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DISPUTE RESOLUTION

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

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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.

In January of this year, Brazil adopted the Taxpayer Defense Code (*Código de Defesa do Contribuinte*) under Complementary Law 225/2026, establishing general rules governing the relationship between tax authorities and taxpayers. The Code forms part of a broader effort to modernize Brazil's tax and administrative framework, emerging from a coordinated legislative reform initiative under which a commission of jurists was convened to develop draft legislation across multiple areas of the tax and administrative system.

Against this backdrop, the Code seeks to redefine the taxpayer–State relationship by articulating rights, guarantees, and duties on a nationwide basis, promoting greater transparency, cooperation, and predictability in tax administration.

The Code introduces two new concepts that merit special attention. The first is "taxpayers in good standing" (*contribuinte bom pagador*). While the label suggests a broad range of benefits for taxpayers in this category, in practice the only advantage is access to simplified service channels. This falls well short of expectations, as many had anticipated priority reviews or expedited refunds.

The second is the concept of the "habitual defaulters" (*devedor contumaz*): taxpayers whose defaults are *substantial, repeated, and unjustified,* and which – after due administrative process – are subject to severe sanctions that may effectively prevent them from continuing to do business.

At the federal level, a default is considered *substantial* where a taxpayer has outstanding tax liabilities classified as "irregular" that total more than BRL 15 million and exceed the taxpayer's known assets; *repeated* where default occurs in at least four consecutive tax periods or six non-consecutive periods in any 12 month period; and *unjustified* where there are no legitimate grounds for treating the default as anything other than habitual. The Code classifies tax debts as "irregular" where the taxpayer has not provided security for payment, deposited the amount of the debt into court, or obtained a judicial measure to suspend enforcement.

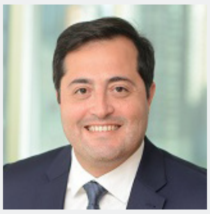
The same legislation that introduces harsher measures against defaulters also creates opportunities for companies with robust tax governance. Tax compliance has become a strategic asset.

Habitual defaulters are exposed to a range of sanctions, including exclusion from tax incentives; restrictions on the use of tax losses for corporate income tax purposes (IRPJ and CSLL); and disqualification from participation in public procurement processes. More significantly, they cannot apply for judicial reorganization, and if they are already under reorganization, the tax authorities can request that the proceedings be converted into bankruptcy – a possibility that the Superior Court of Justice has upheld. Perhaps the most drastic sanction in practical terms is the suspension of the habitual defaulter's tax registration, which effectively brings its business operations to a halt.

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.

If the new Taxpayer Defense Code introduces harsher measures against defaulters, it also creates opportunities for companies with robust tax governance. The Federal Revenue Service has already introduced compliance incentive programs such as Confia (an OECD-inspired cooperative compliance program aimed at large taxpayers), Sintonia (which operates like a kind of "credit score" for corporate taxpayers) and OEA (a customs compliance program), and in public procurement processes, compliance now serves as a tie-breaker.

In Brazil, tax compliance is emerging as a strategic asset.



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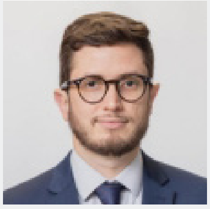

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Mining: New Paths for Capital

▶ By **Felipe Prado** and **João Raso**

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.

Mining is a challenging proposition from a financing standpoint. It demands significant upfront investment long before the first tonne is produced, combines geological, regulatory, environmental, and price risks, and can take ten to fifteen years to move from discovery to production. As a result, financing the sector requires specialized structures, particularly in the early stages of the mining life cycle.

Internationally, three models have become standard. Royalty financing provides capital in exchange for a share of future revenue or production, without diluting ownership. Streaming combines an upfront payment with the ongoing purchase of a portion of production at a discounted price. Offtake prepayments allow producers to bring forward revenue in exchange for a commitment to future supply. These structures are all non-dilutive and work well for more advanced projects, but are less suited to early-stage exploration, where risk is highest.

In Brazil, these financing structures are only beginning to gain traction. Although "incentive debentures," created by Law 12.431/2011, which provide investors with preferential tax treatment on interest income, have long been used in other sectors, mining projects were, until recently, unable to access them.

