

Navigating Brazil's Regulations, Incentives For Green Projects

By **Milena Angulo** (September 4, 2025, 2:54 PM EDT)

In July, Brazil's National Climate Change Fund initiated negotiations with global asset managers, including TPG Inc. and Brookfield Asset Management Ltd., aiming to mobilize up to R\$20 billion (approximately \$3.6 billion) in climate-focused investments.

This initiative is part of Brazil's broader strategy to attract international capital as it prepares to host COP30, the United Nations conference on climate change, later this year, underlining the country's commitment to a green transition.

Complementing this, the Brazilian Development Bank, or BNDES, approved R\$11.2 billion in long-term, low-interest financing directed at climate adaptation and mitigation projects.



Milena Angulo

As the U.S. government scales back tax credits and subsidies for renewable energy projects — including solar, wind and electric vehicles — Brazil continues to expand regulatory instruments and fiscal mechanisms that encourage clean energy and biodiversity protection.

For U.S. companies and investors seeking to enter or expand in Brazil for long-term green investment, the country's environmental and social legal frameworks present both challenges and opportunities.

Environmental Licensing: Constitutional and Legal Foundations

Brazil's environmental licensing regime is primarily governed by Federal Law No. 6.938/1981, which established the National Environmental Policy. This law mandates prior licensing for projects involving the use of environmental resources or those with potential for environmental degradation.

The licensing process is tripartite — comprising preliminary, installation and operational licenses — and each stage requires regulatory review, public participation and periodic renewals.

Central to licensing is the environmental impact study and report, which must precede projects with significant environmental footprints. The report provides detailed analysis of anticipated impacts and proposed mitigation strategies, forming the basis for licensing decisions.

Brazil's Federal Constitution makes environmental protection a fundamental right and duty under Article 225, which states: "Everyone has the right to an ecologically balanced environment ... and it is the duty of the Government and the community to defend and preserve it for present and future generations."

This constitutional mandate empowers regulators and courts to enforce precautionary principles, requiring companies to proactively prevent or mitigate environmental harm.

Brazil's Supreme Federal Court has consistently upheld this constitutional principle, often favoring environmental protection even when conclusive evidence of damage is absent. This is

especially true in ecologically sensitive regions such as the Amazon rainforest, where environmental concerns intersect with indigenous rights and biodiversity conservation.

In the U.S., project approvals often involve multiple federal and state agencies. By contrast, Brazil centralizes much of the process under federal and state environmental agencies, but requires companies to obtain licenses at three stages — preliminary, installation and operation.

For instance, renewable energy developers in Brazil, such as those pursuing wind or solar projects, must present environmental impact studies and obtain licenses from the Brazilian Institute of Environment and Renewable Natural Resources or state agencies. Once approved, the permitting process typically advances within a defined timeline.

Multilevel Regulation: Federal, State and Municipal Authorities

Brazil's environmental governance is characterized by a multilevel regulatory system where federal, state and municipal authorities share jurisdiction, pursuant to Article 23 of the Brazilian Constitution.

This multitiered structure means environmental requirements can vary significantly by region, necessitating nuanced legal analysis and tailored compliance strategies. For instance, renewable energy projects in São Paulo may be subject to different licensing standards, environmental requirements and timelines than similar projects in Pará or Mato Grosso.

State environmental agencies, known as Secretarias Estaduais de Meio Ambiente, often impose additional rules or procedural requirements that reflect local public policy priorities, creating a patchwork of regulatory landscapes for investors to navigate.

Indigenous and Traditional Communities: Consultation and Rights

Respect for Indigenous peoples and traditional communities is a critical component of Brazil's environmental and social regulatory environment.

Brazil is a party to the International Labour Organization's Convention No. 169, incorporated domestically through Decree No. 5.051/2004, which mandates free, prior and informed consultation with Indigenous and traditional peoples when projects may affect their territories or cultural heritage.

The Supreme Federal Court has reinforced this requirement in rulings relating to large infrastructure and energy projects. Companies must meaningfully engage with affected communities before obtaining project approvals. Failure to do so can lead to judicial annulment of environmental licenses and costly project delays.

Moreover, Brazil's legal framework recognizes the collective land rights of Indigenous and Afro-Brazilian traditional communities, offering constitutional protections that require careful navigation by investors. The engagement process requires not just legal compliance but cultural sensitivity and ongoing dialogue.

It's necessary to highlight that Indigenous people and traditional communities in Brazil are protected by the Brazilian Constitution, as well as the right to self-identity. This means that any regulatory process must obligatorily observe their fundamental rights.

