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REVIEWS LEGAL INDUSTRY



The Legal Industry Reviews Brazil presents:

Interviews with ABRAPAVAA's President, **Sandra Assali** and EcoRodovias Audit Committee Member, **Flavio Franco**.

Different industry analysis in the columns of:

- **I2AI** founder and AI expert, **Alexandre del Rey**.
- **Deloitte** Legal Operations Senior Manager, **Paulo José Da Silva**.
- **Legal Insights** Legal Operations and Analytics Manager, **Allana Valsechi**.

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Deal Leaked: What's Next? Strategies for Mitigating and Moving Forward After a Confidentiality Breach



Felipe Lacerda
Editorial Director

M&A transactions are intricate dances of strategy, negotiation, and trust. Central to this delicate choreography is the commitment to confidentiality, often formalized through a Non-Disclosure Agreement (NDA). The NDA serves a dual purpose, shielding the Buyer from becoming a stalking horse in a potential auction scenario while safeguarding the Seller against the misuse of sensitive target information. Typically, this confidentiality framework is bolstered by clean team arrangements, where only select individuals representing the parties gain access to competitively sensitive data. However, the stark reality is that many deals breach the veil of secrecy and leak prematurely.

A recent study conducted by H/Advisors sheds light on the leak landscape within the M&A realm. In 2023, there were 405 announced deals in the U.S. valued at $1 billion or more, a decline from the 497 deals of similar magnitude in 2022. Amid this ebb in overall deal volume, the incidence of leaks stood at 24% for announced transactions in 2023. Noteworthy shifts in the leak environment unfolded throughout the year, with deal momentum intensifying in the latter half. The second half of 2023 witnessed a surge in both deal announcements, rising by 25% compared to the first half, and leaks, escalating from 21% to 26% pre-announcement.

As the art of leaking deals becomes more sophisticated, specialized outlets and professionals adept at triangulating information from diverse sources have emerged. This evolution underscores the need for heightened vigilance and robust confidentiality measures. Interestingly, parties themselves may orchestrate leaks strategically, leveraging them to catalyze auctions or expedite completions.

Given the potential for leaks, prudent parties should include leak response plans in connection with preliminary transactions and related arrangements. Proactive planning mitigates the chaos of dealing with a leak in real-time, enabling swift and strategic actions. For public companies, this proactive stance extends to understanding the disclosure obligations post-leak. Key considerations include assessing the leaked information's materiality, potential duties to disclose under securities law, identifying the leak's origin (internal or external), and discerning between rumors and concrete details. Collaboration with experienced M&A and securities law advisors is fundamental to navigate these intricate scenarios.

In summary, while confidentiality remains a cornerstone of successful M&A transactions, the ever-present risk of leaks necessitates vigilant preparation and swift response strategies. Adherence to best practices, proactive planning, and expert guidance ensure that parties can handle the complexities of deal leaks with resilience and agility, safeguarding their strategic interests and reputations in the competitive M&A market.

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Revolutionizing Legal Practice: The Impact of Generative Artificial Intelligence and Large Language Models

In recent years, the legal industry has undergone a transformative shift, largely propelled by advancements in Generative Artificial Intelligence (GenAI). GenAI encompasses a broad category of Artificial Intelligence (AI) technologies that can generate new content, from text to images, based on learned data patterns. Prominent among these technologies are Large Language Models (LLMs) such as ChatGPT, CoPilot, Gemini, and Claude. These sophisticated tools are built on vast amounts of text data, enabling them to understand and produce human-like text based on the input they receive. The integration of GenAI into legal practices has introduced new levels of automation and efficiency, revolutionizing how legal professionals draft documents, analyze legal precedents, and manage case-related data. This surge in AI capabilities enhances both the speed and accuracy of legal operations, significantly impacting the traditional workflows of the field.

LLMs have profoundly integrated into core legal operations. For instance, in contract law, these models can rapidly draft comprehensive initial contracts tailored to the specific needs of the parties involved. This capability extends beyond drafting to include complex tasks such as analyzing existing contracts for potential risks or inconsistencies and comparing multiple documents to ensure they align with legal standards and client expectations.

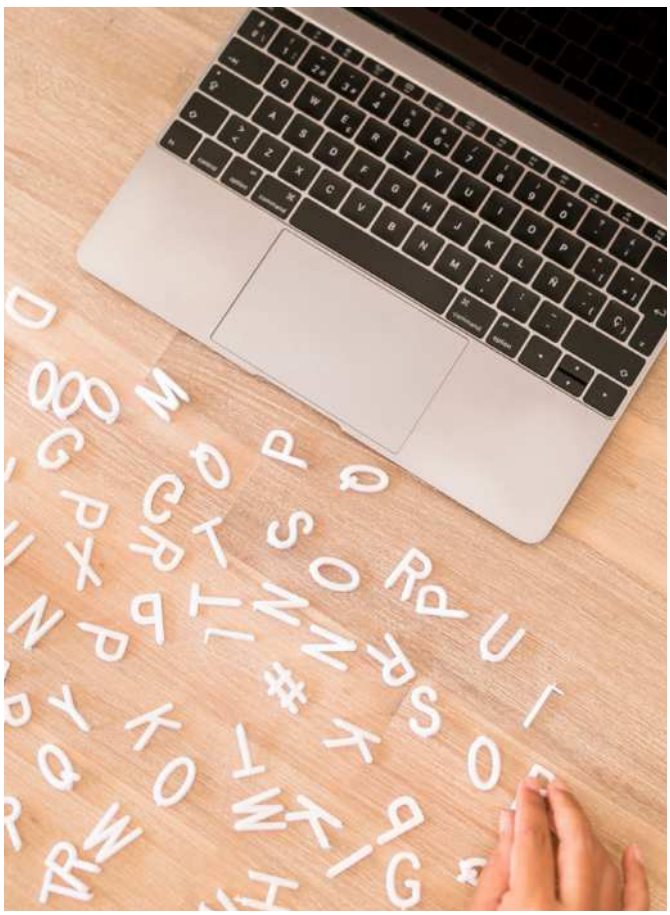
The strategic impact of LLMs on legal work is significant. These models enable lawyers to perform detailed legal research and analysis with speed and accuracy that were previously unattainable. By processing large volumes of case law, statutes, and other legal texts, LLMs can identify relevant precedents and suggest possible outcomes. This functionality supports lawyers in developing more informed legal strategies, advising clients more effectively, and making more precise predictions about case results.

Additionally, LLMs excel in tasks that were once highly time-consuming for legal professionals. They are particularly adept at clause analysis, document comparison, and the summarization of extensive legislative materials. These capabilities not only save time but also enhance the analytical capabilities of legal professionals, allowing them to focus on higher-order strategic thinking and client engagement.

In Brazil, the use of LLMs in the judiciary has been marked by several impactful implementations that demonstrate the practical benefits of this technology. For instance, the Victor System at the Supreme Federal Court significantly streamlines the process of reviewing extraordinary appeals. Traditionally, determining whether an appeal fits into one of the general repercussion themes could take an average of 44 minutes per case. With the Victor System, this analysis is reduced to just 5 seconds, exemplifying a drastic improvement in efficiency.

Similarly, the Athos System at the Superior Court of Justice utilizes AI to identify and monitor repetitive themes judged by the court, effectively aggregating cases by semantic criteria. This aids ministers in their decision-making process by providing them with a structured overview of related cases. Furthermore, the Elis System at the Pernambuco State Court of Justice automates the sorting of fiscal execution processes and checks the viability of debt collection based on the 5-year legal limit, thereby optimizing judicial procedures and resource allocation.

These examples illustrate not only the potential of AI in automating and enhancing the efficiency of specific legal tasks, but also its role in supporting judicial decision-making and administrative functions. Such tools are becoming integral to the modernization of the judiciary, offering both speed and precision that significantly contribute to a more effective legal system.



"These challenges underscore the delicate balance between leveraging cutting-edge technology and safeguarding client confidentiality and competitive positioning".

Overall, LLMs are not merely tools; they are redefining how legal work is conceptualized and executed. By streamlining a range of legal tasks from drafting agreements to conducting complex comparative analyses, these AI models significantly boost efficiency and improve the delivery of legal services, transforming the landscape of the legal profession.

The integration of Large Language Models (LLMs) into legal practices, while transformative, also presents significant challenges, particularly concerning data confidentiality. Legal documents often contain sensitive information pertaining to personal privacy, sensitive subjects, and proprietary business details. If such information were to be mishandled or accessed by unauthorized parties, it could lead to severe legal ramifications and damage to client trust. As a result, the need for stringent security measures to protect this sensitive information is paramount.

Furthermore, there is a growing concern about the use of LLMs in processing confidential data, as these models often require substantial datasets to learn and improve. By feeding these sophisticated algorithms proprietary and sensitive data, there is a risk that these models could inadvertently learn and replicate private patterns and information. This not only poses a direct threat to confidentiality but also risks the inadvertent disclosure of competitive insights and strategies. Such exposure could potentially lead to a loss of competitive advantage, making the management of data privacy not just a legal necessity but a strategic imperative.

Additionally, the economic implications of data in the modern era further complicate the integration of LLMs in legal settings. Data is often likened to 'the new oil,' a critical asset that drives modern business competitiveness. Firms are rightfully cautious about how their data, especially unique datasets reflecting intricate patterns specific to their operations, is utilized by AI systems. There is a legitimate concern that proprietary algorithms developed by third parties could extract and use this data in ways that could disadvantage the original data owners. Therefore, many law firms and legal departments are considering the development of in-house solutions that can harness the benefits of AI-driven efficiencies while maintaining strict control over their data privacy and usage.

These challenges underscore the delicate balance between leveraging cutting-edge technology and safeguarding client confidentiality and competitive positioning. The discourse around the adoption of LLMs in legal settings continues to evolve, as the industry seeks to mitigate these risks while capturing the efficiencies these technologies offer.

The advent of Large Language Models (LLMs) in the legal sector is not only transforming legal operations, but also fundamentally shifting the skill set required from legal professionals. Traditionally, legal education has emphasized mastery of case law and statutory interpretation, skills pivotal to the practice of law. However, the modern legal landscape, shaped by

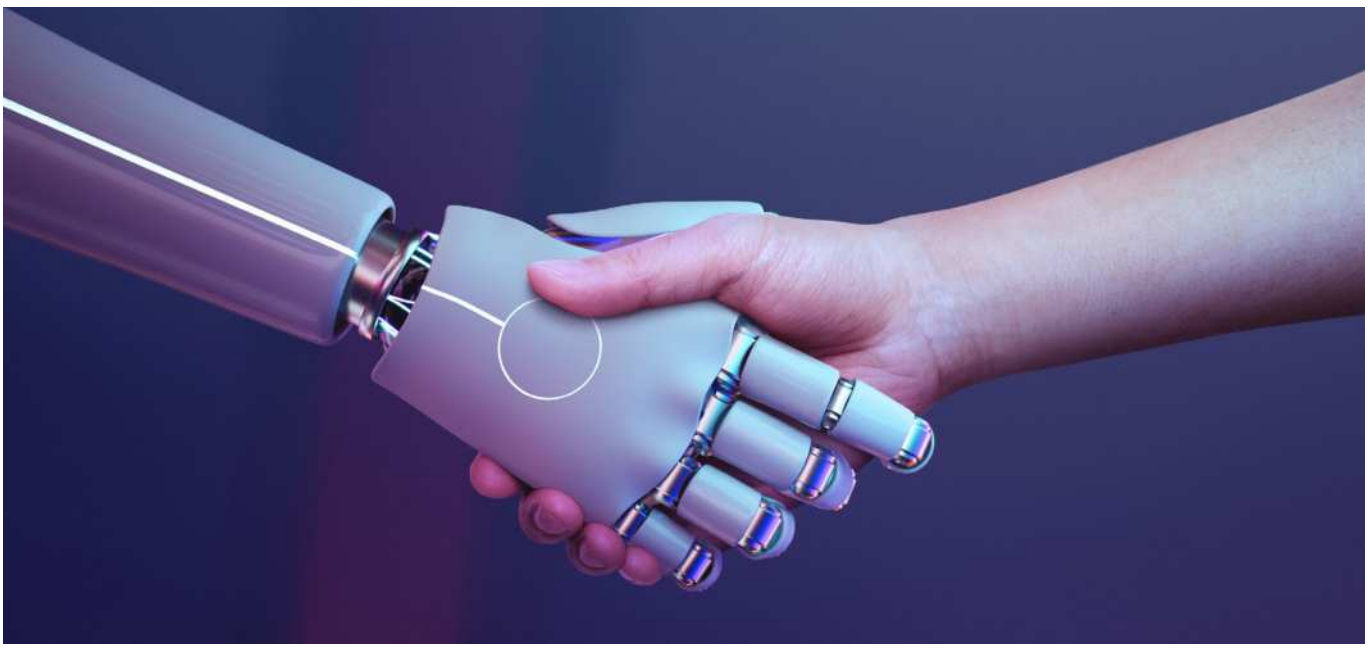
technological advancements, demands a broader repertoire of skills. Today's legal professionals must excel in critical thinking, problem-solving, and effective communication. Moreover, technological fluency has become indispensable as professionals are expected to navigate complex AI platforms and interpret their outputs, ensuring they align with both legal and ethical standards.

In addition to technical skills, the use of LLMs in legal practice enhances the efficiency of communication and documentation processes, which in turn elevates the importance of negotiation skills and the ability to foster alignment between conflicting parties. Lawyers are now expected to do more than just interpret the law; they must also strategically align legal outcomes with broader business objectives. This nuanced role enhancement is crucial as it highlights the potential of LLMs to augment but not replace the essential human elements of legal practice.

The performance differential between legal professionals who utilize AI tools like LLMs and those who do not is becoming increasingly pronounced. Lawyers equipped with LLMs can leverage these tools to dramatically reduce the time spent on routine tasks, freeing up significant bandwidth to engage more deeply with clients. This additional time can be devoted to thoroughly discussing and detailing legal strategies, thus potentially leading to better outcomes for clients and a more tailored legal service.

Furthermore, the integration of LLMs with data analytics, particularly in the field of jurimetrics—the statistical analysis of judicial decisions and patterns—enables a novel form of legal preparation. By understanding the behavioral patterns of specific courts and tribunals, legal professionals can better prepare for significant legal battles. This informed approach allows lawyers to anticipate possible judicial inclinations and tailor their strategies accordingly, thereby enhancing the likelihood of favorable outcomes.

Lastly, as the legal profession continues to evolve with these technological integrations, the human aspects of legal practice, such as ethics, empathy, innovation, and purpose, remain



critically important. The ethical implications of using AI in legal contexts, the need for empathy in client interactions, and the drive for innovation in legal solutions all underline the irreplaceable value of human judgment and interaction in the law. While LLMs provide significant operational efficiencies, the core of legal practice—upholding justice and advocating effectively for clients—relies heavily on these distinctly human qualities. Thus, as LLMs become more embedded in the legal industry, the balance between technological efficiency and human insight becomes more crucial.

As we reflect on the transformative influence of Large Language Models (LLMs) within the legal industry, it is evident that these technological advancements are not merely augmentative tools but are redefining the very essence of legal practice. While LLMs introduce remarkable efficiencies and capabilities, they also pose challenges and ethical considerations that must be carefully managed. The successful integration of these models into legal settings hinges not only on technological implementation, but also on maintaining the integrity and confidentiality that are foundational to the legal profession.

Looking ahead, the evolution of the legal landscape will increasingly depend on a synergistic relationship between human expertise and Artificial Intelligence. Legal professionals must not only adapt to new technologies, but also critically engage with them to enhance their practices. The ability to merge technical proficiency with traditional legal skills—such as judgment, ethical reasoning, and advocacy—will distinguish the next generation of leading lawyers and firms. This blend of skills will enable practitioners to deliver more precise, efficient, and client-focused legal services.

