BRAZIL: PAYMENT FOR ENVIRONMENTAL SERVICES AND REDD+

Main concepts, instruments and opportunities, according to Brazil's federal and state legislators.

TAUIL | CHEQUER
MAYER | BROWN

Introduction

Humanity today faces an increasingly complex and uncertain future, which faces challenges to its very existence, considering the future of life as we know it depends on the decisions made in the immediate future. It's not news that global warming is accelerating: July 5, 2023 was the hottest day recorded in history, in terms of average surface temperature around the Earth.

According to a survey coordinated by the Institute for Policy Integrity of the NYU School of Law, the consensus among 738 economists is that climate change will cause $1.7 trillion per year in economic damage by 2025, and approximately $30 trillion per year by 2075, in most scenarios.

There is an urgent need for both individuals and institutions to implement initiatives which prioritize environmentally sustainable practices, as well as command-and-control mechanisms limited to penalizing environmentally undesirable practices.

PES and the Global Compact

Payments for Environmental Services align with a large portion of the Sustainable Development Goals (SDGs) of the United Nations Global Compact, with an emphasis on:

SDG 12: Seeks to ensure standards of sustainable production and consume.

ODS 13: Seeks urgent measures to combat climate change and its impacts.

ODS 15: Aims to protect, restore, and promote the sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation, and mitigate biodiversity loss.

Introduction

Payments for Environmental Services ("PES") and payments resulting from **Reducing Emissions from Deforestation and Forest Degradation** ("REDD+") are market instruments aimed at rewarding environmentally valuable human actions, serving as alternatives to command-and-control tools.

Generally, these instruments consist of arrangements through which the public authority, third-sector organizations, or private agents compensate those who promote the maintenance, recovery, or improvement of ecosystem services (such as the water supply, pollination, pest control, carbon sequestration).

In PES, compensation can be a component for a wide range of environmental services. On the other hand, compensation for REDD+ results focuses on environmental services related to the reduction of greenhouse gas emissions through the maintenance of "standing forests." It could be said that REDD+ is a species of PES.

On January 13, 2021, Law No. 14,119/2021 was published in Brazil, establishing the **National Policy on Payment for Environmental Services** ("PNPSA"), which also provides for the REDD+ mechanism as a form of PES.

Federal Law No. 12,651/2012:

Article 41. The federal Executive Power is authorized to establish, without prejudice to the compliance with environmental legislation, a support and incentive program for the conservation of the environment, as well as for the adoption of technologies and good practices that reconcile agricultural and forestry productivity with the reduction of environmental impacts, as a way to promote ecologically sustainable development, always observing the criteria of progressiveness, covering the following categories and lines of action:

I - payment or incentive for environmental services as monetary or non-monetary retribution for activities of conservation and improvement of ecosystems that generate environmental services, such as, isolated or cumulatively:

a) the sequestration, conservation, maintenance, and increase of carbon stock and the reduction of carbon flow;
b) the conservation of natural scenic beauty;
c) the conservation of biodiversity;
d) the conservation of water and hydric services;
e) climate regulation;
f) the cultural valuation and traditional ecosystemic knowledge;
g) the conservation and improvement of soil;
h) the maintenance of Permanent Preservation Areas, Legal Reserves, and restricted use areas;

PNPSA

On January 13, 2021, Law No. 14,119/2021 was published, establishing the **National Policy on Payment for Environmental Services** (PNPSA).

The PNPSA created a framework to encourage the PES market, creating the **National Registry of Payment for Environmental Services** (CNPSA) and the **Federal Program of Payment for Environmental Services** (PFPSA).

The regulation defines PES as a "voluntary transaction, through which a payer of environmental services transfers financial resources or another form of compensation to a provider of these services, under agreed conditions, respecting the relevant legal and regulatory provisions." In other words, it is a **negotiation through which a public authority, a civil society organization, or a private agent compensates those who promote activities for the maintenance, recovery, or improvement of ecosystem services.**

Ecosystem services are the significant benefits to society generated by ecosystems, in terms of maintaining, recovering, or improving environmental conditions, in the following categories: (i) provisioning services; (ii) supporting services; (iii) regulating services; and (iv) cultural services

The PNPSA lists the following **types** of PES: (i) direct payment, monetary or non-monetary; (ii) provision of social improvements to rural and urban communities; (iii) compensation linked to a certificate of emission reduction from deforestation and forest degradation; (iv) green bonds; (v) loans for use (comodato); and (vi) Environmental Reserve Quota ("CRA"). However, other modalities can be created by normative act of the Ministry of the Environment (MMA).

The **guidelines** of the PNPSA include: (i) adherence to the principles of provider- receiver and user-payer; (ii) the use of PES as an instrument to promote the development of populations in rural and urban areas and of rural producers, especially traditional communities, indigenous peoples, and family farmers; (iii) the complementarity of PES in relation to command and control instruments for environmental conservation; and (iv) the recognition of the private sector and non- governmental organizations as organizers, financiers, and managers of PES projects, in parallel to the public sector, and as drivers of voluntary markets.

