

HYDROGEN LEGAL FRAMEWORK IS PUBLISHED

On August 02, 2024, Law No. 14,948/2024 was sanctioned and published, resulting from the approval of Bill No. 2,308 of 2023, which establishes the legal framework for low-carbon hydrogen, its certification, and incentives for this industry.

Below, we highlight the main points of the law:



Low-carbon hydrogen: The law establishes the maximum level of CO₂ emitted in hydrogen production so that it may be framed as low-carbon hydrogen. Thus, the hydrogen production process must have an initial emission of greenhouse gas (GHG) lower than or equal to 7 kilograms of carbon dioxide equivalent per kilogram of hydrogen (KgCO₂eq/KgH₂). This initial value must be upheld until December 31, 2030 and can be adjusted by specific regulation after such date.



Activities and competence: The following activities involving hydrogen, its derivatives, and carriers are under the competence of the National Agency for Petroleum, Natural Gas and Biofuels (“ANP”), which will be entitled to regulate, authorize, and supervise them:

Exploration and production:

- (i) The granting modalities will be regulated, as well as the events in which authorization is waived, especially with regard to the volume produced and the use of hydrogen as a raw material.
- (ii) Renewable and low-carbon hydrogen production activities using raw materials regulated by other regulatory agencies in their production processes can be subject to authorization and regulation by these entities.
- (iii) The law also provides for the possibility of transferring ownership of the authorization, upon prior and express approval by the ANP.



Loading, processing, handling, importing, exporting, storing, warehousing, packaging, transporting, transferring, reselling, and trading:

Those who obtain authorization to produce hydrogen will have priority in requests for approval for these activities.



Regulatory Sandbox: The legal framework for hydrogen enables the Regulatory Sandbox – an experimental regulatory environment for legal entities to receive temporary authorization from competent bodies in order to develop innovative business models and test technologies –, to be used for drafting regulations involving activities provided for in the law. The ANP can adopt individual solutions for this purpose until a specific regulation is published.



Certification: Creation of the Brazilian Hydrogen Certification System (“SBCH₂”), to certify the level of greenhouse gas emissions in hydrogen production. Adhering to the SBCH₂ is voluntary for producers of hydrogen and its derivatives. If producers adhere to the SBCH₂, its governance regulations will be mandatory for certification purposes.

SBCH₂ structure: The SBCH₂ will be formed by:

- (i) a competent authority, which will be responsible for establishing public policy guidelines for certification;
- (ii) a regulatory authority, responsible for supervising the SBCH₂, defining regulations for implementing certification guidelines – in line with the National Energy Policy Council’s (“CNPE”) minimum standards and requirements for the certification process, among others;
- (iii) an accrediting institution responsible for accrediting certifiers;
- (iv) a certifying company – a private institution accredited for issuing certificates;
- (v) a company managing records, responsible for keeping a national database of certificate records, as well as for storing, accounting for, and supplying information on certificates issued for auditing purposes;
- (vi) the producer; and
- (vii) the purchaser.

The law also establishes that there will be specific regulations to address the process of recognizing the certification adopted in the territory of origin in the event of imported hydrogen. The regulatory authority must also provide for interoperability mechanisms and compliance with international hydrogen certification standards and can further establish regulations for recognizing certificates for imported hydrogen and its derivatives.



REHIDRO: The Special Incentives Regime for Low-Carbon Hydrogen Production (“REHIDRO”) is established, which will allow the suspension of certain taxes (PIS, COFINS, PIS-Importação and COFINS-Importação, as per articles 3rd, 4th, and 5th of Law No. 11,488/2007) on the purchase or import of machinery, instruments, and materials intended for hydrogen projects, for five years, from January 01, 2025.

Companies qualified to produce low-carbon hydrogen can benefit from REHIDRO, as well as those co-qualified that:

- (i) carry out activities involving packaging, storing, transporting, distributing, or trading low-carbon hydrogen;
- (ii) are engaged in generating renewable electricity for the production of low-carbon hydrogen; or
- (iii) produce biofuels (ethanol, biogas, or biomethane) for the production of low-carbon hydrogen.

Companies under *Simples Nacional* are not eligible for such tax benefit.



Local content and P&D: The law establishes that the Executive Branch will regulate the qualification and co-qualification to REHIDRO. As a requirement for enabling the Special Incentives Regime, such regulation must provide for:

- (i) a minimum percentage for using domestic goods and services in the production process, except if there is no domestic equivalent or when the quantity produced is not sufficient to meet the national demand; and
- (ii) minimum investment in research, development, and innovation.

Companies under *Simples Nacional* are not eligible for such tax benefit.



Encouraged debentures: REHIDRO’s beneficiaries can also issue incentivized debentures, in compliance with Article 2 of Law No. 12,431 of June 24, 2011, aimed at raising funds for implementing or expanding the projects listed below:

- (i) the production, packaging, storage, transportation, distribution, or trading of low-carbon hydrogen;
- (ii) the generation of renewable electricity for the production of low-carbon hydrogen; or
- (iii) the production of biofuels (ethanol, biogas or biomethane) for producing low-carbon hydrogen.



Declaration of public utility for hydrogen production projects: The legal framework for hydrogen further outlines:

- (i) that the ANP has the power to declare the public utility of areas needed for the construction of a structure aimed at producing hydrogen; and
- (ii) that areas needed for implementing electricity transmission and distribution facilities of restricted interest not intended for access to the electricity distribution or transmission network can obtain a declaration of public utility (“DUP”) granted by the National Electric Energy Agency (“ANEEL”), provided that these areas are exclusively dedicated to projects for the production of low-carbon hydrogen.

Recently, several hydrogen production projects have been announced or are under development within Brazil, with investments amounting to billions of reais. The legal framework for low-carbon hydrogen will assist this so-called “energy of the future” towards its development and will further play a crucial role in the country’s energy transition.

Although the law introduces numerous vital premises, a clear, predictable regulatory framework that provides legal certainty will be essential for attracting domestic and foreign investments. With this legal framework, Brazil will establish quality and certification standards, allowing the country to compete and stand out in the international hydrogen market.

Demarest’s Energy and Natural Resources team is available to assist clients and partners with any necessary clarifications on the subject.

[Access](#) the law in full.