



CARBON MARKET IN BRAZIL

LAW NO. 15,042/2024

DEMAREST

Carbon Market in Brazil – Law No. 15,042/2024

What to expect from the law that establishes the Brazilian Greenhouse Gas Emissions Trading System (SBCE)

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Introduction of the Brazilian Greenhouse Gas Emissions Trading System



On December 12, 2024, President Luiz Inácio Lula da Silva sanctioned Law No. 15,042, which regulates the carbon market in Brazil, creating the Brazilian Greenhouse Gas Emissions Trading System (SBCE).

The new law provides for greenhouse gas (GHG) emission caps and the trading of assets representing GHG emissions, reductions, or removals – in line with the Brazilian National Policy on Climate Change (PNMC), provided for by Federal Law No. 12,187/2009.

The SBCE will operate according to a cap-and-trade system – already known in other regions, such as the California market (US) –, which regulates GHG emissions by establishing a cap for different sectors of the economy. Within this context, entrepreneurs receive or purchase permits (allowances) within this established cap.

These permits can be traded when, for example, those responsible for the facilities and GHG emission sources (operators) reduce or exceed the established emission caps.



What does Law No. 15,042 establish?

The SBCE amends several other laws regarding the environment and public records. Instruments created within the SBCE include **Brazilian Emissions Quotas (CBEs) and the Certificates of Verified Emissions Reduction or Removal (CRVEs).**

What is the scope of Law No. 15,042 and to whom does it apply?

The new law applies to activities, sources, and facilities located in Brazilian territory that issue or may issue GHG under the responsibility of operators, individuals, or legal entities.



Operators: Those whose emissions are below the cap can sell allowances, while operators that exceed the limit must purchase allowances in proportion to the exceeding amount. Law No. 15,042 does not explicitly define operators.

What does Law No. 15,042 seek to prevent?

In accordance with the National Policy on Climate Change and the Paris Agreement, the new law seeks to prevent GHG emissions from increasing in Brazil by promoting the reduction and removal of emissions through SBCE. This system includes the control and monitoring of GHG emissions and creates mechanisms for companies and other entities to reduce their GHG emissions, fostering environmental sustainability. In addition, the law provides for penalties to ensure compliance with the regulations, encouraging the implementation of more sustainable practices.



What are Certificates of Verified Emissions Reduction or Removal (CRVEs)?

CRVEs are defined as “fungible, tradable assets that represent the effective GHG emission reduction or removal of one tCO₂e (one ton of carbon dioxide equivalent), according to an accredited methodology registered with SBCE, and in compliance with a specific act of the SBCE’s managing body”.

What are Brazilian Emission Quotas (CBEs)?

CBEs are permits defined as “fungible, tradable assets that represent an emission allowance of 1 tCO₂e (one ton of carbon dioxide equivalent), granted by the SBCE’s managing body, free of charge or upon payment, to facilities or regulated sources”.

What measures must operators comply with?



Law No. 15,042 establishes that operators responsible for the facilities and sources that emit Co₂e must, without distinction by sector (except for primary agribusiness production, as detailed further below), and according to the annual emissions amount (calculated through consolidated measurement, reporting, and verification methodologies), comply with the following obligations:



More than 10,000 tCO₂e/year:

Submit monitoring and GHG emissions and removal report, in addition to further reporting obligations.



More than 25,000 tCO₂e/year:

Submit annual reconciliation reports, in addition to the obligations mentioned above.

What is periodic reconciliation?

It is the verification of compliance with environmental commitments defined by the operator in the National Allocation Plan. Such verification is based on ownership of SBCE's assets in an equal amount to net emissions.

What is the National Allocation Plan?

It is the SBCE's plan that provides for emission caps that have not yet been defined. The National Allocation Plan must also provide for:



Other regulations on the number of CBEs and their allocation method among operators;



The management and operation of asset price stabilization mechanisms; and



The maximum percentage of CRVEs allowed in SBCE;



Criteria for transactions, among other specifications.

Which activities or sectors are subject to special provisions?



Primary agricultural production and goods, improvements, and infrastructure directly associated with rural properties do not classify as activities, sources or facilities regulated by SBCE.