Requirements for participation in the PFPSA: (i) fitting into one of the actions defined for the Program; (ii) in private properties, proof of regular use or occupation of the property, through registration in the Rural Environmental Registry ("CAR"); (iii) formalization of a specific contract (which can be a term of adherence); and (iv) other requirements established in regulation.

Activities covered by the PFPSA include: (i) areas covered with native vegetation; (ii) areas subject to ecosystem restoration, recovery of native vegetation cover, or agroforestry planting; (iii) full protection conservation units, extractive reserves, sustainable development reserves, private natural heritage reserves, and areas of buffer zones and ecological corridors covered by native vegetation; (iv) indigenous lands, *quilombola* territories, and other areas occupied by traditional populations, subject to prior consultation; (v) landscapes of great scenic beauty; (vi) fishing exclusion areas; and (vii) areas prioritized for biodiversity conservation.

Individuals and legal entities who are out of compliance with conduct adjustment or commitment agreements, as well as activities developed in areas embargoed by the relevant environmental agency, cannot receive public funds.

PNPSA: Important Concepts

Provider-receiver principle: Provides financial or non-financial compensation to those who guarantee the production and supply of the service and/or product obtained directly or indirectly from nature.

User-payer principle: Imposes, on polluters and users of natural resources, the burden of incorporating into their production processes the costs of prevention, control, and repair of environmental degradation, preventing such costs from being socialized (internalization of negative externalities).

Ecosystem services: Significant benefits to society generated by ecosystems, in terms of maintaining, recovering, or improving environmental conditions.

Environmental services: Individual or collective activities that favor the maintenance, recovery, or improvement of ecosystem services.

Payment for Environmental Services ("PES"): A voluntary transaction, through which a payer of environmental services transfers financial resources or another form of compensation to a provider of these services, under agreed conditions, respecting the relevant legal and regulatory provisions.

Payer of environmental services: A public authority, civil society organization, or private agent, individual or legal entity, national or international, that provides payment for environmental services.

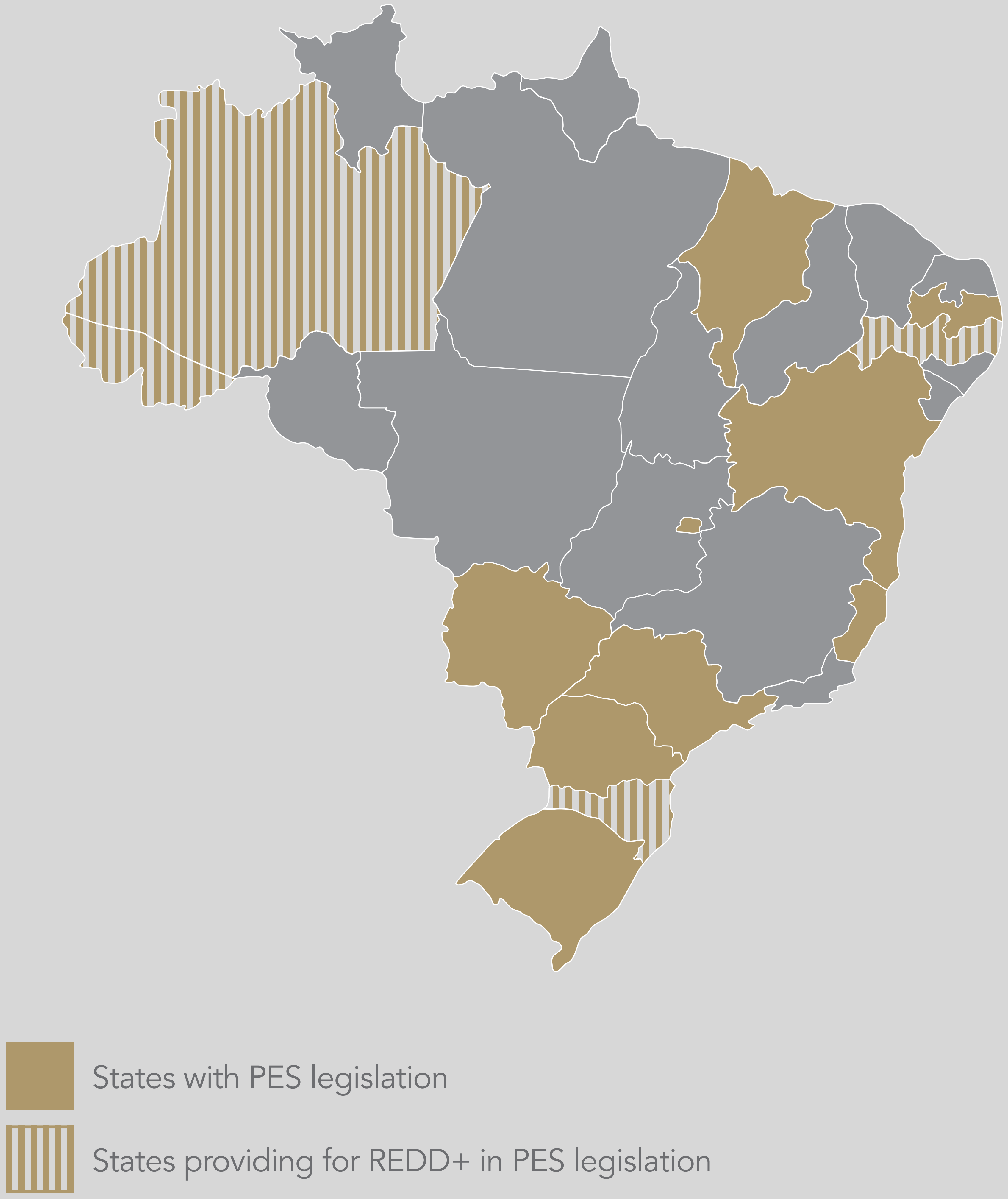
Provider of environmental services: An individual or legal entity, public or private, or family or community group that, meeting the eligibility criteria, maintains, recovers, or improves the environmental conditions of ecosystems.