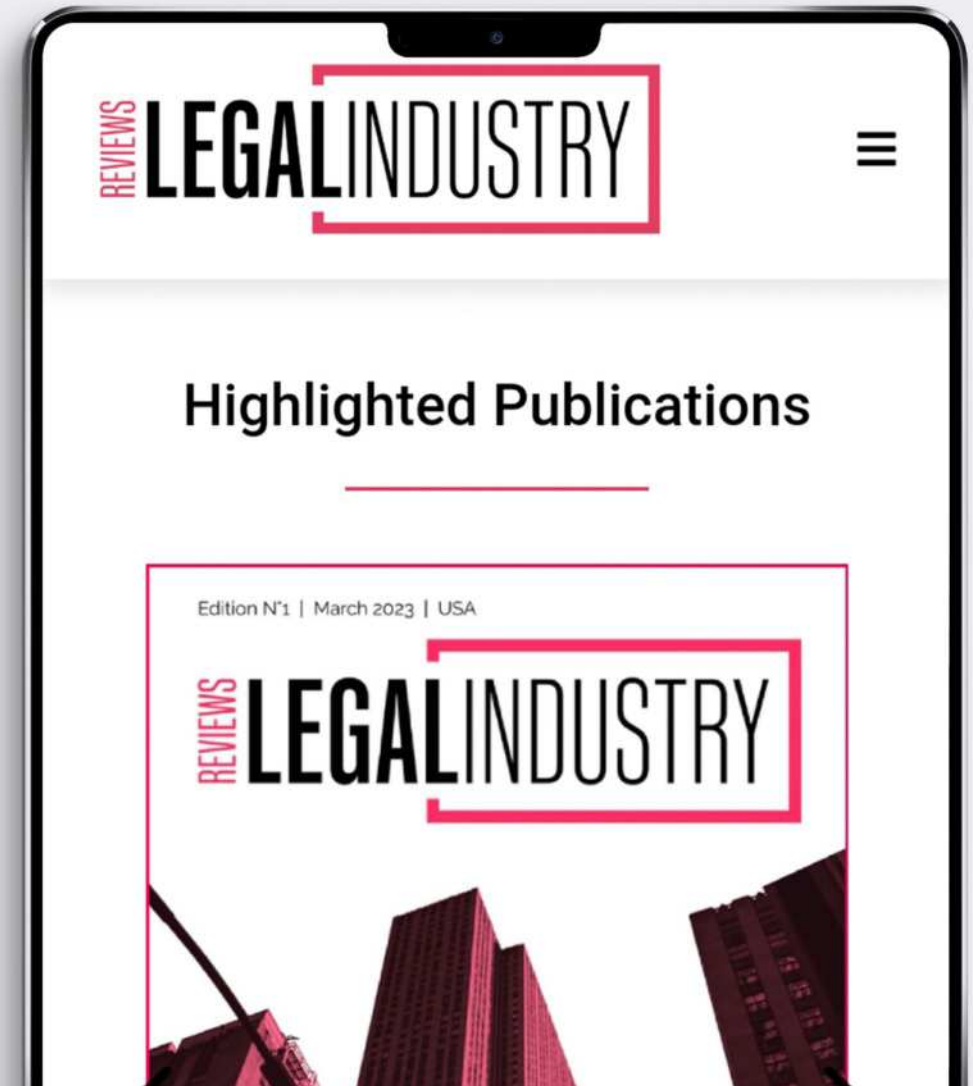
"Legal professionals must not only adapt to new technologies, but also critically engage with them to enhance their practices".

In conclusion, the journey of integrating LLMs into legal practice is complex and ongoing. It requires a forward-thinking approach to both technology and the fundamental values of law. By embracing the opportunities presented by LLMs while vigilantly addressing their challenges, the legal profession can achieve a balance that respects both the power of AI and the primacy of human insight. This balance is crucial for fostering trust, advancing justice, and ensuring that as the legal field evolves, it remains anchored in its core ethical commitments and dedicated to serving the best interests of society.



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Sandra Assali:

"It is very important for the association, in the event of an accident with victims, to necessarily be present and close to the families from the very beginning in a welcoming and respectful manner, and that is why, indispensably, the first meeting with the families should be conducted by the CEO of the Company".

Sandra Assali is a legal professional with a Bachelor's degree in Law from FMU in São Paulo. Since 1997, she has held the position of President at **ABRAPAVAA**, the Brazilian Association of Relatives and Friends of Air Accident Victims. Additionally, Sandra is a co-founder of **ITKOS Mediation**, specializing in conflict resolution. Her involvement in international aviation safety includes membership in **ACVFFI** (Air Crash Victims' Families' Federation International) since 2015. She is also an author and speaker, addressing topics such as crisis management and victim assistance.

In her interview with The Legal Industry Reviews, Sandra Assali, President of **ABRAPAVAA**, recounts the association's genesis following the TAM 402 air accident in 1996, underscoring the lack of support for families. The association's evolution has been marked by legal advocacy and shaping aviation regulation in Brazil. Sandra emphasizes the crucial role of CEOs in crisis management, urging direct engagement with families to prevent further distress. Advocating for legal reforms, Sandra seeks greater family involvement in investigations and fair compensation from airlines. **ABRAPAVAA**'s milestones, including influential compensation calculation reforms, have significantly impacted Brazil's legal landscape surrounding air accidents.

What motivated you to found the Brazilian Association of Family and Friends of Air Accident Victims (ABRAPAVAA), and what has been your experience in leading this organization?

ABRAPAVAA was founded after the TAM 402 air accident on October 31, 1996, in São Paulo, which claimed 99 lives, including my husband's.

The motivation behind establishing an association to represent us stemmed from the lack of obligation for the operator (in this case, TAM) to provide assistance to the victims' families at the time of the accident.

Unfortunately, the operator chose not to assist us. We felt neglected, unsure of where

to start, uninformed about our rights, and we were lacking information on both the criminal investigation and Center for Investigation and Prevention of Air Accidents (CENIPA), the responsible authority, and also lacked any psychological support.

It was then we realized that we could only obtain answers and assistance by founding an association to represent us. We established ABRAPAVAA - a Brazilian Association because, until then, Brazil had no such precedent, and we believed it was ideal to found an association that could provide support and guidance to families of air accident victims throughout Brazil.

I have been the President of ABRAPAVAA since then. Today, 27 years after its foundation, ABRAPAVAA has provided assistance in over 250 air accidents throughout Brazil, becoming a reference both within the country and internationally in the USA and Europe.

Undoubtedly, it is a highly complex task to support, comfort, and guide a family member who has lost a loved one in an air accident. We are dealing with a traumatic, unexpected, and extremely painful loss. We know that the responsibility for emergency response, crisis management, and all post-accident procedures lies with the airline operator. However, the reason families seek out ABRAPAVAA is that we relate to them as affected family members, regardless of the accident's circumstances or how it occurred, meaning we are speaking the same language.

How has the Association's mission, addressing the legal and financial needs of air accident victims and their families in Brazil, evolved over time?

With the establishment of ABRAPAVAA, we began seeking information and examples of procedures for Emergency Response, Family Assistance, and Crisis Management outside Brazil, i.e., how other countries operated.

Based on the information gathered, we started developing content and a model in search of an appropriate and necessary Assistance Norm for our country.

After extensive research, study, model creation, numerous meetings, and hearings in the National Congress with the National Civil Aviation Agency (ANAC), airlines, insurers, lawyers, etc., the ANAC Norm 200-1001 - Assistance to Families and Victims of Air Accidents was approved in 2005.

From that moment on, commercial aviation began to follow the aforementioned norm in the event of an air accident involving their company. Post-accident family reception, medical and psychological support, repatriation, funeral arrangements, etc., became mandatory.



"The commercial aviation airlines have improved significantly in this regard, but unfortunately, in the vast majority of cases (...), they are still quite deficient in dealing with victims' families".

Today, ABRAPAVAA guides families on their rights, insurance issues - RETA and Civil Liability, what they mean, and when these payments are made. Typically, family members of air accident victims seek information; they want to understand what happened, follow the investigations, and also know about compensation processes. They request referrals to specialized law firms, which include associations and partnerships with professionals such as grief specialists, psychologists, and therapists, who are indispensable in painful moments such as the traumatic loss of a loved one in an air accident.

In your experience as a crisis management speaker, what legal strategies or approaches are crucial for individuals and organizations dealing with collective accidents-related legal issues?

ABRAPAVAA provides support to victims' families, which unfortunately is still lacking in Brazil. The commercial aviation airlines have improved significantly in this regard, but unfortunately, in the vast majority of cases (charter, executive, and more precisely, general aviation), they are still quite deficient in dealing with victims' families. It is very important for the association, in the event of an accident with victims, to necessarily be present and close to the families from the very beginning in a welcoming and respectful manner, and that is why, indispensably, the first meeting with the families should be conducted by the CEO of the Company.

As much as the company is trained and prepared for Emergency Response and Crisis Management, it is with the company's CEO that the families want to be. I like to emphasize to the CEO he should not delegate this moment to anyone else. And why do I say this? I have witnessed and experienced numerous situations where the CEO was not present, which caused outrage, in the face of pain and indignation at their losses. They feel disregarded and disrespected, and the result is: lack of dialogue, anger, and often, bonds are severed, meaning future conversations do not happen, which poses a risk to the company's image, the continuity of its business, and the difficulty of a future relationship further aggravates when the time for compensation comes from the insurer. We have examples at ABRAPAVAA of family members who did not want to attend meetings about compensation because they were ignored by the CEO in their critical moments.

What legal reforms or enhancements do you believe are necessary to improve the legal support and assistance available to air accident victims and their families in Brazil?

In addition to what was mentioned in the previous answer, I believe it would greatly help if victims' families could be more closely involved in accident investigations. Both the Criminal Investigation and that of CENIPA.

We are still fighting for a more realistic update of the cost of RETA Insurance (Air Transporter Liability), this being a mandatory insurance payment to beneficiaries immediately after the accident. This Insurance, until 2007, was valued at R$14,000.00, compared to $120,000 in the USA and €130,000 in Europe. However, as of 2007, at ABRAPAVAA's request, with a judicially updated calculation, we reached, at the time, the value of R$137,000 per fatal victim.

ABRAPAVAA then began working with the MPF (Federal Public Ministry) and ANAC (the regulatory body of aircraft companies), airlines, and insurers,

after seeking this fair update in insurance. Finally, in 2009, the RETA value became R$49,950.00. Not ideal but meant progress. The index used is the IPCA (National Consumer Price Index), which today translates to approximately R$120,000 per victim, and the process continues in court for the requested update.

Could you share some notable legal achievements or milestones that ABRAPAVAA has accomplished, and how have these influenced the legal landscape in regard to air accidents in Brazil?

In addition to the RETA Insurance amount, an important step made by ABRAPAVAA was modifying the method by which they calculate the amount of the compensation. Until the TAM 402 accident, the Civil Liability Insurance value was divided among the victims, regardless of whether the victim had dependents, salary value, professional life expectancy, etc.

It is worth mentioning the experience of the relatives of the aforementioned accident regarding compensation actions. As soon as we founded ABRAPAVAA, with the repercussions caused, we were approached by a highly reputable US law firm specializing in transportation accidents. This firm contacted us and informed us that, in our specific case, we had the possibility of reparations in the USA because, after the investigation, it was proven that one of the contributing factors to the accident was caused by a specific part of the plane, whose manufacturer did not have representation in Brazil.

Another factor for us to try reparations in the USA was that there needed to be an American passenger on the flight. And we had one! The process progressed with the families who considered it valid to try the action in the USA, i.e., out of the 99 fatal victims, 65 families, including myself, agreed to try our compensation in the USA.

After a few months, with the preparation of the dossiers for each victim finalized, the processes continued. It was then that we experienced a decisive moment, given the huge difference, until then, between Brazil and the USA in compensation calculations. While in Brazil, the amount entitled to each beneficiary would be the same as everyone else, in the USA, calculations were already carried out such as: the victim's age, salary, position, professional expectations until retirement, how many minor dependents or some other dependent and other references.

That was a major change and has since become jurisprudence in Brazil. This was the new calculation method that the lawyers of the families who chose to remain in Brazil in search of compensation took to Brazilian courts, with the reference of successful agreements in the USA, and this was then one of ABRAPAVAA's most relevant achievements, which from that moment on, became the reference in compensation, not only in air accidents but also in mass situations and tragedies in Brazil.



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Paulo is a speaker, professor and columnist on content portals focused on legal management. He has worked in banks, telecommunications, energy and e-commerce and law firms.

He is currently **Legal Operations Senior Manager at Deloitte**, structuring, implementing and operating legal operations areas for legal departments and law firms, in the "as a service" modality.

The Pillars of a New Operating Model for Legal Departments in the Era of Efficiency and Effectiveness

Historically seen as centers of costs and distant from the companies' most strategic decisions, since the end of the last century, legal departments have had their structure and role within corporations reviewed and reinterpreted.

This movement begins, initially, from a search for efficiency, translated into better budget management, with greater predictability in expenses and a reduction in the amounts spent on conducting and managing legal processes. It is no coincidence that in Brazil, this movement is closely linked to the so-called "mass litigation", translated into an increasing number of lawsuits.

In fact, the increase in so-called legal demands was not just restricted to the litigation area, but also the consultancy and contracts area, mainly due to new business models, as well as products and services that became possible with advances in technology and its popularization.

This search for reduction, as well as specific characteristics and contexts of the Brazilian legal ecosystem, generated movements such as the reduction of legal departments, with the outsourcing of many of the steps inherent to the conduct of a judicial process, or even the transfer of many steps inherent to drawing up a contract

with law firms. In this sense, the legal department should act as an "orchestrator" for these various providers, ensuring compliance with deadlines and the quality of contracted services.

Summarizing it in a well-known phrase, it was necessary to "do more with less".

The search for efficiency initiates a movement to review the operational model of legal departments. If before, the model was based on training and technical profiles, this "new model" is now based on the need for the legal department (and those who are part of it) to have a profile more focused on management, planning and orchestration. A highly technically qualified team is no longer enough, but it is necessary for this department to count on management capabilities.

This change had a significant impact on the profile of the professional who began to be sought to integrate this new phase of the legal department and even nowadays, this profile, of a "managing lawyer" is not easily found. Such professionals must be literally "trained" throughout their careers.

Just like the search for efficiency, another driving element of this review in the operational models of legal departments is the so-called "New Economy".

In an extremely summarized way, we can understand the "New Economy" as a logic of market, which stops focusing on products to prioritize services, with a culture centered on people, in a collaborative context, with rapid changes and the use of what we call industry 4.0 (automation, data and artificial intelligence).[1]

Among the principles of this new economy, two of them prompted a profound inquiry into the "traditional" model of legal departments: the acknowledgement of **failures** (and the need to be **flexible**), as well as the idea that the business environment **is uncertain** (and as this environment evolves, the more uncertain it becomes).

Traditionally "trained" to "mitigate risks" and seek what, in our legal system, we call "res judicata", lawyers, from this perspective of the new economy, need to rethink their way of acting.

Boards, boards of directors, CEOs, CFOs no longer searched in their legal body for answers regarding the possibility or not, from a legal or regulatory perspective, of implementing a new business, but rather how to make this new business viable.

There is a big change in the results expected by stakeholders regarding the performance of legal departments. It is no longer about mitigating risks, but rather about making business viable and acting to fulfill the company's strategic objectives.

It is no longer about "doing more with less", but "doing more, better and differently with less".

And here is where the idea of a "legal business partner" is born, which is correct but not properly implemented sometimes, as well as a fair claim



> *"It is necessary to evaluate the structuring pillars of a new operational model for legal departments".*

that to achieve this, the legal department should be closer to the strategic levels of the company, participating from the elaboration of the strategy to its execution.

As can be concluded, this idea of a partner and business-oriented department is very challenging, as enabling businesses involves *taking risks and not mitigating them*.

Therefore, the need to rethink the operational model of legal departments involves not only the challenge of efficiency (which relates to the processes of this department), but the challenge of effectiveness (which relates to the fulfillment of the company's strategy).