The landscape began to change with Law 14.801/2024, which created a new class of "infrastructure debentures" that shifts the tax incentive to issuers and aims to reduce financing costs at the project level. Regulations issued under Decree 11.964/2024 defined priority sectors, including the processing of strategic minerals for the energy transition, in which projects are eligible to issue infrastructure debentures. Further developments followed in November 2025, when MME Directive 120/2025 established eligibility criteria for mining projects and allowed up to 49% of the proceeds to be allocated to mining and mine development activities, provided they are tied to downstream processing projects.

Even so, the scope remained limited. The Directive applies only to the processing of strategic minerals for the energy transition – such as lithium, nickel, graphite, and rare earth elements – leaving out fertilizers, iron, aluminum, and purely exploratory phases of the mining life cycle.

In May of this year, the Chamber of Deputies approved Bill PL 2780/2024 (the "Bill"), which broadens the range of funding options available to the mineral sector. The Bill, which is now before the Senate, extends the benefits of Laws 12.431/2011 and 14.801/2024 to projects involving critical and strategic minerals, while removing the prior ministerial approval requirement that had limited access under Law 12.431.

The central feature – and the main constraint – is that direct eligibility to issue these debentures is restricted to mineral processing, transformation, and urban mining projects. Exploration, prospecting, mining, and mine development can only access them indirectly, as components of a broader processing or transformation project, rather than on a standalone basis. In practical terms, this excludes junior exploration companies and operators involved solely in upstream mining activities, without a structured downstream component.

Taken together, these developments indicate that Brazil's financing framework in the mining sector is becoming more mature and diversified, moving closer to established international practices.

In addition to expanding debenture-based financing, the Bill establishes the Mining Activity Guarantee Fund (FGAM – *Fundo Garantidor da Atividade Mineral*), with an initial capital of BRL 2 billion from the federal government and the potential to reach BRL 5 billion through private contributions. The fund is designed to provide guarantees to support financing for projects involving critical and strategic minerals, reducing lenders' perceived risk and lowering financing costs across the sector.

There are also signs that a broader institutional ecosystem is taking shape. These include the 2025 BNDES–FINEP public call – a joint government funding initiative supporting strategic projects – which mobilized up to BRL 5 billion in credit, a strategic minerals private equity fund (FIP) co-managed by Ore Investments and Régia Capital, with potential of up to BRL 2 billion, and other initiatives led by both Ore Investments and FINEP.

Taken together, these developments indicate that Brazil's financing framework in the mining sector is becoming more mature and diversified, moving closer to established international practices. Gaps remain – particularly in the earliest stages of the value chain – but the trajectory is clear.

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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.

Law 15.190/2025, known as the General Environmental Licensing Law (LGLA – *Lei Geral de Licenciamento Ambiental*), establishes nationwide rules for environmental licensing within Brazil's National Environmental System. It applies to activities and projects that use environmental resources, are actually or potentially polluting, or may cause environmental degradation.

The LGLA forms part of the Brazilian government's pursuit of greater legal certainty and administrative efficiency, within a broader policy and regulatory agenda affecting key sectors such as agribusiness, energy, infrastructure, industry, and mining. Its significance lies in enhancing procedural predictability and establishing a minimum level of standardization in licensing procedures and decision-making.

From its entry into force on February 4, 2026, the LGLA does not require ongoing licensing proceedings to restart. Instead, subsequent phases must be adapted to the new regime. This approach is particularly significant for investors, since it reduces the risk of procedural reset and allows project timelines to be planned based on milestones already achieved.

The LGLA consolidates key concepts and license types, and provides a more structured framework for public participation. It defines a public hearing as an open process that may be conducted either in person or remotely, and recognizes other forms of participation, such as public consultations and participatory meetings, which likewise may be held in person or virtually.

This development has immediate practical implications. In ongoing litigation over the validity of virtual hearings in environmental licensing, parties have already relied on the LGLA to argue that such hearings were permissible and the law now expressly recognizes this form of public participation.

The LGLA also strengthens mechanisms aimed at streamlining licensing procedures. For example, in certain cases applicants can rely on existing data and prior environmental assessments, reducing duplication and transaction costs where previously prepared studies and validated data sets are appropriate for the new project.