In counterpoint, there is no federal requirement in the U.S. that projects be formally approved by Native American tribes — although federal laws like the National Environmental Policy Act and the National Historic Preservation Act require consultation with tribes when federal actions or federally permitted projects may affect tribal lands, cultural resources or historic sites.

Legal Risks: Strict Liability and Enforcement

Brazil's Environmental Crimes Law imposes strict liability for environmental harm, holding legal entities and their executives accountable regardless of intent or negligence. Under this law, causation of environmental damage is sufficient to establish criminal liability, underscoring the

country's robust stance on environmental protection.

Civil liability is similarly stringent. Courts apply objective liability standards, compelling companies to pay damages and undertake restoration efforts regardless of fault. Administrative penalties, including fines and suspension of activities, also apply.

In practice, these liabilities can significantly increase operational costs and risks, particularly if companies underestimate environmental compliance complexities.

By contrast, in the U.S., major environmental statutes such as the Clean Air Act, Clean Water Act and Comprehensive Environmental Response, Compensation, and Liability Act — also known as the Superfund law — combine strict and negligence-based liability depending on the specific provision.

For example, under the CAA and CWA, liability often requires proof of a violation of a specific regulatory standard, and penalties can be civil — e.g., fines, cleanup costs — or criminal, for knowing or willful misconduct.

U.S. companies, therefore, face a hybrid system at home: Some offenses are strict, while others require evidence of negligence or intent, making the liability framework somewhat less absolute than Brazil's universal strict liability approach.

Incentives for ESG-Aligned Investments

Despite these strict regulations, Brazil offers certain financial and tax incentives for environmentally and socially responsible investments.

The National Climate Change Fund, managed by BNDES, is a cornerstone of Brazil's green finance architecture. It provides credit lines for climate-aligned projects in sectors such as renewable energy, forest restoration, clean transportation and sustainable agriculture.

For example, in May, BNDES approved an R\$80 million loan to re.green, a private reforestation company.

In addition, companies with proven environmental performance may qualify for exemptions or reductions in the industrialized products tax, the urban land tax and the service tax. These incentives vary by jurisdiction, but collectively encourage adoption of renewable energy, waste reduction and sustainable resource use.

Furthermore, Federal Law No. 14.119/2021 establishes the National Policy on Payment for Environmental Services, which compensates entities that engage in ecosystem preservation and sustainable land management.

ESG Compliance as a Competitive Advantage

In an increasingly sustainability-driven global market, compliance with Brazil's environmental and social regulations is merely the baseline. Although the U.S. has reduced support for environmentally oriented investments, a number of U.S. states continue to implement strongly pro-environment policies.

California, for instance, is enforcing ambitious emissions reduction targets, low-carbon fuel standards and advanced renewable energy mandates, while New York has established aggressive climate action plans, clean energy targets and requirements for environmental justice in project siting.

So compliance with Brazil's rigorous environmental framework aligns with state-level standards companies may already be following.

Strategic Recommendations for U.S. Investors

For U.S. companies aiming to establish or expand operations in Brazil, success depends on a

comprehensive and proactive approach to navigating the country's environmental and social regulatory landscape.

Equally important is the development of culturally sensitive and authentic engagement strategies with Indigenous and traditional communities. Companies must not only comply with Brazil's legal mandate for free, prior and informed consultation under ILO Convention No. 169, but also foster meaningful dialogue that respects local customs, traditions and socio-environmental concerns.

Such engagement helps mitigate social risks, build trust and prevent costly delays or litigation that could arise from community opposition.

Integrating ESG principles into project design and corporate strategy is another critical success factor. This means going beyond mere regulatory compliance to embed environmental stewardship, social responsibility and strong governance frameworks into every stage of a project's lifecycle.

Finally, companies must implement rigorous compliance and environmental monitoring systems that ensure adherence to legal obligations while proactively identifying and addressing environmental and social risks. This includes adopting best practices for impact assessments, continuous monitoring, transparent reporting and adaptive management to respond to emerging issues.

Conclusion

As the Trump administration scales back key incentives for renewable projects, Brazil's expanding framework of financial incentives, tax benefits and green financing options may enable investors to participate in large-scale sustainable projects in a market that is both ecologically significant and increasingly aligned with global ESG standards.

For U.S. companies and investors, taking advantage of these opportunities requires careful planning and meaningful stakeholder engagement.

Milena Angulo is a junior civil lawyer at Guimarães & Vieira de Mello.

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