Given this panorama, legal departments have attempted to rethink their operational models, in order to deliver good results with efficiency and effectiveness, as well as, remain updated and prepared for changes in the business environment, in a fragile, anxious, non-linear and incomprehensible global context.[2]

Thus, it is necessary to evaluate the structuring pillars of a new operational model for legal departments, which can face these challenges, as the new economy and the so-called BANI world require, being flexible and antifragile.[3]

It is not easy to make such an assessment, and the intention of this text is to bring elements that can guide rather than determine those pillars, considering the entire panorama outlined so far. With this last statement in mind, it is possible to think of three pillars: a ***technological one***, one that considers how **services are delivered to requesters** and one that specifically deals with the **operations carried out** by this department.

In the **technology pillar**, to begin with, the first element to be highlighted is the search for **platformization**, a considerable change in the architecture of the systems of a legal department, as the idea of a "modular system" closed in itself is abandoned, for an architecture that allows the integration of different tools, from different suppliers. Here, the idea of a legal department that has great orchestration capacity is essential, as this department will have to coordinate these tools very well, being able to quickly identify when a tool no longer responds efficiently and effectively.

Platformization leads to an increased need for **automation**.

The use of automation by legal departments is not new, and many already use automation solutions based on RPA (*Robotic Process Automation*), however, this use in general has always been fragmented, with automation acting in a punctual manner, in specific processes, in a disintegrated manner.

In this new perspective, such automations must be integrated, being capable of executing complex business processes, feeding and being fed from peripheral systems or other areas of the company, or even from partners and suppliers. The idea here is to move towards the so-called *hyper automation*.

This hyper automation is only possible if the operational model considers the increasing use of **artificial intelligence**, whether as a tool for reading, interpreting, structuring, classifying and normalizing data, whether generating content from this data or as a decision engine based on in decision trees and models that evolve from a descriptive analysis to a prescriptive analysis (analytics *evolves* from just a tool for summarizing data to a tool that provides feedback to the legal department and other areas of the company, verifying compliance with the strategy and proposing "route corrections".

The second pillar refers to how the **legal department delivers its services and results**, as well as the context in which services and results must be delivered.

The first element to be considered in this pillar is the idea that these services must be increasingly global, and can be provided from any part of the world, as long as the team providing them knows the environment where they will be performed.

Of course, this element is directly related to how global the company is, but even in national companies, which operate throughout the country where they are located, the idea of uniform practices that serve different regions is a reality. Likewise, it is clear that global practices must respect the characteristics and context of each country (practices related to litigation, for example, have their own characteristics, however, practices related to contract management are easier to be globalized). Once again, the need for a legal department with great orchestration capacity is necessary.

This capability will only be possible if the legal department is **strongly process-oriented**.

In the same way as data is a guide and raw material for decisions, **processes are what guarantee the efficiency and consistency of indicators**.

Finally, in this second pillar, we can point out that **outsourcing** will continue to be the means by which legal departments will be able to seek *capabilities* they do not have, as well as keep the budget under control.

As previously mentioned, outsourcing is not something new, as legal departments have already been outsourcing the conduct of legal processes since the end of the last century, however, what we see now is that there is this same movement towards operational activities or even new functions that came to exist in these departments, which brings us to the third pillar, the **operational** one.

In this new operational model, **new functions**, and consequently, new professional profiles become part of the legal department.

The search for greater efficiency necessarily leads to an increasing separation, within the legal department, of strictly legal activities, which *need and should be carried out by lawyers*, and operational activities, that *must be carried out by non-lawyer professionals with specific skills*.

The financial management of the department **should not be carried out by lawyers, but by professionals who have specific knowledge**. The same can be said about suppliers management, project management or even information governance and data-based legal intelligence.

As a result, the search for efficiency and effectiveness ends up directing the legal department to be multidisciplinary, adding professionals from other areas such as administrators, data scientists, process and project analysts and accountants to the legal teams.

This movement explains why the Legal Operations area has gained strength in recent years, largely due to the efforts of the *Corporate Legal Operations Consortium (CLOC)*, which has



developed *frameworks, guides* and tools to assist professionals in this area in their development and understanding of what "skills" a Legal Operations area must have.[4]

In Brazil, the Legal Operations areas have been boosted since 2019 by the CLOB - Comunidade Legal Operations Brasil[5] initiative, which, from this year 2024, became part of the CLOC as a regional group.[6]

Structuring a multidisciplinary team implies creating specific careers for non-lawyers. Furthermore, the fact is that some positions are activated at specific times, such as, for example, process analysts or project managers. This can be challenging from a budgetary point of view, which is why outsourcing is brought back here, now covering more than just law firms.

Consultancies and the *BIG Fours* now offer "Legal Ops as a Service", providing legal operations services according to the needs of each legal department.

Finally, in this operational pillar, **knowledge management** stands out. It is no longer a question of operating the department by "archiving" the knowledge produced, but making it available and reviewing it periodically.

The entire company takes advantage of the knowledge produced, with a strong curation carried out by both the technical area and the legal operations area. By combining these knowledge bases with Generative AI, the legal department begins to operate at a much greater scale and speed, as automation can "respond" to repetitive queries and direct new questions to the legal team, segmenting, for example, the degree of complexity of the query or its urgency.

As already mentioned, the constituent elements of these pillars – technology, service delivery and operation – may vary. However, these pillars are the foundations that will allow legal departments to be more efficient and effective, acting strategically and delivering value to *stakeholders*.



"Structuring a multidisciplinary team implies creating specific careers for non-lawyers".

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Flávio Franco:

"Balancing the demands of my current multifaceted roles, including advisory boards, mentoring legal professionals, coordinating Legal Management programs and staying attuned to the evolving needs of the legal industry, is a natural extension of my practice as a Legal & Compliance Director across various companies".

Flávio Franco is currently an independent Audit Committee Member of EcoRodovias (publicly listed infrastructure company) and Board Member of Docato, a fast-growing Data Management Lawtech. In addition, he is the coordinator of the "Corporate Legal Management Course" at Saint Paul Business School, co-founder of "Instituto Jurídico Sem Gravata", and mentor of legal careers.

Flávio has served as EY Partner and, previously, as Legal Director of Nextel, Netshoes and Walmart. His multisector corporate experience of over 20 years also encompasses leadership positions for FedEx and Compuware.

His academic background includes the Harvard Law School "Leadership in Corporate Counsel" executive education course, an MBA in Change Management and an "Executive's Development Program", both attended in Brazilian leading universities.

Amidst Brazil's evolving legal landscape, Flávio Franco, reflects into critical industry topics. As an Audit Committee Member at EcoRodovias and Board Member of Docato, he navigates Brazil's regulatory intricacies. In light of increasing global scrutiny, Franco advocates for ethical practices and compliance within Brazilian companies. Furthermore, his insights on balancing operational needs with environmental responsibilities align with Brazil's sustainability agenda. Franco's expertise, amid current legislative developments, offers invaluable perspectives shaping the discourse within Brazil's legal industry, reflecting the nation's proactive stance towards governance and compliance.

Can you tell us about your journey in the legal industry, from your early career to your current roles as an independent member of the Audit Committee at EcoRodovias and coordinator of the Corporate Legal Management Course at Saint Paul?

Most of my career has been developed working as a Corporate Legal Executive. I was lucky

enough to have had very rewarding experiences in publicly listed companies operating in dynamic economic sectors such as Technology, Logistics, Retail, E-commerce, Telecom and Consulting.

I served as EY Partner, leading the team responsible for the Legal Department's innovation, technology and productivity improvement projects. Previously to that, acted as the Legal Director of Nextel, Netshoes and Walmart in Brazil. My experience of over 20 years also encompasses leadership positions for FedEx and Compuware. Besides the expertise in business law matters and in people management, a constant involvement with Compliance, Corporate Governance and Government Relations' free trade initiatives has set the tone in my professional trajectory.

Along the way, I was top ranked for several years in the country's "Most Admired Legal Executives" award, was the winner of the "Deal-Making Award", promoted by the Latin America Corporate Counsel Association (LACCA), and also was appointed by the international publication "The Legal 500" amongst the most influential and innovative in-house Legal Directors working in Brazil.

More recently, I have dedicated myself into corporate governance roles, serving as an independent Audit Committee Member for EcoRodovias (an infrastructure company operating motorway concessions countrywide), and also as a Board Member of Docato, a very promising data-management "lawtech" entrepreneurship.

Learning and teaching Legal Department's Management has always been a passion for me also on the academic/education side as well. So, for many years already, I have the privilege to be the coordinator of the "Corporate Legal Management Course" at Saint Paul, one of the leading business schools in the country, where me and a handful of very talented Legal Executives share their practical experiences with post graduate students, all under a customized "hands on" learning-oriented methodology.

Could you share some insights about the challenges and opportunities you have encountered while working in industry associations, multisector or topic-focused Legal discussions groups, such as the Legal Committee of the IBGC (Brazilian Institute of Corporate Governance)?

I truly believe in the important value the Legal Department can add to the company by working in industry associations, multisector or topic-focused discussions groups.



"Implementing robust integrity programs tailored to the specific regulatory and industry environment is crucial".

They can serve as critical platforms for Legal professionals to learn and share best practices, to collaborate, advocate and navigate together in key legal and regulatory matters. Naturally, one significant challenge lies in managing the diverse interests of members within the association or discussion forums. These environments often gather a broad spectrum of stakeholders, with representatives from corporations to smaller businesses, each with their own priorities, backgrounds and agendas. Finding common ground among these diverse interests can be difficult at times, requiring effective communication, compliance to high standards, negotiation skills and compromise.

However, by leveraging collective expertise and advocacy efforts, it can influence the business, related regulations and decisions that impact their respective sectors, and significantly leverage the strategic role of the Legal team in the organization. For many times and in different companies throughout my career, I have benefited myself from such "corporate affairs" activities, and strongly advise Legal Executives to dedicate time and energy to such forums. Trust me, it pays off!

The Legal Committee of the **IBGC** (Brazilian Institute of Corporate Governance) is such a good example. As the leading Corporate Governance reference in Brazil and one of the main ones worldwide, IBGC is an institution dedicated to exploring and disseminating knowledge to influence stakeholders to adopt best practices, contributing to the sustainable performance of the organizations. Accordingly, as Corporate Governance matters closely dialogue with legal and regulatory aspects, our Legal Committee, composed by bright attorneys from both law firms and Legal Departments, is a precious group that plays a valuable role in the IBGC engine.

How do you balance the demands of your various roles, from working on advisory boards, to mentoring legal professionals and coordinating Legal Management activities, while also staying engaged with the evolving needs of the market?

Balancing the demands of my current multifaceted roles, including advisory board participation, mentoring legal professionals, coordinating the Corporate Legal Management course and staying attuned to the evolving needs of the legal industry, is a natural extension of my extensive practice as a Legal & Compliance Director across various companies. In other words, my executive background has well sharpened my ability to navigate complex landscapes while juggling several responsibilities.

The board engagements provide many insights into emerging trends, regulatory shifts, and industry challenges. These insights directly update the content and direction of the Legal Management courses I coordinate, ensuring they remain relevant and impactful for aspiring legal professionals. Simultaneously, my role as a mentor allows me to share practical expertise gained from my long journey as a Legal Director, developing the learning experiences of mentees and helping them towards success in their careers.

The symbiotic relationship between my current roles makes balancing these responsibilities less complex than it first may appear. Each activity informs and enriches the others, creating a cohesive approach to address the evolving needs of the Brazilian market. This interconnectedness not only streamlines the balancing, but also maximizes the impact of my efforts to always keep learning from others, driving positive change and innovation within the Corporate Legal ecosystem.

As someone internationally certified in Ethics and Compliance, what strategies do you believe are essential for promoting ethical practices and compliance within Brazilian companies, particularly in light of increasing global scrutiny and regulations?

Given the landscape of increasing global scrutiny and regulations, actively influencing and solidifying an ethical and compliance-driven corporate culture in the Brazilian companies is a daily and a shared responsibility.

Several well-known strategies are essential for achieving this goal. Implementing robust integrity programs tailored to the specific regulatory and industry environment is crucial, that includes developing clear codes of conduct, providing comprehensive training, and establishing effective monitoring mechanisms.

However, it's essential to emphasize that good compliance practices are not just about ticking boxes to satisfy formal requirements. It has been extensively demonstrated that they are directly linked to the company's long-term sustainable success. By prioritizing ethics and compliance, companies mitigate risks, enhance their reputation, and build trust with the several stakeholders.

This, in turn, fosters a positive corporate culture and strengthens relationships and alliances. The workforce feels empowered to make ethical decisions, investors have confidence in the company's integrity, customers trust in the quality and reliability of products and services, and the community sees the company as a responsible corporate citizen. A win-win proposition with no way back!

Given your increasing experience as an independent Audit Committee Member, how do you see the balance between the companies' operational needs and its environmental responsibilities?

In today's business landscape, corporate guidance, legislation and best practices dictate that companies must consider environmental responsibilities alongside operational needs. It's essential to recognize that these factors are not disconnected but rather intricately connected and should be closely analyzed together, impacting decisions on resource allocation, production processes and business strategies.



"One of the key objectives of the Constitutional Tax Reform is to simplify Brazil's complex tax system, which has long been cited as a major impediment to business growth and investment".

The Audit Committees is a key player in the Corporate Governance structure to also watch over the company's operations to ensure compliance with environmental regulations and adherence to sustainability goals. This entails conducting thorough audits, evaluating risk management practices, and providing oversight to environmental initiatives.

I recognize a positive and increasing trend in corporate practices towards environmental sustainability, and I am optimistic about its potential to leverage business outcomes positively in Brazil. As companies increasingly prioritize ESG responsibilities, they not only mitigate risks associated with regulatory compliance and reputational damage but also unlock opportunities for innovation and operational efficiency. Moreover, embracing environmental sustainability enhance brand reputation, attract socially conscious investors and customers, and foster long-term resilience in the face of current and future environmental challenges.

In your opinion, what are some of the most pressing legal and regulatory challenges that businesses operating in Brazil are facing today, and what trends or developments do you foresee shaping the legal landscape in the coming years?

I have no doubt that the most overall pressing legal and regulatory challenge ahead is the forthcoming legislative developments stemming from the Constitutional Tax Reform approved in Brazil last December. It holds an immense importance for businesses across all sectors, with far-reaching implications for companies operating in the country.

One of the key objectives of the Constitutional Tax Reform is to simplify Brazil's complex tax system, which has long been cited as a major impediment to business growth and investment. By streamlining tax procedures, reducing bureaucratic hurdles, and harmonizing several tax laws, the reform aims to create a more favorable environment for businesses, fostering economic growth and competitiveness.

However, "as the devil lies in the details", the specific legislative developments arising from the reform will shape its impact on businesses significantly. From the restructuring of tax rates brackets to the implementation of tax incentives and exemptions, businesses will need to closely monitor and adapt to the evolving legal landscape.

Moreover, the reform's implications extend beyond tax compliance itself. They also touch upon broader business models, financial planning, and risk management. As legislative changes unfold, businesses will need to assess their operational and financial implications and, eventually, recalibrate their strategies. Sea of opportunities for Legal Executives with business-oriented mindset and a "no-necktie" ("*Jurídico Sem Gravata*") approach!

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Allana Valsechi

Allana Valsechi serves as the Manager of Legal Operations and Analytics at **Legal Insights**. With prior roles in legaltech and law firms, she has led teams, managed finances, and practiced as a corporate litigation attorney focusing on labor and civil law. Holding a postgraduate degree in Civil Procedure and Labor Law, she actively mentors within the **Na Trilha** community, contributes as a columnist for Advogados Gestores, and participates in Universo Ágil, a platform dedicated to agile methodologies.

Legal Operations Efficiency

We are in the era of digital expansion, with hyper connections, emerging technologies, and evolving legal areas. The countdown to legal versions accelerates, and professionals face the challenge of staying updated, enhancing their deliveries with innovation and creativity.