One major change introduced by the LGLA is a special environmental licensing procedure for projects designated as strategic by federal

decree, based on a biennial proposal from the Government Council. These projects benefit from priority review, coordinated action across authorities at different levels (federal, state and municipal) in the issuance of approvals and related documentation, and a 12 month deadline for a final licensing decision.

In addition to the licensing authority itself, the LGLA recognizes the role of "involved authorities". This category includes sectoral bodies that may provide input in the licensing process on a project's impacts on Indigenous and quilombola lands, protected cultural heritage, and conservation areas.

From a practical perspective, the Law structures the participation of involved authorities through defined criteria and timelines. The authorities' input must remain within the scope of their respective mandates and does not bind the licensing authority's final decision. Importantly, a failure by involved authorities to provide timely input does not prevent the licensing process from moving forward or the license from being issued.

This framework has the potential to improve the investment environment by reducing uncertainty around timelines and institutional coordination for projects that qualify as strategic. At the same time, important areas of uncertainty remain. These include (i) the need for a federal decree to define which projects will be eligible; (ii) how licensing authorities will implement the new priority procedure in practice; and (iii) how the federal framework will interact with state and local rules on project classification, size, and pollution potential, which remain relevant to the choice of licensing procedure and environmental studies.

The LGLA is also being tested in constitutional review proceedings before Brazil's Supreme Federal Court (STF – *Supremo Tribunal Federal*). Various actions either challenge or defend specific provisions of the Law – including issues related to exemptions, new license types, conditions, and public participation – and one action seeks a declaration that the Law as a whole is constitutional.

For investors and project sponsors, these legal proceedings do not negate the gains in procedural predictability made by the LGLA. They do, however, highlight the need to actively manage legal risk as part of project planning, by monitoring judicial developments and adjusting licensing strategies accordingly, particularly in projects that involve significant public debate or interface with traditional communities and environmentally sensitive areas.

Effective structuring of environmental licensing – combining the choice of licensing procedure with 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, where predictability is key to attracting investment.

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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.

Nearly a decade after Brazil's 2017 Employment Law Reform – which sought to modernize employment relations, increase legal certainty, and reduce litigation – several issues continue to generate debate in the country's Labor Courts. One of the most consequential for companies is whether the amounts awarded in employment claims should be limited to those specified in the employee's complaint: a question that remains unresolved and continues to shape the employment litigation landscape.

Law 13.467/2017, which implemented the Employment Law Reform, amended article 840§1 of the Consolidation of Labor Laws (CLT – *Consolidação das Leis do Trabalho*) to require that claims in employment complaints be "certain, specific, and indicate their value."

Prior to the Reform, the prevailing position in the Labor Courts was that there was no relationship between the amounts stated in the complaint and those ultimately awarded, since the legislation did not require claimants to stipulate the value of their claims. This led to a significant distortion: cases filed with merely nominal amounts could ultimately expose companies to liabilities in the millions.

Following the change in the law, the Superior Labor Appeals Court (TST – *Tribunal Superior do Trabalho*) sought to soften its impact. In 2018, it issued Instruction IN 41, which provides in article 12§2 that "the amount in dispute shall be estimated," signaling that the figures stated in the complaint should not operate as a strict cap on the amounts ultimately awarded.

This apparent tension between the Reform and the interpretation adopted by the Superior Labor Appeals Court has led to conflicting decisions in the Labor Courts. Judges have split between two main approaches: some view the amounts stated in the complaint as mere estimates that do not bind the court when determining the award, while others treat them as an absolute cap on the amounts that may be granted.

In 2025, in an effort to resolve the issue, the Superior Labor Appeals Court initiated a repetitive appeals procedure (a mechanism used to establish binding precedent for all Labor Courts) to determine whether the amounts stated in the complaint limit judicial awards at both the judgment and enforcement stages. The case remains pending, with a decision expected as early as this year.

In parallel, Constitutional Challenge ADI 6002 is pending before Brazil's Supreme Court (*Supremo Tribunal Federal* – STF). The action was filed by the Brazilian Bar Association (*Ordem de Advogados do Brasil* – OAB) in 2018, arguing that the Reform's requirement that claims in employment complaints must be given a specific monetary value is unconstitutional. The Court began to hear the case in 2025 on its virtual docket, but it has since been transferred for consideration at an in-person session.

