations, considering the maximum limit of emissions to be defined by the National Allocation Plan.

For the purposes of reconciling obligations, carbon credits may be taken into account which, subject to a validated and accredited methodology, will be converted into CRVE.

The recognition of CRVE from carbon credits based on actions, activities, projects and programs under the "REDD+ market approach" must respect the property and usufruct rights of state entities, as well as:

(i) the limits established by the mitigation results recognized under the United Nations Framework Convention on Climate Change (UNFCCC), within which the part of the mitigation results corresponding to properties that are not owned and enjoyed by state entities, which belong to the rights holders, must be observed, and **(ii)** the methodologies accredited for REDD+ by the SBCE.

An act of the management body will regulate the transfer of ownership and the cancellation of operations on the assets that make up the SBCE, as well as their cancellation.

For each commitment period, operators must submit a monitoring plan for analysis and prior approval by the management body.

The operator must submit an annual report on greenhouse gas emissions and removals to the management body, in accordance with the approved monitoring plan, observing the models, deadlines and procedures set out in the management body's regulations.

The reporting of greenhouse gas emissions and removals must be submitted by the operator to a conformity assessment process, conducted by an accredited inspection body in accordance with an act by the management body.

The data from the reports on greenhouse gas emissions and removals, submitted for validation by a conformity assessment body and presented to the management body, will be entered into the Central Registry, in a specific account for each operator.

At the end of each commitment period or at a shorter period defined by the management body, the operator must have integral assets in a quantity equivalent to its emissions incurred in the respective period, in order to meet the environmental commitments defined within the scope of the SBCE. The operator must submit an annual report to the management body on the periodic reconciliation of obligations, in accordance with the models, deadlines and procedures laid down in the management body's regulations.



TRANSPARENCY

The assets set up and traded within the SBCE will need to be registered in the Central Registry.

When traded on the financial and capital markets, the assets, as well as the CRAM, are considered securities, subject to the regime of Federal Law No. 6,385/1976, which regulates the capital markets.

The Brazilian Securities and Exchange Commission (CVM) may determine that, for the purposes of trading on the securities market, the assets must be registered with financial institutions authorized to provide this service. It will be up to the bookkeeper to register the ownership of the assets that make up the SBCE, when internalized in the system, as well as the registration for the transfer of ownership, constitution of rights in rem or any other encumbrances on the assets.

An act of the SBCE management body will regulate the interoperability of the bookkeeper's records with the SBCE Central Registry.

Any use of SBCE assets for the purposes of voluntary offsetting of greenhouse gas emissions by individuals and companies will result in their cancellation in the Central Registry. The restoration, maintenance and conservation of Permanent Preservation Areas, Legal Reserves or Restricted Use Areas, as well as Conservation Units, are eligible for the generation of carbon credits.

CONAREDD+ will be heard in the process of accrediting methodologies, and will be able to give its opinion and suggest guidelines on methodologies and safeguards. CONAREDD+ will also be responsible for maintaining a national register of jurisdictional carbon credit programs.

NATIONAL ALLOCATION PLAN

The National Allocation Plan will establish, for each commitment period:

- a.** the maximum emissions limit;
- b.** the amount of CBE to be allocated among the operators;
- c.** the ways in which CBEs are allocated, free of charge or onerous, to regulated installations and sources;
- d.** the maximum percentage of CRVE allowed in the periodic reconciliation of obligations;
- e.** managing and operating the price stabilization mechanisms for the assets that make up the SBCE, guaranteeing economic incentives to reduce emissions or remove GHGs;
- f.** the criteria for transactions of Net Greenhouse Gas Emissions Removals; and
- g.** other provisions relevant to the implementation of the SBCE, as defined in a specific act of the SBCE management body and in the general guidelines established by the Interministerial Committee on Climate Change.



The National Allocation Plan shall have a gradual approach between consecutive commitment periods, ensuring predictability for operators, and shall be approved at least 12 (twelve) months before its period of validity.

VOLUNTARY MARKET PROJECTS AND REDD+

Among the planned mechanisms, emphasis was placed on REDD+ projects and programs, the aim of which is to increase forest carbon stocks. Divisions were proposed between "market" and "non-market" approaches, as well as public and private programs..

The **REDD+ non-market approach** refers to financial incentives resulting from international cooperation, in the form of payments for results, carried out on a purely liberal basis, with a non-market approach, without the generation, commercialization or transfer of carbon credits or CRVEs, as they are non-market incentives aimed at supporting the reduction of GHG emissions from deforestation and forest degradation, with access to the resulting resources being regulated at national level by the National Commission for REDD+ (CONAREDD+).