It is in this scenario that the Legal Operations sector is interconnected with legal efficiency for departments and law firms. Conceptualizing the area, we can mention that legal operations are linked not only to the decentralization of activities inherent to lawyers but also as a strategic area focusing on management, solutions, services, and continuous improvements.

The terminology of Legal Operations is intrinsic to the controller and paralegal sectors. Although the historical linkage and differentiation of areas are interesting, the focus is on delivery and activities performed, considering how each company can progress so that its differentials and references are noticed in the market.

In summary, we conceptualize that the Operations area is broader than controllingship since it analyzes other business activities, while controlling focuses on operational procedural and contractual flows such as registrations, system parameterization, database analyses, sanitation, and report issuance.

Despite the market acceleration, we see in the legal technology and innovation team more collaborative environments and information exchanges, intensifying the management of collective knowledge. This came about from the latent need for the sector to break traditionalist barriers and allow access to concepts and tools to accelerate deliveries and stand out in the legal landscape.

The legal sector felt the need to break the shackles of segmentation to understand that, despite being a sector of inherent formalities and bureaucracies, it was possible to add new guidelines related to business activity.

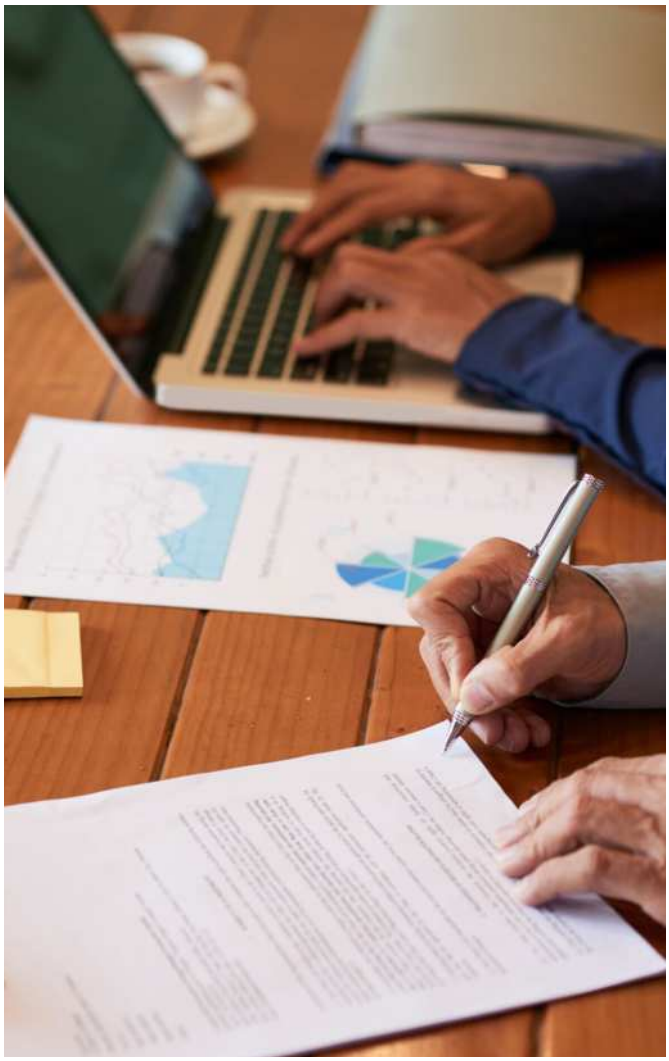
The starting point for this acceleration emerged during the pandemic period when we transitioned from in-person to remote scenarios, with more efficient, real-time connections that continued to maintain quality.

After the pandemic crisis, the perceived value that technology and new ways of working brought could not return to the status quo. This led to an increase in debates, reflections, and exchanges on design topics, systemic integrations, automations, data management platforms, remote meetings with teams and partners, simple language in documents, procedural pieces, and contracts, always focusing on the user, increasing User Experience (UX).

Since there are new work flows, and an area focused on restructuring and optimizing demands, we are facing cultural influence. Therefore, resistances may arise, stages may not be completed, team engagement may not be as expected, among doubts and recalculations of routes on the journey. However, implementing legal operations involves persistence, planning, and dedication from all involved so that once the results and more assertive forms of work are perceived, new steps will gradually be solidified.

The classic triad of Ops contextualization is people, processes, and technology, with this order being essential for structuring the area. People are the center of organizations, they are the fuel for task execution. We cannot evolve with technology and innovation without focusing on people's performance, training, and motivation.

In people's training, attention to soft skills is fundamental, going beyond hard skills. For Legal Ops, creativity, active listening, emotional intelligence, flexibility, adaptability, resilience, and communication will intensify team preparation for business delineation and corporate organization. We must understand that investing in people means experiencing the creation of lasting alliances and partnerships.



> *"Technology is not just hype; it is essential for corporate market deliveries depending on each level of maturity and business needs".*

Processes, understood here as flows, are the stages of strategic planning, project organization, internal and client alignments, with the applicability of methodologies and agility so that all involved can understand and follow the developments of demands.

Technology is not just hype; it is essential for corporate market deliveries depending on each level of maturity and business needs. In this aspect, especially in times of artificial intelligence immersed in doubts and applicability tests, having partners such as legaltechs and service providers for understanding objectives is a great ally of efficiency.

The Legal Operations area is associated beyond the legal sector and into the financial sector, through contingency mapping and provisioning; people management, marketing and sales, products and services, customer and supplier management with expectation alignments, schedules, and customization in service, data reporting, and reports for auditing and teams, constant analytics through predictive, prescriptive, and diagnostic vehicles, by means of jurimetrics, platforms, and systems compiling data.

Applying data-driven is the great trend demonstration strategy, checking the collected information to understand scenarios, but assertively rethinking solutions for the present and future. It is through these analyses that it will be possible not only to track the direction in which the business is heading but also to review positions.

In this matter, technology is an ally for the integration and dynamically updatable construction of data, considering that data needs to make sense to those who will handle it.

In this scenario, we refer to the CLOC Core 12 mandala encompassing all pillars for structuring the operations area. We emphasize that it is not mandatory for sectors to have all competencies, considering that each business will have its specificities. However, they are guiding principles for initiation and growth. They are: Financial management; Firms and suppliers management; Technology; Practical operations; Project and program management; Information governance; Strategic planning; Service delivery models; Knowledge management; Business Intelligence; Optimization and organizational health; Training and development.

CLOC evolves as a global community, and we have CLOC Brazil, including operations, professionals with their regional profiles and individualities contributing with strategic and aggregating visions. A key word of legal operations is multidisciplinarity, as it is through the diversity of operators from legal, finance, administration, engineering, projects, technology, communication, agility, personal development, programmers, analysts, enthusiasts, and each one at their levels of development that we enrich knowledge and insights.

As an association and collaboration, we also have the ACC that arrived in Brazil with

representatives from internal legal departments, aiming to disseminate the guidelines for the performance of these professionals through corporate biases.

In this diversity, we must rethink how people with their multiple characteristics can add with their experiences, cultures, qualities, and areas for improvement. We can only execute the pillars of ESG (Environment, Social & Governance) if we review our teams and representation.

ESG cannot be considered a trend; it is an important issue for the economic and social scenario, as it involves rethinking flows that impact the environment and structuring governance biases so that initiatives are not only theoretical but also followed in practice.

Although ESG is a specific area in most companies, we see great relevance for Legal Operations, as it involves structuring project mapping, budget and legislation analyses, with total integration into the companies' reputational and business objectives. This is the beauty of the area: the interdisciplinary thoughts, with involvement from various sectors and professionals.

When talking about efficiency, we think of major deliveries, savings, structured teams, planned alignments, and achievements. But to achieve these steps, we must remember that the journey is built by walking. To achieve high results, the first step had to be taken, followed by new guidelines and monitoring. We are facing the PDCA cycle (PLAN–DO–CHECK–ACT, or also PLAN-DO-CHECK-ADJUST).

As mentioned in the introduction to the book "Legal Operations: How to Start", make the path as you go, always thinking about improving what we already have and valuing what has been built.

In this phase of analysis and in all Legal Ops scopes, we will be permeated by questions, thinking of answers that are guiding in this construction. How can we be more agile? What resources do we already have available? Are there other functionalities in our systems that we need to explore? Are my service



providers aligned with the business? Is our legal department seen as a cost or facilitator of goals? Do people understand our purposes? Are we working with data? What do they tell us? Here, the use of creativity and a good understanding of the area of operation and objectives to be achieved is clearly allowed.

Valuable lessons have been shared by the authors of the book "Creativity is behavior… innovation is a process," permeating through the stages of rethinking flows, performance, routine and repetitive activities, such as improving proposed solutions, with the central purpose of provocation and invitations to the legal department that we can do differently.

From the shared insights, we can conclude that to be more innovative and creative, we do not necessarily need technology. This will be a loyal ally of all procedures, assisting in rethinking execution methods, such as mindset change.

In times of artificial intelligence, our human differential comes from feeling. This ability is innate to humans, with sensitivity, delivery, and real awareness capacity. We cannot evolve without technologies, starting with more basic applications and improving with each aligned need. But we must always review our sensations and feelings to operationalize our work according to business risks.

"Legal Operations is an invitation to apply legal efficiency, reviewing management forms, flows, demands, teams, and clients".

Legal Operations is an invitation to apply legal efficiency, reviewing management forms, flows, demands, teams, and clients, always thinking about the answers to the questions: How can we do more with what we already have? What are the evolutions to do better? How can we be more efficient?

By compiling the answers to these questions, the range of opportunities will be open for project scaling and priorities, following the execution flow, partnerships, and improvements, with the efficiency that legal deserves and needs.




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REVIEWS
LEGALINDUSTRY
In this edition, Murray Armes and Karoly Olajos talk about the International Thermonuclear Experimental Reactor, considered one of the most ambitious projects in fusion energy in the world.
Gwénaelle Henri, partner and consulting director at the agency Eliott & Markus, explains how law firms can communicate a new service offer to their clients and build a service that meets the customers needs.

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Infrastructure & Projects

Provisional Decree (*Medida Provisória*) No. 1,212 and its Effects to the Brazilian Energy Sector

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On April 10, 2024, the Brazilian Federal Government enacted Provisional Decree No. 1,212/2024, which main purpose, as announced by the President and the Ministry of Mines and Energy, is to reduce energy tariffs applied to end consumers.

Pursuant to information provided by the Ministry of Mines and Energy, today, near 13% of the energy tariffs charged from end consumers is formed by sector charges (when adding the applicable taxes, the number reaches 39%).

As to achieve this specific goal regarding the reduction of energy tariffs, the Provisional Decree proposes to anticipate resources associated with *Centrais Elétricas Brasileiras* S.A. – ELETROBRAS' divestment process with the purpose of prepaying obligations undertaken by the energy sector during COVID pandemic and in view of a relevant water crisis that affected the country during the year of 2021.

In this regard, the Provisional Decree authorizes the Energy Trading Chamber (*Câmara de Comercialização de Energia Elétrica* – CCEE) – governmental entity responsible for the financial accountability and settlement of all power purchase and sale transactions in the country, among other activities – to negotiate and anticipate Energy Development Account – (*Conta de Desenvolvimento Energético* – CDE)'s receivables to prepay referred obligations.

This is not the first time CCEE is allocated with the responsibility of intermediating financial transactions in benefit of the Brazilian energy sector. It is important to record that, during the COVID pandemic, pursuant to regulation enacted at that time, CCEE hired a syndicated loan as to provide relief for energy utilities companies that were facing financial distress in view of the pandemic's effects. In its turn, a new sector charge installment was added to the energy bills charged from end consumers as to repay the referred loan. In fact, this is one of the obligations the Provisional Decree No. 1,212/2024 intends to prepay with the anticipation of Eletrobras' receivables.

By means of such proposal, the Federal Government expects to reduce between 3.5% to 5% the annual adjustments applied to energy tariffs.

In addition to the resource's securitization, the Provisional Decree extends the incentive applicable to renewable energy projects specifically in relation to wheeling tariffs/ connection tariffs, allowing the projects granted with such benefit, pursuant to Law No. 14,120/2021, to start their commercial operation within 36 months upon placement of a performance guarantee.

The question that remains is whether these initiatives will be sufficient to reduce energy tariffs charged from end consumers. The market understands that legal measures to reduce energy tariffs presented side effects in the past, as illustrated by Provisional Decree No. 579/2012, responsible for regulating the renewal of energy concessions.

Also, if on one hand, the Provisional Decree tries to eliminate certain sector charges installments associated with the COVID pandemic and 2021 water crisis, on the other hand, it extends subsidies applied to renewables projects and may create a new sector charge associated with the securitization transaction, which could be debatable.

Therefore, although the Government's intention to reduce sector charges and consequently energy tariffs should be considered admirable, the mechanics to do so must be designed not only by means of specific solutions, but considering medium or long-term sector planning.



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Practice Area News

Brazilian Government Creates Infrastructure Bonds and Presents New Regulation on Incentivized Bonds. On January 10, 2024, Law No. 14,801 came into force to create infrastructure bonds with tax benefits ("*Debêntures de Infraestrutura*", in Portuguese), and recently, on March 27, 2024, Decree No. 11,964 was published to regulate the criteria and conditions for framing and monitoring priority investment projects in the area of infrastructure or economic production intensive in research, development and innovation, for the purposes of issuing Law No. 12,431 Incentivized Bonds ("*Debêntures Incentivadas*", in Portuguese) and Law No. 14,801 Infrastructure Bonds.

These new infrastructure bonds will not replace the already well-known Incentivized Debentures; on the contrary, the same project will be able to use both types. However, the tax benefits provided for in Law No. 12,431 of 2011 and Law No. 14,801 of 2024 cannot be cumulated simultaneously for the same debenture.

One difference to be noted is the focus of the tax benefit on the issuer, not on the debenture holders, as is the case with Incentivized Debentures. This measure may lead infrastructure projects to reach new pockets, such as Pension Funds, as a result of the likelihood of seeing higher premiums with Infrastructure Debentures.

Also, Decree No. 11,964/2024 allowed **(i)** infrastructure bonds to be indexed to foreign currency and **(ii)** the issuance of mirror bonds abroad, which are backed by the bond issued in Brazil, allowing these bonds to reach a larger pool of foreign investors to long-term infrastructure projects in the country.

In the Firm

• **TozziniFreire's Practice Area Recognition.** Chambers Global and Chambers Brazil recommend TozziniFreire. Other international guides also recommend this practice such as The Legal 500, Latin Lawyer 250, IFLR 1000, and Leaders League. Our firm also won the Latin Finance Deal of the Year (2015) and The Latin American Lawyer Energy & Infrastructure Awards (2022/2023).

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Antitrust/Competition

Is a Revision of Resolution 33/2022 on the Horizon?

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During the 226th Judgment Session of the **CADE Tribunal**, Reporting Commissioner Victor Fernandes presented his vote in the context of **Administrative Proceeding for the Investigation of a Merger Act No. 08700.000641/2023-83**, drawing attention to an important discussion to be faced by CADE: the need to review the criteria for mandatory submission of transactions under CADE's merger control.

The case under investigation concerned a gun jumping violation. The parties did not submit the transaction for CADE's review because they believed that they did not meet the revenue threshold criteria under the terms of Resolution No. 33/2022, due to the fact that the parties did not consider the equity funds in their corporate structure to define their economic groups. However, contrary to the parties' initial assessment, CADE's General Superintendence suggested that, since both parties to the transaction had equity funds in their corporate structures whose shares in each of the companies were equal to or greater than 20%, they objectively should be deemed as part of the economic groups of these funds.

The Reporting Commissioner conducted a thorough analysis of CADE's precedents, discussing the interpretation of the provisions that stipulate the submission of transactions involving equity funds under Resolution No. 33/2022. It was found that CADE's position as regards the interpretation of Resolution No. 33/2022 concerning investment funds had not been consolidated until then. As a result, the authority ruled in favor of a gun jumping violation, but the parties were exceptionally excused from the imposition of a fine.