The decisions by the STF and the TST in these two proceedings could significantly reshape companies' employment litigation exposure. They may either consolidate the gains introduced by the 2017 Employment Law Reform or mark a return to the uncertainty that prevailed in judgments by the Labor Courts prior to 2017.

The decisions by the STF and the TST in these two proceedings could significantly reshape companies' employment litigation exposure.

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. Without assurance that awards will remain within those limits, it becomes much more difficult to assess litigation risk accurately, make appropriate accounting provisions, and take informed strategic decisions, such as negotiating settlements at reasonable levels.

In addition, such an approach would require claimants and their counsel to stand behind the claims they present, promoting greater accountability in employment litigation. It would discourage the practice of understating amounts in the complaint to minimize claimants' downside exposure to the risk of having to pay court-awarded attorneys' fees to the defendant's legal counsel (which are often linked to the value of the claims) if the claim is unsuccessful, without any corresponding upside limit on the amount that may ultimately be awarded to the claimant by the court.

This is an important issue, and companies should closely monitor the outcome of these two proceedings before Brazil's highest courts, as their decisions will directly affect risk assessment, provisioning, and employment litigation strategy.

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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.

Price is a central element of any contract and, in M&A transactions, is often one of the most heavily negotiated terms between buyer and seller. Determining the purchase price involves not only an analysis of historical financial performance, but also the parties' differing views, particularly as to the asset's future potential. Buyers and sellers typically rely on different assumptions in arriving at a valuation, and these divergences can make it difficult to agree on price – at times putting the deal itself at risk.

This is where the earn-out comes into play. An earn-out is a contractual mechanism under which a portion of the purchase price is deferred and made contingent on the target achieving specified financial or operational milestones post-closing. In practice, it allows the parties to share the risk associated with the business's future performance, serving as a bridge between differing valuation expectations.

Despite their advantages – including facilitating transactions, aligning pricing expectations, and even serving as a form of financing – earn-out provisions require careful structuring and drafting. Experience shows that earn-outs are a frequent source of post-closing disputes, particularly where the agreement lacks clarity around the calculation methodology and the management of the company's affairs during the earn-out period.

To mitigate the risk of disputes, earn-out provisions should be drafted with precision and clarity, addressing, among other things, the payment formula, performance targets, the applicable timeframe, relevant accounting standards, and any limits on management powers.

In fact, one of the main sources of conflict is the management of the company during the earn-out period: who will be responsible for managing the company, and what limits will apply to their decision-making? It is critical to address this issue at the negotiation stage, as the parties may have diverging incentives. While the seller may prioritize short-term performance to maximize the earn-out payment, the buyer may favor longer-term strategies that could temporarily depress results. This dynamic will depend on the structure of the transaction and the size of the stake acquired. In a full acquisition, the buyer will typically assume control of the business. In partial acquisitions, however, the seller often remains involved in management, making it essential to clearly define the scope and limits of the seller's role.

To minimize the risk of disputes, earn-out provisions should be drafted with precision and clarity, addressing the payment formula, performance targets, the applicable timeframe, relevant accounting standards, and any limits on management powers.

Where the earn-out payments are linked to financial metrics, it is critical to define the applicable accounting rules and underlying financial concepts. Seemingly straightforward issues – such as whether certain revenues, expenses, provisions, or extraordinary items are included or excluded – can materially impact the calculation of the earn-out payment and may give rise to disputes. In addition, the agreement should specify whether the calculation is based on the company's overall performance or the performance of a particular asset or business unit.

Negotiating an earn-out clause calls for more than commercial alignment between the parties: it requires careful legal analysis to define the applicable criteria, governance arrangements, and the risks involved.

The agreement should also clearly establish the limits on the actions that management may take during the earn-out period. In the absence of such provisions, decisions will be governed by management's fiduciary duties and the best interests of the company, making it difficult to attribute liability if the projected targets are not met. In other words, failure to meet the targets, in itself, is not sufficient to establish liability.

Another important issue arises where payment of the earn-out is conditional on the seller remaining involved in the management of the company post-closing. While this structure can promote continuity and facilitate post-closing integration of the business, it may also result in disputes as to the legal nature of the amounts paid to the seller, particularly whether they constitute compensation for services, rather than part of the purchase price.