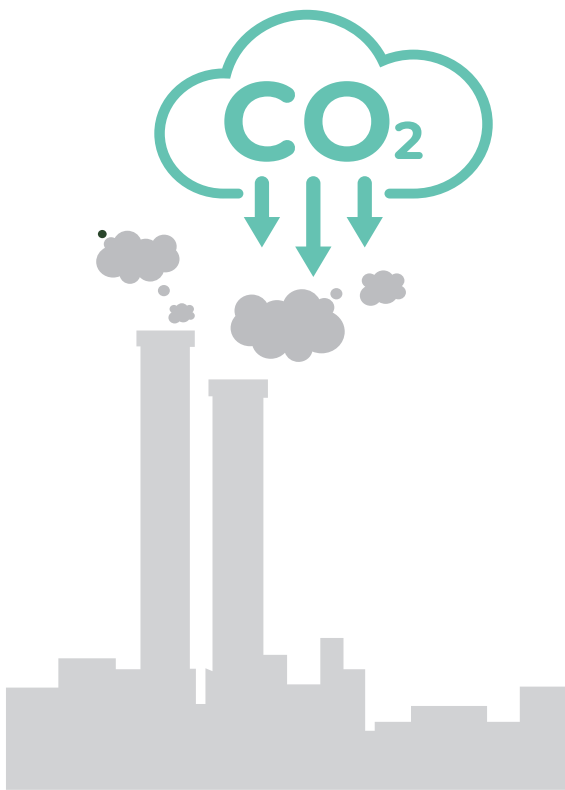


Companies that process and dispose of solid waste or liquid effluents and have proven to use emission neutralization technologies are exempt from complying with SBCE caps.



Insurance companies, open supplementary private pension entities, capitalization companies and local reinsurers subject to CMN Resolution No. 4,994 24/2022 must purchase SBCE's environmental assets or investment fund quotas of these environmental assets up to the limit provided for in this resolution or any regulation that replaces it, but complying with the 0.5% annual minimum threshold of resources from technical reserves and provisions.





What does the law state regarding rural area emissions?

Net emissions in rural areas owned or controlled by the operator of the activity, source, or regulated facility, and which are integrated into their production procedures, may be accounted for in the periodic reconciliation, at the discretion of the operator, for fulfilling obligations imposed by SBCE.

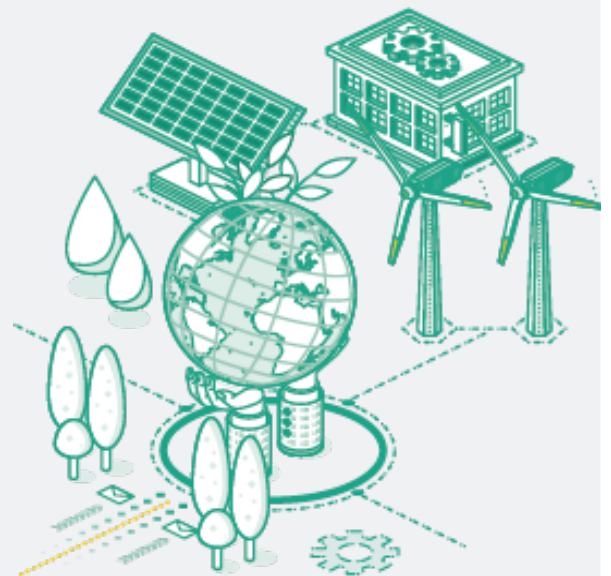
What can happen to GHG removals that exceed emissions?

Removals that exceed emissions are not automatically converted into CRVEs and must undergo the registration process with SBCE.

Which areas are eligible to develop a carbon project under SBCE?

Non-restricted or non-protected areas, areas for recovery, maintenance and conservation of Permanent Preservation Areas, Legal Reserves, Restricted Use Areas, Indigenous Lands, Quilombola Territories, and other areas traditionally occupied by traditional peoples and communities.

Conservation units are also eligible, provided the unit management plan does not restrict them. Settlement projects, unallocated public forests, and other areas with no express legal restriction are also eligible areas.



What does Law No 15,042 state regarding SBCE assets ownership?

The new law establishes that original ownership of carbon credits belongs to the generator of the carbon credit project or CRVE, allowing the sharing or assignment of these credits in partnerships with project developers.

Law No. 15,042 also recognizes the original ownership of:

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Credits generated in returned lands and federal conservation units, by the Federal Government;
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State and district conservation units, by the states and Federal District;
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Municipal conservation units, by municipal governments;
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Private property, by private owners or usufructuaries;
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Indigenous lands, by Indigenous communities;
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Conservation units for sustainable use, by extractive reserves and traditional communities;
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Remaining quilombola lands, by quilombola communities;
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Settlement lots, by agrarian reform settlers; and
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Public domain land, by other usufructuaries not mentioned previously, provided that legitimate usufruct is not held by the public entity that owns the real estate.


How will SBCE governance function?


SBCE governance will consist of the Interministerial Committee on Climate Change (CIM), the SBCE’s managing body, and the Permanent Technical Advisory Committee.


What are the SBCE phases?

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Phase I: Twelve-month term (Extendable for another 12 months) counted from the law’s entry into force, that is, December 12, 2024, to enact its regulation.
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Phase II: One-year implementation term for emission reporting instruments by operators.
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Phase III: Two-year term, during which operators’ sole obligation will be to submit a monitoring plan and report on GHG emissions and removals to the SBCE’s management body.
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Phase IV: Effective term of the first Brazilian National Allocation Plan, including the unencumbered distribution of CBEs, and the implementation of the SBCE’s asset market.
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Phase V: Full implementation of SBCE.

In short, SBCE is structured into five phases. The first focuses on the regulation of Law No. 15,042, with a one-year term that can be extended for one more year. In turn, the last phase provides for the full operation of the SBCE in line with the completion of the first National Allocation Plan.