In this sense, "REDD+ non-market approach" state programs are "programs for the reduction or removal of greenhouse gases developed by public entities, with a non-market approach, whereby, in areas that are cumulatively their property and usufruct, they may choose to receive exclusively payment for non-market environmental results, and, in areas owned or under usufruct by third parties (...) they may receive payments for non-market environmental results, provided that they expressly inform the donor countries, entities or companies that such receipt does not prevent them from exercising their constitutional rights (...)....) may receive payments for non-market environmental results, provided that they expressly inform the donor countries, entities or companies that such receipt does not prevent the constitutional exercise (...) of generating and commercializing carbon credits in them, based on the 'REDD+ market approach'" (art. 2, XXVI);

The **REDD+ market approach**, on the other hand, refers to projects or programs aimed at reducing greenhouse gas emissions from deforestation and forest degradation, including forest preservation or conservation, as well as increasing forest carbon stocks and sustainable forest management, in accordance with national or international methodologies, with a market approach, allowing the generation of carbon credits for subsequent sale on the voluntary market, and CRVEs, provided that, in the latter case, the effective reduction or removal of carbon is certified in accordance with the methodology and registration required for the SBCE.

This approach includes three alternatives:

State carbon credit projects "REDD+ market approach": "projects for the reduction or removal of greenhouse gases, with a market approach and the purpose of generating carbon credits, developed directly by a public entity, alone or in agreement with others, carried out in areas in which a given public entity has cumulative ownership and usufruct, and provided that there is no overlap with an area owned or under usufruct by a third party" (art. 2, XXVIII).

2

Jurisdictional "REDD+ market approach" carbon credit programs: "programs to reduce emissions or remove GHGs, carried out directly by the public authorities, on a national or state scale, in territory under their jurisdiction, with a market approach, which generate measurable results that can be recognized in the form of carbon credits, in which public entities receive payments for past environmental results through the sale of carbon credits generated on the basis of emission reductions or GHG removals already achieved."

In this case, it will be "prohibited, in order to avoid double counting, any kind of advance sale or promise of sale relating to jurisdictional carbon credits for the reduction of emissions or removal of GHG for a future period, and, with regard to real estate owned or under usufruct by third parties (...) public entities must refrain, immediately and in any form, from the sale of carbon credits relating to such properties as soon as any potential generator of carbon credits from such properties communicates, at any time, by means of a written document, filed with CONAREDD+ (...) expressing its desire to withdraw its property from the jurisdictional program (...)" (art. 2, XXVII).

3

Private "REDD+ market approach" carbon credit projects: "projects for the reduction or removal of greenhouse gases, with a market approach and the purpose of generating carbon credits, developed directly by a carbon credit generator, or in partnership with a carbon credit developer, carried out in areas in which the generator has ownership or usufruct" (art. 2, XXIX).

GOVERNANCE

Governance will be made up of the following bodies and committees:

1. **Higher and Deliberative Body** with normative, appeal and consultative powers, subordinate to the Interministerial Committee on Climate Change. The Higher and Deliberative Body must, among other things, establish the SBCE's general guidelines and approve the National Allocation Plan.
2. **Managing body, the SBCE's executing body, which is responsible for, among other things:**
 - a. the regulation of the SBCE asset market and the implementation of its instruments;
 - b. the definition of monitoring methodologies and the presentation of information on emissions, emission reductions and the removal of greenhouse gases;
 - c. the establishment of annual greenhouse gas emission levels above which the operators of the respective facilities or sources become subject to the duty to submit a monitoring plan and report on greenhouse gas emissions and removals;
 - d. the definition of requirements and procedures for measuring, reporting and verifying emissions from regulated sources and installations the creation, maintenance and management of the SBCE Central Registry;
 - e. the issuance of CBEs.



3. **Permanent Technical Advisory Committee**, which is responsible for (a) presenting subsidies and recommendations for improving the SBCE, such as criteria for accrediting and de-accrediting methodologies, (b) establishing the requirements and procedures for accrediting and de-accrediting methodologies for generating the Certificate of Verified Emissions Reduction or Removal (CRVE) and (c) investigating infractions and applying sanctions arising from non-compliance with the rules applicable to the SBCE.

An Act of the Federal Executive Branch will establish the operating rules of the bodies that make up the governance of the SBCE.

TAX ASPECTS

The gain arising from the sale of carbon credits and assets will be subject to income tax in accordance with the applicable rules:

- i. To the regime in which the taxpayer falls, in the case of developers who initially issued such assets;
- ii. Net gains, when earned on transactions carried out on stock, commodities and futures exchanges and organized over-the-counter markets;
- iii. Capital gains, in other situations.