Economic instruments: Instruments which, in contrast to command-and-control instruments, place less emphasis on establishing obligations, ordering conduct and standards, or imposing prohibitions, and seek more to influence citizens and companies by acting on production and consumption costs, directing their decisions and behaviors at the lowest cost towards the ecologically virtuous alternative, according to the objectives established by a particular environmental policy.

Reductions of Emissions from Deforestation and Forest Degradation ("REDD+"): a mechanism for payment for results from reductions of emissions due to deforestation and forest degradation.

PES Legislation in Brazilian States

State	Legislation
Acre	Law No. 2,308/2010
Amazonas	Law No. 4,266/2015; Decree No. 44,968/2021
Maranhão	Law No. 11,578/2021
Paraíba	Law No. 10,165/2013
Pernambuco	Law No. 15,809/2016
Bahia	Law No. 13,223/2015
Goiás	Decree No. 8,672/2016; Decree No. 9,130/2017
Mato Grosso do Sul	Law No. 5,235/2018; Decree No. 15,323/2019
Distrito Federal	Law No. 5,955/2017
Espírito Santo	Law No. 9,864/2012; Decree No. 3,182/2012
São Paulo	Decree No. 66,549/2022
Paraná	Law No. 17,134/2012; Decree No. 1,591/2015
Santa Catarina	Law No. 15,133/2010
Rio Grande do Sul	Decree No. 56,640/2022



REDD+

- REDD+ is a mechanism developed under the **United Nations Framework Convention on Climate Change** (UNFCCC) to financially reward developing countries for their results in reducing greenhouse gas emissions from deforestation and forest degradation, considering the role of **conservation** and the **enhancement of forest carbon stocks,** and **sustainable forest management.**

- Adopted at **COP 19** (2013), through the **Warsaw Framework for REDD+.**

- The REDD+ mechanism was developed by the UNFCCC as a voluntary financial instrument for governments to implement measures that help to reduce anthropogenic pressures on forests and, consequently, to reduce national GHG emissions resulting from the degradation of such ecosystems. In this dynamic, the results of reduced deforestation achieved by the country based on baseline scenarios are submitted to the UNFCCC, which leads to the mobilization of resources—that is, payment for results—from other countries, such as Germany, Norway, and the United Kingdom.

- This mechanism was then incorporated into the generation of forest carbon credits for voluntary markets. However, voluntary forest carbon credits, generated by avoided deforestation, should not be confused with the UNFCCC's REDD+ financing mechanism. Currently, in light of the existing framework (both nationally and under the Paris Agreement), both coexist. Going forward—depending on the future of the discussions related to Article 6 of the Paris Agreement, or even evolutions in the Brazilian regulatory framework on carbon markets—it's possible that the mechanisms will have relevant interfaces with each other, with the aim of, for example, standardizing baselines or ensuring that avoided deforestation is not doubly compensated.

- From this perspective, it is, at heart, a mechanism "that allows developing countries to be financially rewarded for their achievements in preventing greenhouse gas emissions associated with deforestation and forest degradation." However, unlike individual forest carbon projects, which depend on market mechanisms to sustain themselves (such as the sale of carbon credits and the demand from companies that wish to achieve climate goals), REDD+, at the national level, is funded by other countries that decide to finance such initiatives in the form of payment for results.