As expressed by the Commissioner, considering that more than ten years have passed since the issuance of the first Resolution establishing the current criteria for notification, "*it is imperative that CADE reconsiders the hypotheses of configuration of unitary management for the purposes of merger control, especially in the face of the emergence of corporate arrangements with dispersed and pulverized shareholdings*".

It is important to note that such discussion has been brought out not only due to the current greater complexity of corporate structures, since other challenges are also insurgent, such as the amounts stipulated as the revenue legal thresholds. The need to update these amounts set forth by CADE is not unanimous among the antitrust community, but there is a consensus on the importance of taking action given the increasingly high number of deals submitted to the authority each year. For instance, up to March of this year, as reported by the authority on its social media, CADE has already analyzed 126 mergers. Along with other suggested proposals, the creation of additional criteria linked to the value of the transaction and/or the acquired asset is also being discussed.

This issue has already been raised in the peer review conducted by the OECD for CADE's admission to its competition committee. OECD has recommended regular evaluation of the notification criteria to the authority, in order to avoid over-notification of cases. The debate is gaining momentum. And, with the recent highlight on the matter, it is expected that this will soon be on the authority's agenda.



Practice Area News

CADE Publishes a New Guide Regarding Trustees. On **April 2, CADE's General Superintendence** issued a "Guide for the use of Trustees". The guide aims to standardize and improve the use of trustees to monitor the parties' compliance with decisions or agreements with the Authority.

President Lula Indicates New Names to CADE. The office of President Luis Inácio Lula da Silva has indicated to the Senate the names to fill the positions of General Superintendent (the highest position in **CADE's General Superintendence**) and Chief Prosecutor (the highest position in **CADE's Specialized General Prosecutor's Office**) in CADE.

For the Superintendence, the president reappointed Alexandre Barreto, who already holds the position, and for the Prosecutor's Office, André Luís Macagnan, replacing Juliana Domingues, whose mandate ends on April 13.

Cooperatives Condemned for Gun Jumping by CADE. In an analysis of two transactions involving agricultural cooperatives (**Administrative Proceedings for the Investigation of a Merger Act No. 08700.009227/2022-59 and no. 08700.003705/2023-06**), **CADE's Tribunal** ordered the mandatory notification of the transactions and condemned the parties for the practice of gun jumping.

In both cases, the authority highlighted that cooperatives act commercially and should therefore be considered as parties to economic transactions. It is important to note that these transactions were not exactly acquisitions, however resulted in factual acquisitions of business, which led **CADE's Tribunal** to consider them as subject to merger control.

In the Firm

• Founded in 1970 by Thomas Felsberg, Felsberg Advogados is a full-service law firm with an innovative spirit that permeates its approach to meet diverse legal needs, from corporate giants to startups. Committed to social causes, Felsberg expanded its pro bono program in 2021, partnering with Instituto Pro Bono in 2022 to address justice access inequalities. Diversity is a core value, with nearly 50% female partners and 63% women in the office, overseen by the DiversiFeA committee. Internationally, the firm strengthens its practice through membership in Meritas and Legalink, offering lawyers fluent in multiple languages and well-versed in global legal environments.

FELSBERG
ADVOGADOS

Arbitration

Enforcement of Shareholder Rights: The Rise of Collective Arbitration

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The enforcement of shareholder rights through collective proceedings (either lawsuits or arbitration) is not just a passing trend; it marks a significant evolution in Brazil's legal landscape. It reflects the country's increasing sophistication of its corporate governance framework and underscores the legal system's commitment to protecting shareholders' interests.

Traditionally, Brazil's legal system has heavily focused on individual shareholders' rights, with limited avenues for collective proceedings. For instance, the Securities Class Action Law (Law No. 7.913/1989.) has only given rise to a handful of cases. However, in recent years, there has been a noticeable shift towards recognizing the importance of collective proceedings in safeguarding shareholders' interests and promoting corporate accountability. This change is driven by various factors, including attempts to amend the legislation, judicial decisions, and heightened shareholders' awareness regarding the need for effective mechanisms to combat corporate wrongdoing.

The Brazilian Congress is currently deliberating Bill 2925/2023 ("Bill"), a crucial piece of legislation that could reshape the landscape of shareholder collective proceedings. The bill proposes amendments to Brazilian securities regulations, with provisions that could significantly broaden the scope and accessibility of such proceedings. These provisions include holding administrators and controlling shareholders accountable for breaches of securities laws and regulations, and empowering certain shareholders to bring collective proceedings on behalf of all affected shareholders. The Bill also introduces clear criteria for shareholder standing in bringing, such as representing a minimum percentage of shares (5%) or possessing a stake worth at least BRL 50 million.

The bill also regulates arbitration. In fact, resorting to arbitration is mandatory for public companies listed in the top segments of the Brazilian stock exchange. The Bill provides that the arbitration must be public and allows intervention by other shareholders as co-participants.

Upon bringing a collective lawsuit or arbitration, the plaintiff must notify the issuer, compelling them to disclose the matter to the market. Furthermore, eligible harmed shareholders may join the case within thirty days of the dispute's disclosure to the market. This provision grants affected shareholders an opportunity to actively engage in the dispute, safeguarding their interests and enhancing the effectiveness of collective proceedings.

Additionally, the Bill grants government authorities the discretion to establish limits on the publicity of arbitration, including circumstances where confidentiality may be permitted. This inclusion emphasizes the importance of transparency and public oversight, while allowing flexibility for certain aspects of arbitration to remain confidential.

In anticipation of the bill, the Center for Arbitration and Mediation of the Brazil-Canada Chamber of Commerce ("CAM-CCBC") issued new and special corporate disputes arbitration rules. These rules provide that when an arbitration could impact a legal entity and its shareholders, CAM-CCBC may notify the affected third parties, inviting them to participate in the arbitration proceedings. After being notified, these third parties are bound by the outcomes of decisions rendered throughout the arbitral proceedings, regardless of their active involvement.

While minority shareholders – notably the lawyers who typically represent the interests of such shareholders – have welcomed these proposals, it remains uncertain how the Brazilian capital markets will be affected by the proposals. Publicly traded companies have expressed concerns about a potential rise in collective proceedings, which in turn could elevate the risks associated with going public.



Practice Area News

São Paulo Appellate Court Confirms Brazil as an Arbitration Friendly Jurisdiction. A comprehensive study carried out by the 'Arbitration Observatory' in collaboration with the CBAr (Brazilian Arbitration Committee) and ABJ (Brazilian Association of Jurimetrics) delved into **São Paulo Appellate Court** rulings from March 2018 to November 2022. The findings unveiled a remarkably low 1.5% probability of arbitration awards being overturned by the courts. This highlights the consitent tendency of Brazilian courts to upholding arbitration rulings.

ANTT's New Regulation on Dispute Boards and Arbitration. The **National Land Transport Agency (ANTT)** has recently approved the regulation on dispute boards and arbitration for highway and railway concession contracts in Brazil (**Resolution 6.040/2024**). Adopting dispute boards and arbitration represents a significant step toward efficient conflict resolution in Brazil's transportation infrastructure projects, curtailing delays and mitigating the burden of excessive litigation.

Brazilian Federal Government Favors Arbitration for High-Stake Contractual Disputes. Since 2006, the Brazilian **Federal Government** has participated in 36 arbitration proceedings involving substantial amounts. This figure is expected to increase as, according to a 2022 survey conducted by the **General Attorney's Office** (Advocacia Geral da União), the Federal Government has entered into 216 contracts containing arbitration agreements.

Superior Court of Justice Decides on Conflicts of Jurisdiction Between Arbitral Tribunals. The **Superior Court of Justice** (STJ) has asserted its jurisdiction to resolve jurisdictional conflicts involving arbitral tribunals. This decision is grounded in the **Brazilian Constitution**, which entrusts the STJ with the authority to adjudicate disputes between any tribunals. The STJ reasoning is that arbitral tribunals, though distinct from the Judiciary, are encompassed within the constitutional reference to "any tribunals".

In the Firm

- **Lefosse Expands Operations in Brasília.** Strategically located in the federal capital, the new office aims to strengthen the firm's foothold at the highest courts, government bodies, entities, and regulatory agencies in the country.

- **Lefosse was Awarded "Law Firm of the Year" by Legal 500.** Lefosse was awarded "Law Firm of the Year" in Brazil by The Legal 500 Awards 2024. This accolade reflects our strategic partnership and multidisciplinary approach with clients.

Lefosse

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Banking & Finance

MATTOS FILHO

Interest Rates for Credit Cards: A Settled Debate?



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In October 2023, the Brazilian government passed Law No. 14,690 in response to persistent demands for lower credit card interest rates, particularly for the 30-day revolving credit referred to as "*crédito rotativo*". This legislation mandates a 90-day period for credit card issuers and payment system participants to propose self-regulation to the Brazilian National Monetary Council (CMN), setting limits for interest rates and financial charges on revolving credit and installment payments for credit card bills. In the event of no industry consensus, charges would be capped at the debt's original amount as per Law 14,690.

Two months on, with no agreement among stakeholders, the CMN and the Central Bank of Brazil (BCB) issued regulations to enforce Law 14,690. These were proposed to govern the interest rates applicable to revolving and installment credit operations and to address financial over-indebtedness among Brazilian consumers, particularly arising from credit card debt.

The market generally views these measures as positive, as they are designed to foster responsible lending, improve credit market transparency, and promote financial literacy. However, their effectiveness in reducing interest rates and benefiting consumers remains uncertain.

Brazil's credit card market has features that are very particular. For instance, settlement between issuers, acquirers and merchants can take up to 30 days and, as a rule, merchants are the ones handling the cash flow mismatch (making receivables financing transactions very popular in the industry). Additionally, the legacy of decades of high inflation has made installment payments essential for enhancing low-income consumers' purchasing power.

Given this context, risks and returns are not always evenly distributed, and industry players have valid reasons to defend their current market practices. An artificial legal cap on credit cards financing may not fully address the complex factors influencing the current rates, necessitating a more nuanced solution. Industry participants, with their comprehensive understanding, are best positioned to develop alternatives. However, this requires a collaborative approach, with issuers and acquirers seeking common ground and prioritizing the interests of their clients—consumers and merchants.

Fortunately, Law 14,690 provides an annual opportunity to revisit this issue, offering the industry another chance to propose solutions. It is hoped they will capitalize on this opportunity effectively.



Practice Area News

Brazil's Central Bank Gathers Input on Virtual Asset Regulation. On **December 14, 2023**, the **Brazilian Central Bank (BCB)** opened a public consultation to gather contributions and information to develop regulations for virtual assets – as determined by Brazil's Virtual Asset Legal Framework **(Law No. 14,478/2022)**. Contributions were accepted up to January 31, 2024 and further public consultation is expected in light of received contributions. Read more **HERE**.

Automatic Pix: New Product Set to Allow for Recurring Instant Payments in Brazil. On **December 7, 2023**, the **Brazilian Central Bank (BCB)** issued **BCB Resolution No. 360**, amending the regulations for Brazil's 'Pix' instant wire transfer system. The resolution introduces operational rules for a new feature of the instant payment system known as Automatic Pix, which allows for automatic recurring payments via Pix, providing increased convenience and reduced collection costs for consumers and merchants. New rules will take effect as of **October 1, 2024**. Read more **HERE**.

Brazil Contemplates New Framework for S1 Financial Institutions' Recovery and Resolution. On **January 24, 2024**, the **Brazilian Central Bank (BCB)** opened a public consultation to gather input on creating a new regulatory framework concerning the recovery and resolution of financial institutions classified under Segment 1 (S1). New regulations are anticipated to be issued later this year. Read more **HERE**.

In the Firm

• **Record-Breaker.** Mattos Filho took out Brazil Law Firm of the Year for the seventh time at the Chambers Brazil Awards 2024 – a record number in this category. Read more **HERE**.

Chambers AND PARTNERS

• **Promotions.** Seven lawyers have been promoted to partnership, to boost strategic areas and business development at Mattos Filho, whose partner count now rises to 144. Meet our new partners **HERE**.



Claim Management

Construction Expertise: Why does the Quantification of Damages for Productivity Loss Vary between the Measured Mile and the Earned Value?

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One of the issues I have encountered in construction contract disputes is the quantification of alleged Productivity Loss claimed by contractors, whose substantiation in arbitration is not a straightforward matter to resolve.

In addition to the inherent difficulties in collecting and processing the necessary data for the accuracy of such loss, there are **methodological differences** employed by technical experts that further complicate the matter for the understanding of adjudicators and arbitrators.

In broad terms, Productivity Loss consists of reduced efficiency caused by a disruption, obstacle, or interruption to the normal working methods of a Contractor.

Ultimately, it is a phenomenon that affects the Contractor's resources, which, affected by various causes, become less efficient, implying higher execution costs to carry out the project.

In response to this, **there are different methodological approaches to quantify the damage suffered by the Contractor and that will be sought to be compensated in judicial or arbitral proceedings**. The two methods most widely accepted by the courts are the **Measured Mile** method and the **Earned Value** method.

The former uses the productivity achieved by the Contractor in a period or sector not impacted (by the alleged events) as a reference point to determine the inefficiencies suffered in the impacted periods or sectors. The latter, on the other hand, determines the difference between the actual man-hours (expended) and the estimated man-hours (earned).

For some, the damage quantified by the **Earned Value** method would constitute, for all technical and legal purposes, the maximum limit of the damages to which the Contractor could be entitled to be compensated. This is because there would be no damages beyond that difference, thus acting as an insurmountable limit.

In contrast, such a threshold does not limit the quantification of damages under the **Measured Mile** method, whose approach is different; by identifying a period or sector not impacted, what is obtained is the potential efficiency that the contractor could have achieved - throughout the project - in a scenario of absence of impacts.

In some cases, this efficiency may be better than planned, and therefore, the damage quantified by the Measured Mile method may exceed the limit set by the Earned Value.

Consequently, the Measured Mile appears to be a more comprehensive approach, as it not only reimburses the Contractor for the additional resources expended over the planned (or earned) ones but also compensates for the efficiency gains (above the bid) that the contractor could have achieved through its own management.



Practice Area News

Will Litigation Funding Be a Determining Factor in Deciding whether to Enter into Arbitration in 2024? An interesting investigation into legal sector financing was recently conducted by the English fund **Burford Capital**, where three major themes were surveyed: the costs companies face in litigation; the economic impact of pending lawsuits and unpaid awards, and diversity in the leadership of international litigation.

In particular, the financial analysis of commercial litigation (regarding the optimization of the value of pending claims, judgments, and unpaid awards in legal budgets) revealed that the solution is divided between attorneys who opt to implement cost-saving measures to mitigate economic impact, and others who prefer cost shifting downwards.

While only 2% of attorneys claim to have recovered the full value of their judgments and awards in the last five years, 61% stated that their opponents voluntarily pay their pending judgments and awards less than half of the time, and that uncertain or difficult conditions affect their likelihood of considering legal financing solutions.

On the other hand, 52% say they will likely seek cost-sharing solutions with attorneys or legal financing providers to mitigate the impact of the current economic climate. Meanwhile, eight out of ten consider the ability to file claims and recoveries that will add value to the business as an important benefit of commercial legal financing. Lastly, 57% of senior attorneys state that they are likely to use funded enforcement and recovery services for a pending judgment or award.

The research concludes that legal financing is an important part of the decision-making process when considering potential litigation in the future.

In the Firm

• **Director of WAGEMANN Consulting, Fernando Landeros, Presents at the most Important Annual Arbitration Congress in Central America.** Just a few weeks ago, the director of WAGEMANN Consulting, Fernando Landeros, was invited by the Chamber of Commerce of Costa Rica to speak at the XV International Arbitration Congress 2024.

During his presentation, he addressed the three elements that define an effective expertise: the timing of hiring the expert; the treatment of strengths and weaknesses, and the ability to explain complex ideas in a simple manner.