What does Law No. 15,042 state regarding the voluntary carbon market?

Among the several important rules, the voluntary carbon market can operate independently from the regulated system. As such, carbon credits arising from the voluntary market can migrate to SBCE, provided that they meet specific criteria.



How will SBCE assets be taxed?

Federal Law No. 15,042/2024 also addresses the taxation method for assets (CBEs and CRVEs) and carbon credits. It establishes that the income tax will be levied on income from the sale of carbon credits and assets:



According to the taxpayer regime, for developers who issued the assets;



As net income in stock exchange transactions and organized markets; and



As capital gains in other situations.

Deductions



Expenses for reducing or removing GHG emissions can be deducted from the corporate income tax (IRPJ) and individual income tax (IRPF), including administrative and financial expenses.

Deduction of Expenses



The cancellation of carbon credits for offsetting emissions enables the deduction of expenses in the calculation of taxable income and the CSLL tax base, provided that deductibility requirements are met.

CSLL



These rules also apply to the Social Contribution on Net Income (CSLL).

Legal Entity



Capital gains will be calculated according to the IRPJ tax base.

Exemption



Income from the sale of carbon credits will not be subject to PIS/PASEP and COFINS.

Tax calculation



Differences arising from accounting methods and criteria provided for in commercial law will not affect the calculation of federal taxes.

Credit Conversion



Carbon credits converted into SBCE assets will not be taxed.

What does Law No. 15,042 state regarding Internationally Transferred Mitigation Outcomes (ITMO)?

The new law assigns the competence to authorize such transfers to the designated national authority. However, adjustments to the national emission inventory will be necessary. For example, providing that CRVEs must be monitored by SBCE. Additional provisions on these transfers will depend on a regulation to be drafted by CIM, considering the multilateral climate change regime and Brazil's international commitments.



What does Law No. 15,042 state regarding Indigenous and traditional peoples and communities?

The new law ensures the right to trade CRVEs and carbon credits generated based on the development of projects in territories traditionally occupied by these peoples and communities, provided that they comply with socio-environmental safeguards, including prior, free, and informed consultation, and fair financial compensation.

What laws did Law No. 15,042 amend?

The new law amends Laws No. 12,187/2009, No. 12,651/2012 (Brazilian Forest Code), No. 6,385/1976 (Securities Exchange Commission Law), and No. 6,015/1973 (Public Records Law).



What penalties does Law No. 15,042 establish?

The following penalties can be applied within the scope of the SBCE, cumulatively or individually:



Warning;



Activity, source, or facility embargo;



Fine;



Partial or total suspension of activity, facility, and source;



Obligation to publicize the conviction¹;



Restriction of rights, which includes:



Suspension of registration, license, or permit;



Loss or suspension of participation in lines of credit in official credit establishments; and



Cancellation of registration, license, or permit;



Prohibition from contracting with the government for up to three years.



Loss or restriction of tax incentives and benefits;

Fines applied to legal entities must exceed the cost of obligations that were not met, limited to 3% of the gross turnover in the previous year, and may reach 4% in case of repeated offenses. The fine ranges between BRL 50,000 and BRL 20 million for other entities or individuals, without considering gross turnover.

Penalties that restrain rights will only apply to serious offenses and after all other administrative appeals have been exhausted. Penalties must consider:



Seriousness of the offense;



Offender's cooperation;



Offender's priors/records;



Measures taken to reduce damage;



Recidivism;



Timely enforcement of corrective measures; and



Offender's economic status;



Good faith;



Proportionality between the seriousness of the offense and the penalty.



Obtained or sought unfair advantage;

¹ In the event of serious repeated offenses, the offender must publish a statement addressing the conviction. Such statement will be published in a communication channel established in a ruling, at the offender's expense on two consecutive days from one to three consecutive weeks.

How will SBCE assets be negotiated in the financial and capital markets?

Law No 15,042 states that SBCE's assets and carbon credits traded in the financial and capital markets are deemed securities and are subject to CVM regulation, except in private placements outside such markets. CVM may require that these assets be recorded with authorized financial institutions responsible for ownership registration and transfer.

In addition, CVM and the National Monetary Council may require custody of these assets in the central depository, waive certain records, establish specific requirements for admission to the market, and provide for specific information rules for the negotiation of these assets.

What does Law No 15,042 state regarding the jurisdictional market?

The new law establishes jurisdictional "REDD+ Market Approach" programs as policies and incentives for activities related to reducing emissions from deforestation and forest degradation, and increasing carbon stocks. These programs can be implemented on a national or state scale and are eligible to receive payments through market approaches, including capital raising in the voluntary market. The allocation of funds between the Federal Government and states should comply with potential upcoming national regulations.

Owners, legitimate usufructuaries, and private concessionaires are entitled to exclude their respective areas from such programs. Law No. 15,042 also provides for measures to avoid double counting and discussions regarding the ownership of credits generated in jurisdictional-scale programs.

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