Negotiating an earn-out clause calls for more than commercial alignment between the parties: it requires careful legal analysis to define the applicable criteria, governance arrangements, and the risks involved. Properly designed, an earn-out should be seen not as a way of deferring disputes, but as a tool for avoiding them – and for enabling the successful completion of the transaction.

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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.

The volume of mergers and acquisitions (M&As) involving startups has increased significantly in recent years. In these transactions, the founders play a central role, as they are key to both the management of the business and the generation of value in the target companies.

As a result, it is common for the purchase price to be structured in multiple installments, with part of it contingent on the occurrence of future and uncertain events, which are typically linked to the founders' continued involvement in the company after closing and the achievement of specified performance targets. This structure is designed to ensure that the economic value projected by the acquirer is effectively realized, reflecting the fact that, in these types of transactions, the founders' continued involvement is often a determining factor in the generation of value in the acquired business.

The challenge presented by contingent payments, however, is that their characteristics can give rise to a divergence between their legal nature and their accounting treatment.

The accounting treatment of contingent payments does not necessarily determine their tax treatment.

From a civil law perspective, these amounts are treated as part of the purchase price for the equity interest acquired in the target company. For accounting purposes, however, they may either be treated consistently with that classification, forming part of the carrying amount of the investment, or be categorized differently – as compensation for services, for example, in which case they are recognized as an expense in profit or loss.

Under item B55 of CPC 15 – Business Combinations (the Brazilian equivalent of IFRS 3 – Business Combinations), this classification does not depend on how the payment is described by the parties in their agreement, but rather on an assessment of whether there is an explicit or implicit link between the payment and continued provision of services by the founders.

Under this accounting guidance, continued provision of services is treated as the primary indicator: where payment is contingent on the seller's continued involvement in the business, it will generally be classified as compensation for services for accounting purposes, with other factors only considered in the absence of such a condition.

The accounting treatment of contingent payments does not necessarily determine their tax treatment. It is possible to argue that such amounts, even if recognized as compensation for accounting purposes, should be treated from a legal perspective as part of the purchase price, provided they constitute a genuine component of that price.

This reflects the principle that the legal nature of the transaction and its tax consequences should prevail over its accounting treatment. Divergences between the tax and accounting treatment of the same transaction are possible, and in some cases expected, given the different criteria applied under the law and by accounting rules in classifying transactions.

Contingent payments are one example of how accounting and tax treatment can diverge. From a tax perspective, however, the effects of the underlying legal transaction should prevail: (i) for the acquirer, the amounts paid should be treated as part of the cost of acquiring the investment; and (ii) for the seller, they should be included in the calculation of the capital gain arising from the disposal of the equity interest.

Nonetheless, treating payments to the seller as compensation for accounting purposes tends to increase the risk that the tax authorities will take a similar view. 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. In practice, in some cases this has led to a reassessment of contractual structures – and even of the overall terms of the deal – in order to mitigate risk and ensure that the payments are properly classified for tax purposes.

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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.

The use of artificial intelligence in due diligence is still far from settled. As the initial wave of enthusiasm subsides, a more nuanced picture is emerging: while some users continue to raise questions about how much human involvement these tools still require – and whether their benefits justify the cost – others are already reporting significant gains in efficiency.

Despite the lack of consensus, the adoption of artificial intelligence appears almost inevitable. According to a Deloitte survey, 86% of corporations and private equity funds have already incorporated AI tools or advanced data analytics into dealmaking, and 35% are using them in due diligence.[1]

The question, therefore, is no longer whether AI should be used in legal due diligence, but

1. DELOITTE. *Deloitte Survey: GenAI in M&A*. New York: Deloitte, October 9, 2025. Available at: www.deloitte.com/us/en/about/press-room/deloitte-survey-genai-in-mna.html.

how to use it, balancing gains in speed and efficiency with the ethical and legal constraints applicable to Brazilian lawyers under the Statute of the Legal Profession and the Brazilian Bar Association (OAB – *Ordem de Advogados do Brasil*), the OAB Code of Ethics and Discipline, the General Data Protection Law (LGPD – *Lei Geral de Proteção de Dados*[2]), and the Code of Civil Procedure.[3]

In November 2024, the OAB's Federal Council issued Recommendation 001/2024, setting out guidelines for the use of generative AI in legal practice in Brazil.