Commercial Litigation

CPC Now Permits the Defendant to Execute Specific Performance Forestalling its Conversion into Damages



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In March 2024, there was a discreet but significant change in the Brazilian Code of Civil Procedure ("BCCP"), with the enactment of Law No. 14,883/2024 and the addition of a unique paragraph to Article 499. This effectively brought about a considerable alteration in the rules for the fulfillment of obligations to give and to do in Brazil, which are vital for various contracts, including those for construction by contract.

Previously, Brazilian procedural law stipulated that the conversion of the obligation to give or do into damages depended on the plaintiff's request or the realization that its fulfillment had become impossible. Therefore, it was mainly up to the party that suffered non-compliance to determine when their rights to receive the goods or have something done would be transformed into monetary compensation.

However, the new wording of Article 499 of the CPC changed this dynamic, including an exception to the plaintiff's right to request the conversion of the obligations to give and do into money. Before converting them into compensation, "the judge will firstly grant the possibility for the fulfillment of the specific performance" by the defendant.

As a result, in practice, it will be up to the defendant to choose whether to fulfill the obligation as agreed or to prefer to pay compensation for its non-compliance.

Nonetheless, the CPC has restricted this possibility to cases of receipt of goods with hidden defects in commutative contracts (Article 441, CC), construction contracts (Article 618), insurance contracts (Article 757, CC), and those involving subsidiary or joint liability. Therefore, not every debtor of an obligation to give or do will enjoy this right, with the exception being applicable only to the contractual modalities and obligations described by law.

It is worth remembering that the bill (PL 2,812/2023) which proposed this legislative change stated that, with its approval, the CPC would ensure that the initial will of the parties upon the contract's formation would be respected, guaranteeing also that the execution of the contract occurred in a manner less detrimental to the debtor.

Furthermore, the new wording of Article 499, unique paragraph, of the CPC would serve not only as a procedural remedy for the excess of lawsuits but also to ensure good faith in contracts. The non-fulfillment of the obligation may stem from adverse situations over which the debtor might not have full control.

It remains to be seen if these intentions will indeed be verified with the implementation of this law. In addition, it is now recommended that the parties be aware of this new procedural dynamic when contracting obligations to give or to do, since the creditor has lost their exclusive right to convert these types of obligations into money.

In other words, even if the creditor no longer requests to receive the goods or have the service rendered after the debtor's non-compliance, the conversion into money will depend on the defendant's agreement, who may simply opt for the fulfillment of the obligation as originally agreed.



Practice Area News

ANTT Regulates the Use of Dispute Boards. The National Land Transportation Agency (Agência Nacional de Transportes Terrestres – (ANTT) published, on April 5, 2024, Resolution ANTT No. 6,040/2024, introducing Dispute Boards as a mechanism to prevent and resolve disputes between the agency and regulated agents in road and railway concession contracts. The Dispute Board is a dispute resolution mechanism characterized by delegating authority to a group of technically qualified professionals to resolve disputes of an essentially technical nature involving pecuniary rights available throughout the contract execution. Unlike arbitration, the decisions of the mechanism are not final and can be challenged before the Judiciary or before the Arbitral Tribunal.

Companies will have Until May 30 to Register their Electronic Domicile. The *Conselho Nacional de Justiça* (CNJ), through Resolution No. 46, has mandated that Brazilian companies register in the Electronic Domicile ("*Domicílio Eletrônico*") system by May 30, 2024. This system will change the way in which corporate summonses and notifications are issued within the country, transitioning to an entirely electronic format, facilitated through this system.

In the Firm

• BMA won recognition in Chambers Brazil, which lists the country's main law firms with litigation practices. BMA has been ranked in 8 practice areas, with 23 practitioners named in the guide. See more **HERE**.

• BMA won as Competition/Antitrust Law Firm of the Year at the Chambers Awards ceremony held in São Paulo. See more **HERE**.

BMA
ADVOGADOS

Corporate Governance & Investigations

Publicly-held Companies Upcoming Deliverables: Reference Form and Governance Report

The first six months following the end of the fiscal year (for the majority of the companies, the period commencing in January), are considered challenging for publicly-held companies in terms of work volume and flow, given all actions required for preparation and disclosure of the annual financial statements, due by the end of March, the preparatory measures for the annual shareholders' meetings to be held by April 30, followed by the annual update and review of the Reference Form (*Formulário de Referência*) and the Governance Report (*informe sobre o Código Brasileiro de Governança Corporativa*), due by May 31 and July 31, respectively.

It is worth remembering that on January 2, 2023, it became effective the new format of the Reference Form, resulting from a regulation reform performed by the Brazilian Securities Exchange Commission (*Comissão de Valores Mobiliários – CVM*) aiming, among others, at enhancing the informational regime of the publicly-held companies by ensuring a greater visibility to ESG practices, as well as implementing a more logical structure and content to facilitate the fulfilment of the form by the companies.

However, our practice assisting several companies in complying with such obligation showed that a significant number of them continues to face difficulties, either due to the – still present – challenge of coordinating the workflow of several areas involved in the process and preparing an extensive document with consistent and compatible information, as well as to the new sort of information required (mostly ESG related).

As per CVM's analysis (please refer to the 2024 Annual Letter issued by the Superintendency of Relations with Companies – *Ofício Circular Annual 2024 da Superintendência de Relações com Empresas*), the number of incorrect or incomplete information presented by the companies within the ESG related items superseded the entity expectations. However, for now the entity decided not to question all companies, but rather to implement systemic locks and warnings to alert the companies about the inadequate fulfillment. The adjustments should be implemented up to the limit date to submit the 2024 Reference Form and enable the improvement of the data provided by the companies.

After the submission of the 2024 Reference Form, we expect to see a more active approach of CVM in monitoring, inspecting ad potentially questioning the companies that fail to adequately fulfill the applicable items of the form.

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Following the Reference Form submission, it will be time for the category 'A' companies to focus on preparing the Governance Report. The companies shall inform whether they adopt the relevant governance practices recommended by the Brazilian Code of Corporate Governance (*Código Brasileiro de Governança Corporativa*) considered as part of the report and provide a proper explanation whenever the answer is negative (i.e., if it does not follow a certain recommended practice).

Our experience also shows an increasing concern of the companies in "checking-in the boxes" to evidence and reinforce that they fit a high standard governance environment. However, it is important that the companies abstain from providing untrue answers by using generic and subjective wording, exclusively to avoid assuming they do not adopt a certain practice. Regardless of the document or communication channel being used, all publicly-held companies are under the obligation to always provide true, complete, consistent and not-leading to error information and the companies' management may be held accountable for not complying with such duty.

After the storm of complying with all applicable obligations due in the first semester, the companies may take advantage of the relative calmness of the second semester to focus on in-house projects and develop the agendas that may lead to an improvement of their governance, social and environment structures and even to enable that the procedures of the next year first semester become smoother and easier to comply with.



Practice Area News

ISSB Financial Report. On January 8, 2024, CVM issued the Letter No. 1/2024, confirming the availability of a new category in its electronic system Empresas.Net to enable the submission of the report of financial information related to sustainability, based on the international standard issued by the International Sustainability Standards Board – ISSB ("ISSB Financial Report").

The measure aims at enabling the implementation of the provisions of CVM Resolution 193, enacted on October 20, 2023, by which the companies were given the option to voluntarily prepare the ISSB Financial Report as from the fiscal years commencing on or after January 1, 2024.

This initiative is part of the CVM Sustainable Finances Action Plan for 2023-2024 and evidences the commitment of the entity with the development of sustainable finances and its contribution to reach UN Sustainable Development Goals.

The companies choosing to anticipate the disclosure shall continue to prepare and disclose the ISSB Financial Report for the remaining periods during which its adoption is voluntary.

The preparation and disclosure of the ISSB Financial Report will become mandatory for publicly-held companies as from the fiscal years commencing on or after January 1, 2026.

CVM Orientation Annual Letter. On March 7, 2024, CVM Superintendency of Relations with Companies (*Superintendência de Relações com Empresas da* CVM) issued its Annual Letter (*Oficio Circular Annual*) with general orientations on the procedures to be observed and followed by publicly-held companies.

Among other updates, the Annual Letter included new orientations on how the companies shall report corporate claims, file *clawback policies* (if any), the procedures for replacement of members of the board of directors in case of vacancy and the exemption of the companies' obligation to disclose a specific announcement to shareholders confirming the date on which the general shareholders' meeting will occur.

In the Firm

• **Análise Advocacia Mulher 2024.** Six of our women partners were acknowledged by *Análise Editorial* as part of a group of the most admired lawyers in Brazil. The research also recommended our partners Alessandra Zequi and Daphne Minerbo as corporate practitioners.

• **The Legal 500 Brazil Awards 2024.** Stocche Forbes Advogados was a finalist in four categories and had three lawyers in individual categories. Our partner Luciana Stracieri was the winner in the Next Generation Partner category.

STOCCHE FORBES

Environment

Chemical Recycling as a Tool to Boost EPR Systems

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One of the main challenges of recycling is the demonstration that the material resulted from its process will be safe to human use, guaranteeing environmental and sanitary safeties. There are several technical matters that need to be addressed while developing and applying technologies in this field.

One of the tools industry has developed is the Chemical Recycling, which works as an important strategy to reduce plastic pollution and allow companies to comply with Brazilian legislations regarding solid waste management and circular economy. Much jurisdiction have authorized its use for sanitary purposes, but Brazil was more resistant to the idea, but it changed recently. A great victory of the plastic industry that has been investing in new ways to reinvent its chain.

Brazilian sanitary regulations used to restrict, in a quite categorical way, recycled plastic for food packages use (Health Surveillance Agency Resolution – ANVISA RDC No. 56/2012). However, with the technological improvements, the process of chemical recycling allows the recycled plastic composition to stay the same as its previous form. The monomers resulting from the chemical recycling process are chemically identical to the monomers obtained from fossil naphtha, in a way that it is not possible to differentiate which of the monomers was used to form the polymer.

Based on technologic evidences and demonstrations of the plastic industry, the Brazilian Health Surveillance Agency (*Agência Nacional da Vigilância Sanitária* – ANVISA) has recently altered its position to allow a new understanding of the use of plastic packaging from chemical recycling by the food industry.

The 6th edition of ANVISA's Questions and Answers regarding food contact materials clarifies that if the chemical recycling of plastic products follows complete depolymerization processes obtaining monomers indistinguishable from the original monomers, with a purity suitable for the manufacture of food contact materials and in accordance with current regulations applicable to plastic materials, the recycling plastic can be used for that purpose without the need for a specific application or authorization. This understanding is aligned with EU Resolution 2,011/10.

This new position is a breakthrough in terms of circular economy and allows new possibilities for companies investing in the consolidation of a recycling chain. ANVISA's decision is very welcome because it also puts Brazil in line with jurisdictions that have been using chemical recycling for several years. In an international political context where a global plastic agreement is under discussion, ANVISA's understanding also directs Brazil position, calling the attention to the urgent need of investments to boost the implementation of EPR schemes and strength policies in place in developing countries.



Practice Area News

BNDES Extends Veto to Clients with Environmental Embargoes in Force. The **BNDES (National Bank for Economic and Social Development)** has informed financial institutions of the extension of the prohibition on contracting rural credit operations and the suspension of the release of funds to clients with current embargoes registered in IBAMA's Register of Environmental Charges and Embargoes and who have not taken effective measures to regularize them. **SUP/ADIG Circular No. 76/2023-BNDES** included this prohibition in **SUP/AIDIG Circular No. 13/2022-BNDES**, which sets out guidelines and general orientations for Accredited Financial Institutions. The Circular was published on **December 11, 2023**, and came into effect on **March 10, 2024**. See more **HERE**.

Minas Gerais Government Regulates Take-back Requirement Systems in the State. On **February 9, 2024**, the **Minas Gerais State Secretariat for the Environment and Sustainable Development ("SEMAD" in Portuguese)** published **Copam Normative Decision No. 249/2024**, which defined the guidelines for implementing, operating and monitoring the take-back requirement systems in the state. This Normative Decision made it mandatory for manufacturers, importers, distributors and traders to structure and implement take-back obligations for the products it specifies in the state of Minas Gerais. The new regulation foresees take-back systems for the following products: **(i)** household electronics and their packaging; **(ii)** batteries; **(iii)** automotive lead-acid batteries; **(iv)** fluorescent, sodium vapor, mercury vapor and mixed light bulbs; **(v)** lubricating oil packaging; **(vi)** packaging in general; **(vii)** household medicines for human use and their packaging; and **(viii)** waste tires. See more **HERE**.

In the Firm

• **Trench Rossi Watanabe's Practice Area Recognition in Chambers Global 2024.** According to Chambers & Partners review, "Trench Rossi Watanabe handles highly sophisticated matters in the field of ESG, advising clients on the establishment and management of social and sustainable policies, compliance with standards and regulations, and matters of sustainable finance, among others."

Trench Rossi Watanabe.

Real Estate and Merger Control: Insights and Perspectives in Brazil

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In February 2024, the Brazilian Administrative Council for Economic Defense ("CADE") issued its 2023 Yearbook, presenting its main activities from last year. On merger control, an interesting feature of CADE's Yearbook is the upsurge of notified real estate-related deals. Indeed, in 2023 the sector was top-2 on Brazilian pre-merger control filings.

According to the Brazilian Competition Law ("BLC"), provided that the relevant turnover thresholds are met, acquisitions of assets (both tangible and intangible) may require governmental approval prior to closing. However, questions on when a deal falls into BCL's concept of "acquisition of assets", triggering Brazilian pre-merger control rules, often arise due to the lack of specific guidelines on the matter, especially when dealing with real estate assets.

Against this background, CADE has dealt with a variety of real estate deals -- including the formation of special purpose entities for the development of real estate ventures, purchase/sale of properties for real estate development, acquisition of equity stakes in real estate holding companies, and sale and leaseback transactions --, involving the most different categories of properties (e.g., land, commercial buildings, quarries, warehouses, planted forests), and, although CADE has been making a case-by-case assessment, recent precedents have provided insightful guidelines on the matter.

Indeed, according to CADE's recent case law, merger control rules are triggered whenever the acquired asset **(i)** is **essential** to the buyers' economic activity; or **(ii)** represents an **increase in the buyers' production capacity** post-transaction[1].

In 2023, CADE applied this understanding to real estate deals when assessing the acquisition of a non-operational land by a real estate developer from an automaker. In that opportunity, CADE ruled that, since the buyer was a real estate developer and it planned to use the acquired land to develop real estate projects, the transaction was subject to pre-merger control.

CADE also highlighted that real estate assets are inputs for the real estate development business; thus, even non-operational properties may be "essential". This understanding was also applied to transactions involving the acquisition of non-operating plants for the construction of logistics facilities that could be used to support the buyer's main activities (e.g., storage of the products to be sold)[2]. In another recent decision, CADE found that an acquisition, by a real estate developer, of stake in an inoperative special purpose entity that owned a single property for a specific real estate development project should have been notified to CADE, as the acquired asset related to the buyers' core business[3]. The parties agreed to pay approx. R$ 800,000 to settle the *gun jumping* probe.

Therefore, absent a bright-line test that allow parties to readily determine whether a transaction is subject to mandatory notification and whilst CADE consolidates its case law, dealmakers must remain vigilant to the importance of antitrust pre-merger assessment. Consequences of missteps can involve significant *gun jumping* fines[4] and delay the deal's closing.

1. Merger Control Review No. 08700.001514/2023-00 (Companhia Siderúrgica Nacional and São José Desenvolvimento Imobiliário 121 Ltda.).
2. Merger Control Review No. 08700.001513/2023-57 (Companhia Siderúrgica Nacional and São José Desenvolvimento Imobiliário 121 Ltda).
3. Administrative Proceeding to Investigate the Merger No. 08700.003971/2019-44 (Parties: Cyrela Brazil Realty S.A. Empreendimentos e Participações and Precon Engenharia S.A.).
4. Gun jumping fines could range from R$ 60,000 to R$ 60,000,000.



