

BMA Review 91: Earn-Outs in M&A, New Financing Structures for Mining, Environmental Licensing, and More

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This edition of BMA Review, our quarterly publication, features articles by our lawyers on legal and regulatory developments affecting businesses and investors in Brazil. The topics covered include the use of AI in legal due diligence, new financing structures for the mining sector, expected developments in labor litigation this year, and the ICC's Highly Expedited Arbitration procedure.

The cover article examines earn-out provisions in M&A transactions, a mechanism that defers part of the purchase price and ties payment to the achievement of financial or operational targets after closing. It also discusses recent case law and practical lessons for structuring these arrangements.

This issue also explores Brazil's new General Environmental Licensing Law, developments in the tax treatment of contingent payments in M&A transactions, the Taxpayer Defense Code and the concept of the habitual defaulter, and aimed at expanding financing options for the mining sector.

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TAX

Brazil's New Taxpayer Defense Code and the Habitual Defaulter

By Rodrigo Taraia, Caio Toschi and Paula M. Bardella

Corporate groups should pay especially close attention. Complementary Law 225/2026 provides that entities related to the debtor taxpayer can also be classified as habitual defaulters. Moreover, the ratio between a taxpayer's debt and assets – which forms part of the legal test for substantial default – can be affected by asset revaluations and provisioning, potentially triggering classification as a habitual defaulter, even in the absence of new tax debt.

ENVIRONMENTAL, CLIMATE AND MINING

Mining: New Paths for Capital

By Felipe Prado and João Raso

Topics

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Mining requires significant upfront investment, unfolds over decades, and carries substantial geological and operational risks. Internationally, royalties and streaming dominate. In Brazil, the menu of financing options is starting to broaden.

ENVIRONMENTAL, CLIMATE AND MINING

Brazil's General Environmental Licensing Law: Enhancing Predictability for Investment

By Márcio Pereira and Fernanda Tanure

Effective structuring of environmental licensing – combining the choice of licensing procedure, the scope of environmental studies, the design of public participation, and the identification of federal, state and local requirements – remains central to the legal and economic viability of projects, as predictability is key to attracting investment.

LABOR AND EMPLOYMENT

Limits on Awards in Employment Claims: Pivotal Decisions Expected in 2026

By Cibelle Linero and Larissa Medeiros Rocha

A clear position that awards should be limited to the amounts stated in the complaint would represent a significant step forward in terms of legal certainty for companies.

CORPORATE AND M&A

Earn-Out Clauses: Bridging Valuation Gaps Without Derailing the Deal

By Chico Müssnich, Thamires Da Cas Grande Guerra and João Pedro Martins Borges Caldas

Used to bridge valuation gaps and help bring deals to completion, earn-outs require careful drafting. Without clear calculation criteria, defined governance arrangements, and limits on management powers during the earn-out period, they can become a significant source of post-closing disputes.

TAX

Tax Treatment of Contingent Payments to Individuals in M&A Transactions

By Luis Henrique Costa and Marina Pettinelli

In the absence of clear guidance in the case law, and given the well-established divergence between accounting and tax treatment, the use of contingent payments in these transactions warrants careful analysis.

DUE DILIGENCE

AI in Legal Due Diligence: Efficiency Without Autopilot

By Adriana Dib Fuzinato, Ellen Juste Nuñez, Estêvão Nascimento Orcini and Vinícius Rodrigues Alves

AI is already embedded in the day-to-day conduct of due diligence in M&A transactions. As adoption continues to grow, the focus is shifting to how it should be used, and particularly the practical, ethical, and legal boundaries needed to strike the right balance between speed and certainty.

DISPUTE RESOLUTION

Fast and Furious: The ICC's New "Highly Expedited Arbitration"

By André de Albuquerque Cavalcanti Abbud and Luiza Romanó Pedroso

The ICC has enacted a new version of its Arbitration Rules, effective June 1, 2026. One of the headline changes is an optional mechanism that takes the logic of expedited arbitration further: awards in as little as three months, along with procedural flexibilities that require particular care in drafting the arbitration clause.

CONSTRUCTION PROJECTS

The FIDIC Rainbow Suite: Red, Yellow, Silver

By Daniel Falcão de Paula Soares, Matheus Ricardo Barbosa and Ana Leticia da Costa Siqueira

Selecting the right FIDIC contract depends on a precise assessment of project variables, making it essential to understand the purpose, structure, and key provisions of each model.

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