In essence, the OAB's guidance focuses on safeguarding data confidentiality and privacy, ensuring the ethical use of AI tools – particularly by preventing unsupervised professional analysis – and fostering a clear understanding of their capabilities and limitations. It also highlights the need for client consent, robust cybersecurity and AI use policies, along with ongoing training and monitoring to ensure compliance.

AI-driven speed only becomes an advantage when paired with robust controls.

While the effective use of AI can deliver consistent gains in speed and accuracy, achieving those gains paradoxically requires time, care, and sustained effort. To meet the OAB's recommendations, law firms and legal departments must put in place clear internal policies and processes governing the use of AI in their work.

In due diligence practice, this means clearly defining the scope and boundaries for AI use, developing prompts and agents to map and analyze documents, implementing routines for human review of outputs, and ensuring the continued training of both models and teams.

With these safeguards in place, the use of AI in due diligence can not only shorten review timelines but also enhance the quality of the final output, supporting more efficient and competitive delivery. By automating routine, operational tasks, AI allows professionals to devote more time to higher-value analysis, bringing a sharper, more critical perspective to the strategic issues and genuinely material risks that inform the client's decision-making.

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2. Law 13.709 (August 14, 2018).
3. Law 13.105 (March 16, 2015).

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.

In March, the International Chamber of Commerce (ICC) approved a new version of its Arbitration Rules. The new rules have come into force on June 1, 2026 and will apply to requests for arbitration submitted from that date onward. One of the changes introduced by the new Rules stands out for its practical appeal: Highly Expedited Arbitration (HEA).

Since 2017, the ICC has offered an expedited procedure designed to produce an award within six months, with a sole arbitrator, no Terms of Reference, and enhanced powers for the arbitral tribunal to limit the production of evidence. The original expedited arbitration provisions apply automatically to lower-value disputes (from June 2026, below USD 4 million) and may also be applied, by agreement of the parties, to higher-value cases.

The introduction of Highly Expedited Arbitration (HEA) pushes that logic further. It applies only where the parties expressly opt in. The procedure front-loads the presentation of evidence and arguments, favors a document-only process with no hearing, and, if the parties agree, permits the issuance of an unreasoned award – a sensitive feature, discussed further below. A sole arbitrator will either be agreed on by the parties within twenty days or appointed by the Court, and the final award is to be rendered within three months of the initial case management conference.

The decision to introduce an even faster track for arbitral proceedings is supported by empirical data. Expedited arbitration has been used with increasing frequency, reflecting a clear market demand for faster dispute resolution, even at the expense of more extensive evidentiary proceedings. The ICC's 2026 report, *Expedited Procedure Provisions – Eight Years On*, illustrates this trend: in 79% of reported cases there was no document production phase, in approximately 94% no expert reports were submitted, and in nearly half no hearing was held.

Highly Expedited Arbitration builds on this trend by taking the push for greater efficiency a step further and introducing a procedure designed to deliver a final resolution even faster. Whether that promise will be borne out in practice, however, will only become clear as data on the use of HEA emerges in the coming years.

> For Brazilian parties determining whether HEA is suitable for a given type of dispute is only part of the equation. The other part – one that is particularly important in cross-border contracts – is deciding which features of the HEA framework the parties are prepared to adopt.

This raises an important question: if expedited arbitration already meets the usual demand for a faster procedure, what types of disputes is HEA intended to address? The point matters because a three-month process, decided solely on the basis of documents submitted with the parties' written submissions, is not suited to factually or technically complex disputes. For example, HEA is unlikely to be appropriate for infrastructure disputes involving claims for extensions of time or recovery of additional costs. On the other hand, it may be well suited to disputes in sectors such as technology, finance, and sports, and to cases that turn primarily on legal or documentary issues.

For Brazilian parties, however, determining whether HEA is suitable for a given type of dispute is only part of the equation. The other part – one that is particularly important in cross-border contracts – is deciding which features of the HEA framework the parties are prepared to adopt. The most problematic of these is the possibility of an award being issued without reasons.