Practice Area News

CADE Clarifies Merger Notification Rules for Investment Funds in Brazil. On March 24, CADE's Tribunal acknowledged a gun-jumping infringement by two tech companies but decided not to impose fines since previous rulings on how to calculate the revenue threshold of economic groups involving investment funds for notification purposes have been inconsistent.

The Tribunal clarified that only where the investment fund is directly involved in the deal the revenue calculation should consider the economic group of each investor who holds directly or indirectly at least 50% of the fund's shares, individually or through any type of investor agreement, in addition to the fund itself, its controlled entities and the ones in which it holds directly or indirectly at least 20% of the voting or share capital.

According to the Reporting Commissioner Victor Fernandes, such rules had been wrongly applied in deals where investment funds were indirectly involved, such as holding stakes in the directly involved party.

Cade Orders Mandatory Notification of an Incorporation Between Cooperatives. CADE's Tribunal found that two agribusiness cooperatives had 'jumped the gun' by closing a 2022 deal prior approval and ordered its notification. Gun-jumping fines will also be applied after the deal review.

The Reporting Commissioner Diogo Thompson rejected the parties' argument that cooperatives are not subject to merger control laws and clarified that, despite their legal nature, cooperatives act commercially and, thus, could be considered as part of business transactions.

CADE Publishes Guidelines on Trustees' Activities. On April 24, CADE published Trustee Guidelines that provides guidance on the activities of monitoring, selling and operational trustees as regards antitrust matters, covering both merger control and anticompetitive conducts proceedings.

As regards merger control, a trustee (independent third party) may be appointed to monitor and ensure compliance with remedies or conditions imposed as a part of the merger clearance process.

In the Firm

- **Cascione Recognized by Top Industry Rankings.** Cascione is a full solution law firm that offers superior legal services in all areas of Corporate Law. We are recommended by The Legal 500, Leaders League, Chambers, among others.

- **Cascione's Competition and Antitrust Team.** Recognized by legal rankings such as The Legal 500 and Leaders League, Cascione's team provides multidimensional and business-centric advice to high-profile companies in complex matters on merger control, investigations, and compliance.

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Mining

Incentivized Debentures may Foster Investments in Brazilian Mining Sector





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In March 2024, the Federal Government published Decree No. 11,964/2024, establishing new criteria and conditions for classification of investment projects considered priorities in the sectors of infrastructure or intensive economic production in research, development and innovation, for purposes of issuance of **(i)** incentivized debentures, real estate receivables certificates and quotas of investment funds in receivables credit rights provided for in Article 2 of Law No. 12,431/2011, or **(ii)** infrastructure debentures provided for in Law No. 14,801/2024. Such debentures are basically debt instruments which provide to the investor and the issuing company tax incentives/advantages, as a way of stimulating the financing of infrastructures considered strategic for the country.

Expanded Priority Sectors: A significant change implemented by the Decree is the expansion of the sectors considered priorities for investment and, therefore, eligible for the issuance of the debentures. In addition to traditional sectors such as logistics, transportation, renewable energy and basic sanitation, the Decree now includes the mining sector, particularly projects involving processing of strategic minerals for the energy transition.

Requirements: The issuance of securities with tax benefits is subject to specific requirements aiming to ensure transparency and integrity in priority projects. These requirements range from considerations about legal structure to the deductibility of income tax, encouraging investment by issuers.

Limitations, Monitoring and Restrictions: The Decree sets limits on the amounts raised through the issuance of the securities (limited to the amount of project capital expenditure) and establishes a rigorous monitoring procedure to be followed by the issuing company. The norm also imposes restrictions on the acquisition of debentures by persons affiliated with the issuer and prohibits the accumulation of tax benefits, ensuring effectiveness and compliance to the priority projects.

Promotion of Environmental and Social Benefits: Projects which promote relevant environmental or social benefits will receive priority treatment in the assessment of the request for registration of the public offering by the Securities and Exchange Commission (CVM) and in the procedures for prior approval of the projects by the sectoral Ministries. This focus on sustainability and social responsibility reflects the Government's commitment to promoting balanced and sustainable development.

Transition Rules: Tax benefits for incentivized debentures issued based on the previous norm will be maintained. Projects already approved by the sectoral Ministries which do not meet the criteria and conditions of the new Decree may be subject to new incentivized debentures to be issued within 90 days (until June 24, 2024).

Decree No. 11,964/2024 represents a significant step forward in the regulation of priority investment projects in Brazil. Its effective implementation will be crucial to boosting economic and social development in the country, while ensuring environmental protection and the well-being of the population. This decree is part of a series of governmental initiatives to promote investments in strategic sectors, as demonstrated by the recent announcement by the National Bank for Economic and Social Development (BNDES) regarding the creation of an investment fund to support mining projects.



Practice Area News

BNDES and MME launch Strategic Minerals FIP. During the PDAC (the world's most relevant mining convention, which takes place in Canada), the **Brazilian Development Bank (BNDES)** and the **Ministry of Mines and Energy (MME)** launched the new Brazilian Investment Fund in Participations ("FIP") focused on Strategic Minerals. The resources may be used by junior and medium-sized companies that fit the purposes of the FIP, which will be managed by a company selected through public call. The FIP is expected to mobilize up to **R$1 billion (approx. US$200 million)**, with a contribution of up to R$250 million (approx. US$50 million) from BNDES.

Update of the Regulatory Standard NR-22. The **Ministry of Labor and Employment (MTE)** published Ordinance No. 225/2024, which changes the terms of **Regulatory Standard NR-22** (which regulates the protection of workers in the mining sector) and intends to make the restrictions to the existence of structures downstream of TSFs even tougher. As of the entry into force of the new ordinance (scheduled for **May 28, 2024**, with possible extension), the prohibition of structures in areas downstream of TSFs would be expanded to cover "any facilities of the company". In addition, the new ordinance also prohibits the construction, maintenance and operation of facilities within the safety perimeter of waste piles.

Minas Gerais State Regulates Environmental Dam Collateral. On December 30, 2023, the State of Minas Gerais regulated the environmental collateral outlined in the **State Dam Safety Policy (Law No. 23,291/2019).** The environmental collateral aims to ensure socio-environmental recovery in the event of a disaster and for the deactivation of the dam, being a requirement for environmental licensing of dams in the state. Non-compliance with the regulations in the State Decree may subject TSF owner to administrative sanctions, including the immediate suspension of environmental licenses.

ANM 8th Round of Tender of Areas. On January 10, 2024, the ANM published **Ordinance No. 1,504/2023**, which establishes the **8th Round of Tender of Areas** for mineral exploration and exploitation. This procedure aims to select those interested in developing mining projects which had already been granted to third parties, but for any reason returned to the ANM's portfolio. On April 17, 2024, ANM held a public hearing to receive contributions to the draft notice, which will probably be announced soon, along with the respective schedule of activities.

In the Firm

• Our team is Chambers Band 1.

The excellence of Veirano's mining team was recognized by the **Chambers Global 2024** as **Band 1**, with individual recognition to our partner Pedro Garcia (leading lawyer). See more **HERE**.

Chambers RANKED IN Global 2024

• OAB/RJ Mining Law Commission.

Veirano is leading the creation of the Mining Law Commission of the **Rio de Janeiro Bar Association (OAB/RJ)**, which will be officially launched on **May 14, 2024**, during an event that will discuss the challenges and opportunities for the mineral sector in the State.

OABRJ

Real Estate

Restrictions on Acquisition and Lease of Brazilian Farmlands by Foreigners

CAMPOS MELLO ADVOGADOS
IN COOPERATION WITH DLA PIPER



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The prominence of farming in the Brazilian economy is notorious. It accounts for approximately 6% of Brazil's GDP and is one of the world's largest grain and meat exporters, which arouses the interest of foreigners in investing in this industry.

However, the Brazilian legal system, in particular Federal Law No. 5.709/1971, Decree No. 74.965/1974 and the Opinion of the Federal Attorney General's Office published in 2010 ("AGU's Opinion"), establish several restrictions on the acquisition and/or lease of farmlands by foreign persons and/or Brazilian legal entities controlled by foreigners, in addition to the need to obtain prior authorization from Brazilian National Institute for Colonization and Agrarian Reform – INCRA (and/or from Brazilian Congress, as the case may be), and other public bodies in order to sign the competent contracts.

In a nutshell, the main restrictions imposed are:

- Destination of the properties: foreigners may only lease or acquire farmlands for the implementation of agricultural, livestock, industrial or colonization projects linked to their statutory objectives.

- Area: **(a)** the sum of the leased areas belonging to the same nationality cannot exceed 10% of each Municipality; and **(b)** the total area of farmlands owned or leased by foreigners cannot exceed ¼ of the surface area of the Municipality.

In addition to the restrictions abovementioned, the area exceeding 100 MEIs (Modules of undefined exploitation, which area may vary from each region of Brazil) to be acquired or leased by foreigners requires the prior approval by the Brazilian Congress and there are specific rules that apply for the foreigners to access areas indispensable to national security or a border area.

For foreign legal entities, authorization from INCRA (and/or from Brazilian Congress, as the case may be), is required to acquire or lease farmlands of any size, obeying the above restrictions.

Therefore, because of these restrictions and considering that in most cases temporary access to the land is enough for foreign companies, some other structures such as usufruct and surface rights are adopted, and it is worth noting that these structures are not expressly prohibited by law, but some questioning about using them may arise. Regarding surface rights, there have already been two court judgments extending the application of the restrictions to surface rights as well, and the argument is that the surface right has greater force than leasing, as well as there is right of first refusal in favor of the surface right holder.

Also, INCRA has stated in an official document that, since there is a clear superiority of the superficiary's powers (a real right) over the property in comparison to the lessee (obligational right), the need or otherwise for such authorization has not yet been decided by INCRA.

Despite the legislation being very old and the AGU's Opinion being almost 14 years old, the issue is still controversial. There are currently two bills dealing with the issue, as well as two lawsuits pending judgment in the Brazilian Supreme Court related to the matter. So, until we have clear legislation on the subject and the judgment of these lawsuits, this matter will still be the subject of much debate and study.

The above scenario demonstrates the great legal uncertainty that exists for legal entities controlled by foreigners to obtain possession of farmlands for the development of their projects, resulting in a negative impact of foreign investment in Brazil.



Practice Area News

Bill Amends Urban Lease Law and Regulates Property Rental via Website or App. Bill No. 2474/2019 proposes adding **article 50-A** to the Urban Lease Law, which establishes as a rule the prohibition of seasonal rentals by websites and/or apps, the exception being the authorization for such rentals only permitted if there is express authorization in the condominium Bylaws, which will establish minimum rules that must be established to avoid other conflicts.

New Brazilian Civil Code. On **April 17, 2024**, the Senate officially received the preliminary draft of a New Civil Code drawn up by a committee of jurists. Such preliminary draft aims to update the current Civil Code, which has been in force for more than 20 years, suggesting changes that impact citizens' lives, including related to marriage, regulation of companies and contracts, digital law, as well as rules of succession and inheritance.

In the Firm

• **Market Recognition.** CMA's Real Estate practice was shortlisted as the best team of Brazil in 2023 by two of the most important rankings: Chambers and The Legal 500.

• **GRI Event.** CMA's Rio de Janeiro office hosted the event "New Urban Centers: Exploring Development Opportunities", organized by the GRI Club, to analyze tax incentive programs and economic revitalization policies in large metropolitan areas, in addition to discussing government changes and plans, among others.

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Tax

Regulation of Law 14,754/2023 by RFB Normative Instruction 2,180/2024

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Law No. 14,754 of 2023 brought significant changes in taxation of offshore investments of individuals residing in Brazil. One of them concerns the taxation of profits obtained by controlled foreign entities. The profits of such entities, especially those located in tax havens or with active income lower than 60%, are subject to an income tax rate of 15% on yearly basis, without any deduction whatsoever and regardless of distribution.

The exchange rate variation on assets acquired abroad with funds originated in foreign currency also ceased to be tax-exempt, becoming part of the calculation base for capital gains estimation. The change represents one of the major points of controversy because, for many, if the acquisition cost of an asset was formed in foreign currency, the exchange rate variation should not be considered in capital gain calculation.

The Law also allows for the adjustment of the value of foreign assets and rights, enabling tax residents in Brazil to update the value of these assets to their market value on December 31, 2023, with the difference being taxed at the 8% rate.

Regarding trusts, the new legislation establishes rules for the taxation of assets and rights included in fiduciary structures abroad, as well as for the distribution of income to beneficiaries. It also applies to irrevocable trusts, which is rather controversial, since the settlor no longer has any title or ownership over the trust's assets.

On March 1, 2024, Normative Act No. 2,180 was issued by the Federal Revenue Secretariat of Brazil (IN 2180/2023), to regulate Law 14,754/23. The regulation introduced specific innovations, especially in areas where the legislation required supplementation by the tax administration.

Among them, the exclusion of virtual assets and digital wallets stands out, as well as the inclusion of rights to acquire equity participations, such as subscription bonuses, in the illustrative list of foreign financial investments.

Article 9 of the IN 2180/2023 defined virtual assets and digital wallets to consider them as foreign virtual assets when held or traded by institutions located outside the country, regardless of the location of the asset's issuance.

The regulatory wording seems to illegally prevent the deduction of Personal Income Tax on income from other financial investments, as well as on profits and dividends from controlled entities. The restriction was not initially foreseen in Law 14,754/23, which allowed the deduction of the tax paid abroad on gains from financial investments in the country of origin of the income to income from other financial investments.

Additionally, the normative act considered as entities controlled abroad insurance policies whose principal or income is redeemable by the insured or beneficiaries when the investor is allowed to define or influence the investment strategy. This established a differentiation from the standard classification of financial investments.

Articles 17 and 18 included provisions with instructions on how to calculate the 60% of active income for the application of the taxation regime of the controlled foreign entities. It brought provisions including the obligation to issued financial statements of said entities signed by accountants legally authorized to issue statements following international or Brazilian standards.

Finally, the Option for Abex - Updating of Foreign Assets and Rights Return was established, in conjunction with the option already stipulated in Law 14,754/23, to adjust foreign assets and rights to their market value as of 12/31/23, which may represent an excellent tax planning opportunity, depending on the taxpayer's circumstances.



Practice Area News

Regulation of the Carbon Market – Taxation of Hydrogen. Constitutional Amendment 132/2023 reflects the national commitment to sustainability by proposing tax incentives for environmentally beneficial activities. Meanwhile, bills aimed at regulating the carbon market and taxing green hydrogen are advancing in Congress.

Bill No. 2,308/2023, still under review, establishes the Legal Framework for Low Carbon Emission Hydrogen, seeking to attract investments and boost the industry through favorable tax regimes. The idea is to take advantage of more favorable tax regimes to encourage and stimulate activity, ensuring regulatory stability.

Approved in the Chamber of Deputies, Bill No. 2,148/2015 creates the Brazilian System for Trading Greenhouse Gas Emissions.

Currently, Brazil only has a voluntary carbon credit market, subject to Income Tax and Social Contribution on Net Income taxation, and depending on the profit regime applied, its tax burden can reach up to 34%. Bill No. 2,148/2015 establishes the tax regulations for transactions concerning carbon credits, including provisions for deductions.

ITCMD – Tax Incidence on Assets Abroad. In the scope of Direct Action of Unconstitutionality due to Omission No. 67, concluded in 2022, the Supreme Federal Court unanimously recognized the omission of the National Congress regarding the regulation of Inheritance and Donation Tax (ITCMD) on assets abroad. The court established a deadline of 12 months for legislative measures to be taken.

Until now, the complementary law necessary for this regulation has not been promulgated.

With the promulgation of Constitutional Amendment No. 132/2023 as part of the tax reform, National Congress introduced a provision related to the subject. This indicates minimal and provisional regulation, although the intention of a detailed complementary law still remains.

