

ESG and Brazil's Environmental Policy

06.05.2021 3 min read

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Since Brazil adopted its National Environmental Policy (PNMA – Política Nacional de Meio Ambiente) under Law 6938 almost 40 years ago, on August 31, 1981, many laws and regulations dealing with the environmental aspects of producing goods and services have been inspired by institutional (governance) and behavioral (social) changes introduced by the PNMA.

In addition to other instruments for environmental control, such as emissions standards, environmental licensing and impact assessments (among other mechanisms which have been consolidated over the decades and used as the foundation for solid environmental compliance programs in business), the PNMA's early adoption of a financial risk approach to environmental issues is noteworthy.

Adopted in an economic context characterized by a strong state presence, the PNMA made financing (project finance) and government incentives (agricultural credit) conditional on environmental criteria and standards. When the Brazilian economy later opened up, and then with the influence of the Equator Principles and the Principles for Responsible Investment, this trend broadened, and Brazil's Central Bank now requires that regulated financial institutions incorporate social and environmental policies, and that pension funds adopt sustainability criteria.

Anticipating the idea of a green economy, the PNMA also deals with financial contributions when environmental resources are used for economic purposes, and was followed by other legislation that promotes the use of economic mechanisms in environmental regulation, such as payment for the use of water resources, environmental reserve credits in connection with reforestation, and decarbonisation credits for production of biofuels to substitute fossil fuels. On other regulatory fronts, Brazil has seen inclusion of social and environmental standards in securities issuances and a revision of sustainability standards for the grant of credit in the agricultural sector.

The concept of “polluter” under the PNMA is a broad one - any party that is responsible, directly or indirectly, for an activity that causes environmental degradation.

In the post-covid economy, ESG principles have ushered in a new perception of systemic risk, which demands more complex regulatory analysis, particularly with respect to specific risks that are still under-regulated or

unregulated, such as water security, and recognition of the value of biodiversity and genetic heritage, traditional knowledge of indigenous peoples and other traditional communities, and human rights. In fact, the human factor is not ignored by the PNMA, which includes among its objectives the protection of the dignity of human life and compatibility between environmental aims and social and economic development, which could inform complex – but interesting – legal debates over climate litigation and the protection of human rights, for example.

The broad concept of “polluter” under the PNMA – any party that is responsible, directly or indirectly, for an activity that causes environmental degradation – has driven regulatory and even judicial initiatives, both national and international, to deal with risks associated with sustainability in productive chains in Brazil (in the agricultural market, for example), employing a variety of mechanisms, including the imposition of liability on shareholders. Cases such as these reveal the reputational and financial risks that can arise when investments are disconnected from a systemic vision of environmental legislation and human rights – dissociated from ESG principles, in other words.

As socio-environmental legislation becomes more sophisticated, the mitigation of risk through an ESG approach is now essential to the generation of value and companies' performance in the long term. Reduction of these risks makes organizations more resilient, less likely to suffer a loss of reputational credibility, less exposed to legal and financial penalties, and consequently more capable of producing predictable cash flows, not to mention the positive impacts they generate for society in general, and social (as well as financial) value for shareholders.

**This content is part of the e-book "A Post-Covid World, the ESG Agenda and Other Trends in 2021: Insights for Foreign Investors in Brazil". [Click here to view all the articles.](#)*

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