While such awards are accepted in many jurisdictions, they are not permitted under the Brazilian Arbitration Law, Law 9.307/1996. Under articles 26(II) and 32(III) of the Law, arbitral awards must state the reasons on which they are based, and may be set aside if they fail to do. Where the seat of arbitration is Brazil, or where the award must be recognized or enforced in Brazil, therefore, opting for an unreasoned award creates a real risk that Brazilian courts may annul the award or refuse to recognize it (Law 9.307/1996, article 39(II)).

Like any promising procedural innovation, HEA can be highly effective when used appropriately. It works well for targeted, document-driven disputes in which speed is part of the value at stake, for both sides of the arbitration. It is not suited to cases that require a level of depth incompatible with a three-month timeframe.

For Brazilian parties, HEA also calls for careful drafting of the arbitration clause to capture the benefits of the mechanism without importing features that conflict with Brazilian law. In other words, speed can be a real advantage, but on the fast track, it pays to know what you're doing – and to stay in control.

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The FIDIC Rainbow Suite: Red, Yellow, Silver

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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.

The Fédération Internationale des Ingénieurs-Conseils (FIDIC) is an international organization founded in 1913 to represent engineers and consultants worldwide. Headquartered in Switzerland, it brings together affiliated professional associations in around 100 countries, including Brazil. Over more than a century, FIDIC has become a leading global reference for standard-form contracts in construction and infrastructure, publishing model agreements widely used by governments, multilateral financial institutions, and the private sector in various jurisdictions.

FIDIC's standard-form contracts cover a wide range of contracting structures for construction works and engineering services. They are issued as a suite of contracts known as the Rainbow Suite, with each contract identified by a distinct color. Each volume presents a standard form contract, accompanied by guidance and commentary to support its use in practice.

From a structural perspective, the contracts are divided into General Conditions, covering matters such as performance, payment, timelines, risk allocation, and dispute resolution, and Particular Conditions, which supplement or amend the General Conditions to address project-specific requirements, such as local law and the currency of payment.

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As for the parties, the contracts involve an Employer and a Contractor, and, in some models, an Engineer responsible for contract administration and supervision of the works.

Within the Rainbow Suite, three contracts are particularly relevant for large-scale projects: the Red, Yellow, and Silver Books. Unless otherwise noted, the references below are to the 1999 editions of these contracts.

Red Book: Employer-Designed Works

The Red Book is FIDIC's most traditional and widely used contract, typically applied where the Employer provides the design and the Contractor is responsible for execution. Under this structure, the Employer retains significant risk, including ground and site conditions risks (Red Book 1999, Sub-Clauses 4.7, 4.10 and 4.12), reflecting its role in preparing the design.

Yellow Book: Contractor-Led Design-Build Projects

The Yellow Book applies to design-build projects in which the Contractor is responsible

for both design and execution, based on the Employer's requirements. Like the Silver Book, it provides for tests after completion and is commonly used in projects with defined performance criteria. Unlike the Silver Book, however, it retains the role of the Engineer and adopts a more balanced allocation of risk.

Silver Book: EPC/Turnkey Contracts

The Silver Book is designed for EPC/turnkey contracts, under which the Contractor assumes full responsibility for design, procurement, and construction, delivering a facility ready for operation. In this structure, the Engineer is replaced by the Employer's Representative, and more risk is allocated to the Contractor, with remuneration typically set on a lump-sum basis. While the Employer retains a significant share of risk under other Rainbow Suite contracts, the Silver Book shifts that burden to the Contractor in exchange for greater price and schedule certainty – features that are particularly important in project finance structures.

Despite their prominence internationally, FIDIC contracts have not been widely adopted in the Brazilian market. In practice, their use remains relatively limited and is often partial or adapted, reflecting both the consolidation of local contracting practices in the engineering and construction sector and specific features of the Brazilian legal framework, such as mandatory rules, contractor liability, limitation periods, and public procurement regimes.

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Even so, shifts in the infrastructure market and the growing presence of international stakeholders in Brazil are creating a favorable environment for the use of FIDIC contracts.

Opting for a FIDIC contract is not merely a formal step, but a strategic decision that shapes risk allocation, aligns the parties' incentives, and influences the overall dynamics of the project, directly affecting its feasibility, timeline, and ultimate cost.

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