Expenses incurred in the reduction or removal of greenhouse gas emissions may be deducted from the IRPJ calculation base based on real profit.

Income from the sale of assets is not subject to the Contribution to the Social Integration Program/Public Servant Equity Formation Program - PIS/PASEP and the Contribution to Social Security Financing - COFINS.

OWNERSHIP

Carbon credits generated from projects or programs that imply a reduction in the emission or removal of greenhouse gases may be offered voluntarily by any generator or developer of a carbon credit project, of which it is the holder, or by a public entity developing jurisdictional carbon credit programs.

Ownership of the carbon credits rests with the generator of the carbon credit or CRVE project, and the contractual provision for sharing or transferring these credits in projects carried out in partnership with carbon credit or CRVE project developers is valid as a means of exercising this ownership. The agreement signed between the generator and developer of a carbon credit project can be registered with the Real Estate Registry of the district in which the property used as the basis for the project is located.

The PL recognizes ownership:

- a. The **Federal Government** on carbon credits generated on vacant lands, federal conservation units and other federal properties, which are cumulatively owned and under usufruct by the Federal Government, as long as there is no overlap with areas owned or under usufruct by third parties;



b. The Federal states on carbon credits generated in state conservation units and other state properties, which are cumulatively owned and enjoyed by the federal states, as long as there is no overlap with areas owned or enjoyed by third parties;

c. Municipalities on carbon credits generated in municipal conservation units and other municipal properties, which are cumulatively owned and enjoyed by municipalities, provided there is no overlap with areas owned or enjoyed by third parties;

d. Private owners or usufructuaries of carbon credits generated on privately-owned properties;

e. Indigenous communities on the carbon credits generated on the lands described in art. 231 and paragraphs of the Brazilian Federal Constitution;

f. Extractivist communities on the carbon credits generated in the Extractivist Reserves provided for in art. 14, inc. IV, of Federal Law no. 9.985/0

g. Quilombola communities on the carbon credits generated on the remaining lands of quilombola communities, provided for in art. 67 of the Transitional Constitutional Provisions Act;

h. Settlers who are **beneficiaries of the agrarian reform program** and who live in settlement projects, on the carbon credits generated in the plots of settlement projects of which they have usufruct, regardless of whether or not they already have title deeds;

i. From other usufructuaries, on carbon credits generated on other properties in the public domain not mentioned in the previous sections, provided that the usufruct does not belong to the public entity that owns the property.

State carbon credit projects will be developed with strict respect for private property and the usufruct of others, and can only be carried out in the areas of the Union, States and Municipalities when the public entity has, cumulatively, ownership and usufruct of such areas, as long as there is no overlap with an area owned or under usufruct by a third party. If these conditions are met, the public entity can directly develop state carbon credit projects in these areas or, alternatively, implement private carbon credit projects in these areas in partnership with a carbon credit project developer or CRVE, in which case it will be necessary to tender the forest concession, under the terms of art. 14-D of Federal Law 11.079/2007.

INFRACTIONS AND PENALTIES

Guaranteed the double degree of appeal, administrative infractions for non-compliance with the rules applicable to the SBCE will be established in a specific act of the management body.

The following penalties will apply, cumulatively or separately:

- i.** warning notice;
- ii.** fine;
- iii.** publication, at the offender's expense, of an extract of the conviction for 2 (two) consecutive days, from 1 (one) to 3 (three) consecutive weeks, in the media indicated in the decision, in cases of repeat serious offenses;



- iv. embargo of activity, source or installation;
- v. partial or total suspension of activity, installation and source; and
- vi. restrictive of rights, which may consist of: **a)** suspension of registration, license or authorization; **b)** loss or restriction of tax incentives and benefits; **c)** loss or suspension of participation in financing lines with official credit establishments; and **d)** a ban on contracting with the Public Administration for a period of up to three years.

The penalty will be a fine:

- a.** in an amount **not** less than the cost of the obligations not complied with, provided that it does not exceed the limit of 3% (three percent) of the gross revenue of the legal entity, group or conglomerate obtained in the year prior to the initiation of the administrative process, updated by SELIC in the case of legal entities, and may be progressively higher than this percentage limit, in the event of recurrence, up to the percentage limit of 4%; and
- b.** from R\$ 50,000.00 (fifty thousand reais) to R\$ 20,000,000.00 (five million reais), in the case of other individuals, as well as other entities or persons incorporated in fact or in law, even temporarily, with or without legal personality, that do not have a turnover, and the gross turnover criterion is not possible.

Infractions will be investigated, as soon as the infraction notice is issued, by means of an administrative sanctioning process, ensuring the right to a full defense and an adversarial proceeding, with a 30 (thirty) day defense period.



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