- In this context, seeking to make the REDD+ mechanism achieve greater potential—as envisioned in 2013 at COP 19—certification programs for jurisdictional REDD+ projects have emerged. If the voluntary market has played an extremely important role in the development of REDD+ projects at an individualized scale, it is important that, at some point, these projects evolve towards jurisdictional approaches that allow the assessment and quantification of avoided emissions, not just project-by-project, but also at the national or sub-national level.

- To address this and other peculiarities of jurisdictional projects, specific certification standards and methodologies are needed. Currently, there are two certification programs for jurisdictional REDD+ projects: (i) the Jurisdictional and Nested REDD+ (JNR) standard from the Verra certifier; and (ii) the Architecture for REDD+ Transactions (ART TREES) standard from the LEAF Coalition initiative.

CONAREDD Resolutions

- Brazil's National Commission for REDD+ (CONAREDD+) was reinstated by Decree No. 10,144/2019 to coordinate, follow, monitor, and review the National Strategy for REDD+, as well as to elaborate on the requirements for access to payments for results of REDD+ policies and actions in Brazil. Some important resolutions are:

Resolution	Objective
05/2016	Established the general principles for the implementation of the National Strategy for REDD+.
06/2017	Defined the distribution of the limits for capturing payments for results in emissions reduction from deforestation in the Amazon biome
07/2017	Defined the rules for the eligibility of Amazonian states and federal entities for access to, and capture of, payments for results
08/2017	Defined the guidelines for the use of resources and the monitoring of REDD+ payments for results agreements.
09/2017	Adopted the interpretation of the Cancun Safeguards in the Brazilian context and provided other measures for the CCT-Safeguards
03/2020	Recognized the voluntary forest carbon market.
08/2022	Defined the limits for capturing payments for REDD+ results in the Cerrado biome
09/2022	Defined eligibility rules for Cerrado states and federal entities to receive payments for results
10/2022	Approved the eligibility of the states of Pará and Amapá to receive payments for REDD+ results

REDD+ state legislations

State	Legislation
Maranhão	Law No. 11,578/2021
Mato Grosso	Law No. 9,878/2013
Roraima	Decree No. 29,710-E/2020
Pará	Decree No. 941/2020
Rondônia	Law No. 4,437/2018
Tocantins	Law No. 1,917/2008

States with jurisdictional REDD+

States where REDD+ is promoted

The Forest Management Law (Law No. 11,284/2006) regulates the management of public **forests for sustainable production**, and establishes the requirements for what are called forest concessions. Forest concessions involve the transfer of the right to practice **sustainable forest management** for the **exploitation of forest products and services** in a management unit.

On May 24, 2023, Federal Law No. 14,590/2023 was published (converted from Provisional Measure No. 1,151/2022), which amended the Forest Management Law and the ICMBio Creation Law (Law No. 11,516/2007) to **enable the development of forest carbon credit projects and other environmental services in conservation units** through concessions.

In general terms, the existing regulatory framework—until the publication of Provisional Measure No. 1,151/2022—made it unfeasible to develop many carbon credit-generation projects through concessions in conservation units. On the one hand, because the Forest Management Law prohibited the granting of the right to commercialize credits resulting from the avoided emission of carbon in natural forests, it had been impossible to develop REDD+ projects in forest concessions. On the other, the ICMBio Law only provided for the explicit concession of conservation units for visitation services, without the possibility of concession of environmental services in such areas.

The amendments made by Federal Law No. 14,590/2023 repealed the aforementioned prohibition in the Forest Management Law and established that the concession contract may provide for the transfer of ownership of carbon credits and environmental services from the grantor to the concessionaire, contributing to the legal security of such projects.

Federal Law No. 14,590/2023 also amended the ICMBio Law, expressly stating that concessions in conservation units may include the right to develop and commercialize carbon credits and environmental services.

Definitions

Forest concession: An onerous delegation, made by the granting authority, of the right to practice sustainable forest management for the exploitation of products and services in a management unit, through a bidding process, to a legal entity, either in a consortium or individually, that meets the requirements of the respective bidding notice and demonstrates the capacity for its performance, at its own risk, and for a determined period;

Sustainable forest management: The administration of the forest to obtain economic, social, and environmental benefits while respecting the sustainability mechanisms of the managed ecosystem. This includes the cumulative or alternative use of multiple timber species, multiple non-timber products and by- products, as well as the use of other forest-related goods and services;

Forest products: Timber and non-timber products generated by sustainable forest management;

Forest services: Tourism and other actions or benefits resulting from forest management and conservation that are not classified as forest products

For **more information** on the topics described above, contact our team.

LUIZ GUSTAVO BEZERRA

lgbezerra@mayerbrown.com

Rio de Janeiro - +55 21 2127 4231

São Paulo - +55 11 2504 4214

GEDHAM GOMES

ggomes@mayerbrown.com

Rio de Janeiro - +55 21 2127 4254