Brazil's Carbon Market Regulation: What your company needs to know

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Law 15.042, enacted in December 2024, creates the Brazilian Greenhouse Gas Emissions Trading System (*SBCE – Sistema Brasileiro de Comércio de Emissões de Gases de Efeito Estufa*), a regulated environment in the national production sectors will be given new commitments to control greenhouse gas emissions (GHG). The initiative is part of the agenda to decarbonize Brazil's economy, one of the commitments made by the country in its Nationally Determined Contribution (NDC) under the Paris Agreement, with support in Brazil's own National Climate Change Policy.

By making operators with GHG emissions above 10,000 tCO_2e/year subject to regulation, the SBCE will affect companies in various sectors, especially energy, mining, industry and transport.[1] Operators who fail to meet their emission reduction targets will be able to buy emission allowances, known as Brazilian Emission Quotas (*CBEs – Cotas Brasileiras de Emissão*), from operators who are below the limit. This system of buying and selling quotas is intended to act as a financial incentive for industries to adopt cleaner and more efficient production practices, since it shifts the burden to those that do not comply, and exposes them to the penalties provided for in the Law.

The SBCE will be rolled out in five phases over at least four years. From the fourth phase onwards, the National Allocation Plan will come into force, with the distribution of CBEs. Implementation of the National Allocation Plan will be one of the most sensitive phases for operators, and will certainly attract considerable market attention because CBEs will be allocated, either free of charge or at a price, to all operators required to reduce or offset GHG emissions to meet their targets.

Operators that emit more CO_2e than the number of CBEs granted to them will be able to offset the excess emissions by acquiring assets traded on the SBCE, namely: (i) CBEs acquired from third parties or (ii) "Certificates of Verified Emission Reduction or Removal" (*CRVEs – Certificados de Redução ou Remoção Verificada de Emissões*). Carbon credits generated in the voluntary market may be treated as CRVEs and therefore part of the SBCE if they originate from methodologies accredited by the SBCE's managing body and are registered in the system's Central Registry. The purchase limit for these assets will be set out in the National Allocation Plan.

Law 15.042 also deals with the financial aspects of assets traded in the SBCE. CRVEs are classified as an intangible asset, which means they are governed by the rules on ownership and property under the civil law, and clarifies their tax status. In the financial and capital markets (if offered publicly), CRVEs will be treated as securities and subject to the jurisdiction of Brazil's Securities Commission, the CVM (*Comissão de Valores Mobiliários*). If CRVEs are traded on the securities market, the

CVM may require that they be registered with a financial institution, which will act as registrar and transfer agent.

Regulations to be issued under Law 15.042 will clarify and detail the SBCE's governance structure, define the GHG sources and facilities covered by the system, establish trading rules, and deal with other operational aspects. Throughout the process of implementing the SBCE, active participation by the private sector will be fundamental, through the SBCE's Permanent Technical Advisory Committee, which will include members of civil society, academia, and sector entities, and the Committee's Regulatory Matters Chamber.

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NOTE

1. Primary agricultural production is not included in the SBCE.

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