The focus here is not to discuss the merits of the new constitutional norm but rather to consider the temporal application of the involved norms, especially to determine when ITCMD may be demanded again on inheritances and donations abroad.

In the Firm

• **Commitment recognized in Chambers & Partners Global 2024.** Ulhôa Canto was ranked in Chambers Global 2024 in the areas of Energy & Natural Resources: Power, Tax Litigation, Corporate/M&A and Tax: Non- contentious.

Among the ranked partners are Aloysio Meirelles de Miranda Filho, Isabel Lustosa, Carlos Alberto Ulhôa Canto and Rodrigo Brunelli Machado.



Wealth Managment

General Succession Rules in Brazil - The Importance of the Will



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According to Brazilian legislation, a Will is considered a revocable act by which someone, in accordance with the law, disposes, in whole or in part, of their estate to after their death. Therefore, it is a revocable act, as at any time the testator can change their mind, altering the will as often as they wish.

In this sense, it represents solely the last will and testament of the testator, whose effects will be produced after their passing, establishing the fate of their estate, designating their testamentary heirs and legatees, without the need to mention those who by law are already necessary heirs (if they exist). Thus, any person over the age of 16, who is of full capacity and able to express their will, can draft a Will.

The Will serves so that the estate of a person, after their death, can be disposed of according to their will expressed in life, respecting the legal restrictions for those who have necessary heirs (children/parents/spouses/partners), meaning it is a way to record the owner's will regarding the future distribution, which shall be carried out after their passing.

In addition to the above statements, the Will is one of the most important instruments of succession planning in Brazil because through it, it is possible to ensure that the estate remains within the consanguineous family for a longer period and the imposition of restrictive clauses, such as: **(a)** non-communicability: determines that the property will remain part of the beneficiary's private estate, not becoming part of the spouse's or partner's community property upon marriage or common-law marriage; **(b)** inalienability: prohibits the beneficiary from transferring/alienating the received property, whether gratuitously or for consideration, and **(c)** non-seizability: provides that the donated property cannot be seized by the donee to guarantee future payment to creditors, even if they have incurred debts or may do so in the future.

Finally, there are three basic forms of making a Will, namely: the **holographic Will**, made entirely by the testator without the intervention of a Notary, and signed along with three witnesses; the **closed Will**, where nobody except the testator knows the content, although it is approved by a Notary in the presence of two witnesses. It is usually used in cases where the testator's provisions may offend the sensitivities of relatives and/or acquaintances. And lastly, the **public Will**, which is considered the most secure, mainly because it is attested by a Notary and its entire contents are recorded in the Notary's book.

*This article was written in collaboration with **Carolina Ducci** and **Vera Helena Cardoso de Almeida**.



Practice Area News

The Optionality of the Regime of Mandatory Separation of Property for Persons Over 70 years old.

On February 1, 2024, the Federal Supreme Court (STF) resolved, via the judgment of Extraordinary Appeal 1309642, under the thesis of general repercussion for Theme 1,236, that individuals over 70 years of age could opt out of the mandatory separation of property regime in their marriages or common-law unions. This can be done through an express declaration of the parties' intentions via a public deed at a Notary's Office.

The STF's decision was grounded on the principle of "the right to self-determination for the elderly", affirming their autonomy to select a property regime that best aligns with their interests.

It's critical to acknowledge the ongoing debate surrounding the mandatory separation of property regime. This debate has been particularly influenced by the application of STF Precedent 377, which asserts that assets acquired onerously during a marriage (or common-law marriage) should be divided between the spouses or partners.

Moreover, it is significant to highlight that married individuals or those in a common-law marriage, who have entered such arrangements at the age of 70 or older under the mandatory separation of property regime, may now select a different property regime. This change can be enacted through a judicial process (for married couples) or by drafting a new Public Deed (for common-law relationships), taking effect from the time of the court's judgment or the creation of the Public Deed, respectively, without retroactive impact.

Concluding, the new rule outlined above can be an important tool for estate and succession planning, ensuring greater freedom for individuals over 70 years of age.

In the Firm

• On April 9, our law firm had the honor of hosting HSH Prince Hubertus von und zu Liechtenstein, Member of the Council of the LGT Group, for a discussion with our clients on Family Governance. The House of Liechtenstein is one of the oldest and most traditional European families, with over 900 years of existence, having created a successful family and business governance structure that has endured for 26 generations. Using their experience, we discussed with our clients how it is possible to create a family tradition and transmit values to new generations.

KLA

White-Collar Crime

Assessment of Corporate Compliance Programs in Brazil

Hogan Lovells



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"Caesar's wife should not only be free from suspicion but also from accusation." This ancient proverb resonates strongly with contemporary circumstances. Mere adherence to formal legal standards and putting in place corporate compliance programs are insufficient to appropriately manage risk. It is imperative these efforts are perceived as sincere and effective, and there are several mechanisms to assist companies in demonstrating such integrity.

International standards, seals, guidelines, and certifications that evaluate compliance programs are highly regarded by regulatory authorities and bolster a company's reputation. They underscore the significance of investing in comprehensive corporate compliance programs aimed at preventing, detecting, investigating, and remedying misconduct. Ethical business partners expect to do business with ethical counterparties.

ISO 37001/2016 (anti-bribery management system), ISO 37301/2021 (compliance management systems), the Brazilian Pro-Ethics Seal, and the recent Brazil Pact for Corporate Integrity Seal are examples of mechanisms employed by those doing business in Brazil to assess the effectiveness and robustness of their compliance programs.

Brazilian Pro-Ethics Seal (known as *Selo Pró-Ética* in Portuguese) was created in 2010 by Ethos Institute, a non-profit, in partnership with the General Comptroller's Office of Brazil (CGU in Portuguese), which is in charge of protecting federal assets and resources. This joint initiative aims to commend companies that proactively implement robust measures to prevent, detect, and address instances of corruption and fraud. Brazil Pact for Corporate Integrity Seal (known as *Pacto Brasil pela Integridade* in Portuguese) is another initiative of CGU that encourages entities operating in Brazil to voluntarily commit to public integrity. Companies adhere to this initiative by signing an accession agreement and completing self-assessments in the form of extensive Q&As whose answers indicate the level of maturity and sophistication of each organization.

When ascertaining integrity programs, these factors are taken into consideration: **(i)** how organizations and management have behaved when confronted with corruption incentives; **(ii)** commitment to compliance from senior management; **(iii)** creation and enforcement of policies and procedures; **(iv)** periodic risk-based reviews; **(v)** appropriate oversight by independent decisionmakers; **(vi)** provision of training and guidance; **(vii)** suitability of internal reporting and investigation processes; **(viii)** enforcement of disciplinary measures; and **(ix)** monitoring, testing, and remediation efforts.

Those elements are the cornerstone of any compliance program and are consistent with guidelines issued by enforcement authorities from key jurisdictions and multilateral organizations such as the U.S. Department of Justice, CGU, and the Organisation for Economic Cooperation and Development (OECD). New reports issued by OECD have further recommended companies to pay attention to commercial bribes (kick-backs) and financing of political campaigns, topics to be closely scrutinized in certain countries.

Companies that attain international and national certificates/seals for their compliance programs not only are seen as role models by employees, but also benefit from public recognition by society, peers, and business partners.

Indeed, Brazilian states including Rio de Janeiro, Espirito Santo, Sergipe, and the Federal District have enacted rules making corporate compliance programs a must for their contractors; and the new law on federal procurement states that, for large projects, contractors shall have effective integrity programs in place and, in case of similar fee proposals, candidates with most suitable compliance programs may be preferred.

Formal and informal standards – alongside concerns of legal risks and bad reputation – create a feedback loop that incentivizes all stakeholders to strengthen their commitment to behaving ethically in the marketplace.



Practice Area News

Global Bribery and Corruption Outlook. Hogan Lovells has recently launched its annual **Global Bribery and Corruption Outlook**, which focuses on the trends that businesses may be facing. 2024 promises to be a year of change. Sixty or so countries, plus the European Union, are expected to hold national elections this year. Roughly half the world's population will go to the polls. The outcome will likely mark a major turning point for some countries and will influence enforcement dynamics across the world.

Hogan Lovells | 2024 Life Sciences and Health Care Horizons. The global transition from soft law to hard law will keep Environmental, Social, and Governance (ESG) initiatives front and center in 2024 and beyond. The potential environmental impacts of supply chain planning now place companies at risk for regulatory and civil law penalties. While many of these regulations are industry-agnostic, their impact will nevertheless be significant for clients across our sector. Life Sciences and Health Care companies must also stay up to date on **sector-specific developments**.

Investigating AMLA. In February 2024, was announced that Frankfurt would host the EU's Anti-Money Laundering Authority (AMLA). This announcement has prompted lawyers from around our European network to consider the purpose and powers and structure of AMLA, and to share their key reflections through this **video series**.

In the Firm

• Practice - Investigations, White Collar, and Fraud.

According to Global Investigations Review 100 (GIR), we are "One of the world's best investigations and white-collar practices". We work with you to limit the impact these events can have on your business. Our strength lies in managing the effects of an investigation – often where there is a multijurisdictional element. See more **HERE**.

• Chambers & Partners. Corporate Crime & Investigations (International Firms). Global Guide 2024: Brazil.

The head of Hogan Lovells Brazilian practice Isabel Costa Carvalho is acknowledged for her precise legal work and local expertise on internal investigations of bribe and compliance, as well as antitrust violations and government investigation.

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FEATURED CASES

Tozzini Freire. ADVOGADOS



Maria Elisa Gualandi Verri, Partner at TozziniFreire, Assumes Presidency of WLG, Bringing Vast Legal and Corporate Knowledge. Maria Elisa Gualandi Verri, a partner at TozziniFreire, has taken on the role of President of the WLG, starting her two-year term on October 29, 2023, following the elections at the WLG | Summit Rome '23 in Italy. With over three decades of legal expertise, Maria is well-regarded for her advisory work on significant transactions and her collaboration with major Brazilian companies. As the head of TozziniFreire's Human and Organizational Development Department, she supervises the firm's pro bono strategy and corporate social responsibility initiatives. Her specialization in Corporate/M&A and Corporate Social Investment positions Maria Elisa as a key figure within WLG, and she also serves on its Membership Committee. (Written by: Tozzini Freire)

Source: TozziniFreire.

CASCIONE ADVOGADOS



Professionals from Cascione Advogados Make Contributions to Thomson Reuters' Practical Law Guide on Patent Challenges. Karin Klempp Franco and Patricia Ataulo, members of the Intellectual Property and Privacy practice at Cascione Advogados, were extended an invitation by Thomson Reuters to make a contribution to the most recent edition of Practical Law. They have authored a guide on the topic of "Pre-Grant Challenge and Post-Grant Patent Nullity". This collaboration proves their expertise in addressing the intricate aspects of intellectual property and patent-related legal issues within the context of Cascione Advogados.

Source: Cascione.

FEATURED CASES

MADRONA FIALHO advogados

WATCH NOW

Madrona Fialho Advogados' Partner Paulo Roberto Andrade Examines the Consequences of STF's Decision on ICMS Credit for Exported Goods. Madrona Fialho Advogados' partner, Paulo Roberto Andrade, has authored an article for the JOTA portal, delving into the tax ramifications associated with goods intended for use and consumption in export activities. Taking into account the decision by the Supreme Federal Court (STF) on Theme-RG 633, the article sheds light on the impact of this ruling on the entitlement to ICMS credits for such acquisitions, in proportion to the export revenues.

Source: Madrona Fialho.

STOCCHE FORBES

WATCH NOW

Anticipating Vibrant Opportunities in the Electrical Sector of 2024: Legal and Regulatory Insights by Stocche Forbes Advogados' Specialists. Partner Mariana Saragoça and Head of Energy Frederico Accon, from the law firm Stocche Forbes Advogados, have authored an article titled 'The Expectations and Opportunities in the Electrical Sector in 2024,' which has been published by EnergiaHoje. In anticipation of a year marked by extensive legal and regulatory deliberations aimed at sectoral organization and modernization, the article underscores the importance of comprehensive risk assessments by investors. Mariana and Frederico anticipate substantial investment prospects in 2024, despite uncertainties surrounding the impact of forthcoming measures.

Source: Stocche Forbes.

FEATURED CASES

Trench Rossi Watanabe.

WATCH NOW

In a ruling issued by the 3rd Civil Court of the District of Varginha/MG, concerning a case involving a petition for recognition entailing transnational insolvency co-led by Trench Rossi Watanabe, the validity of the judicial reorganization underway in the United States, initiated by a coffee trader with the objective of safeguarding assets within the national borders, has been acknowledged in Brazil. In an interview with a newspaper, Gledson Campos and Mariana Conrado, a partner and an associate, respectively, from the Civil Litigation group, who participated in this international legal collaboration representing Brazil, emphasized the significance of this judgment. This represents the inaugural instance where a petition for the validation of a foreign jurisdiction by a Brazilian entity has been granted approval.

Source: Trench Rossi Watanabe.



VEIRANO ADVOGADOS

WATCH NOW

Veirano Advogados Assists SPIC Brasil in Pioneering 1.3 Billion Commercial Papers Issuance for Solar Ventures in Ceará and Piauí. Veirano Advogados acted as a facilitator in the issuance of 1.3 billion Commercial Papers by SPIC Brasil on behalf of Panati Holding S.A. and Marangatu Holding S.A. This transaction stands as one of the significant debt offerings in the capital market within the solar project sector. The proceeds are designated for photovoltaic energy generation in solar complexes located in Ceará and Piauí.

Source: Veirano Advogados.

FEATURED CASES

MATTOS FILHO

WATCH NOW

Mattos Filho Provides Legal Expertise for FertGroup's Acquisition of Vida Bem Vinda Clinic in the Assisted Human Reproduction Sector. Mattos Filho provided legal counsel to FertGroup, backed by XP Private Equity Fund, in their acquisition of the São Paulo-based Vida Bem Vinda clinic, which specializes in assisted human reproduction. Veirano Advogados acted as the legal representation for the target company in this undisclosed transaction. Through this strategic acquisition, FertGroup, a consolidation platform within the assisted human reproduction sector, is enhancing its portfolio. (Written by: Mattos Filho)

Source: Mattos Filho.

CAMPOS MELLO ADVOGADOS
IN COOPERATION WITH DLA PIPER

WATCH NOW

Campos Mello Advogados, in Collaboration with DLA Piper, Guides Legrand Holding in Key Acquisition of ZPE Systems, Inc.'s Brazilian Subsidiary. Campos Mello Advogados, in collaboration with DLA Piper, assisted Legrand Holding in operational aspects pertaining to the acquisition of ZPE Systems, Inc.'s Brazilian subsidiary. This transaction underscores Legrand's dedication to offering comprehensive management solutions throughout the production chain, thereby enhancing services from distributors to end-users. The Corporate and M&A team, under the leadership of partners Mirella Kaufman and Fabiano Gallo, offered strategic guidance throughout Legrand Holding's acquisition of 100% of ZPE Systems, Inc., showcasing their proficiency in the Corporate, M&A, Energy, and Natural Resources sectors. (Written by: Campos Mello Advogados in cooperation with DLA Piper)

Source: Campos Mello Advogados in cooperation with DLA Piper.

FEATURED CASES



Cescon Barrieu Professionals Contribute the Brazilian Chapter to the Esteemed Concurrences Compendium on Antitrust Damages Actions. Cescon Barrieu's Competition department, led by Joyce Honda and Thales Lemos, made a contribution to the prestigious Concurrences publication, organized by the International Chamber of Commerce. Their focus was on Antitrust Damages Actions, and they authored the Brazilian chapter in the 'Compendium of Antitrust Damages Actions.' This compendium, which receives global recognition, provides invaluable insights into the intricate field of Antitrust Damages Actions. It offers essential guidance for economic agents and addresses the concerns of companies engaged in or exposed to antitrust litigation, serving the needs of both multinational corporations and SMEs. Concurrences praises it as a distinctive resource for navigating the complexities of this legal terrain.

Source: Cescon Barrieu.

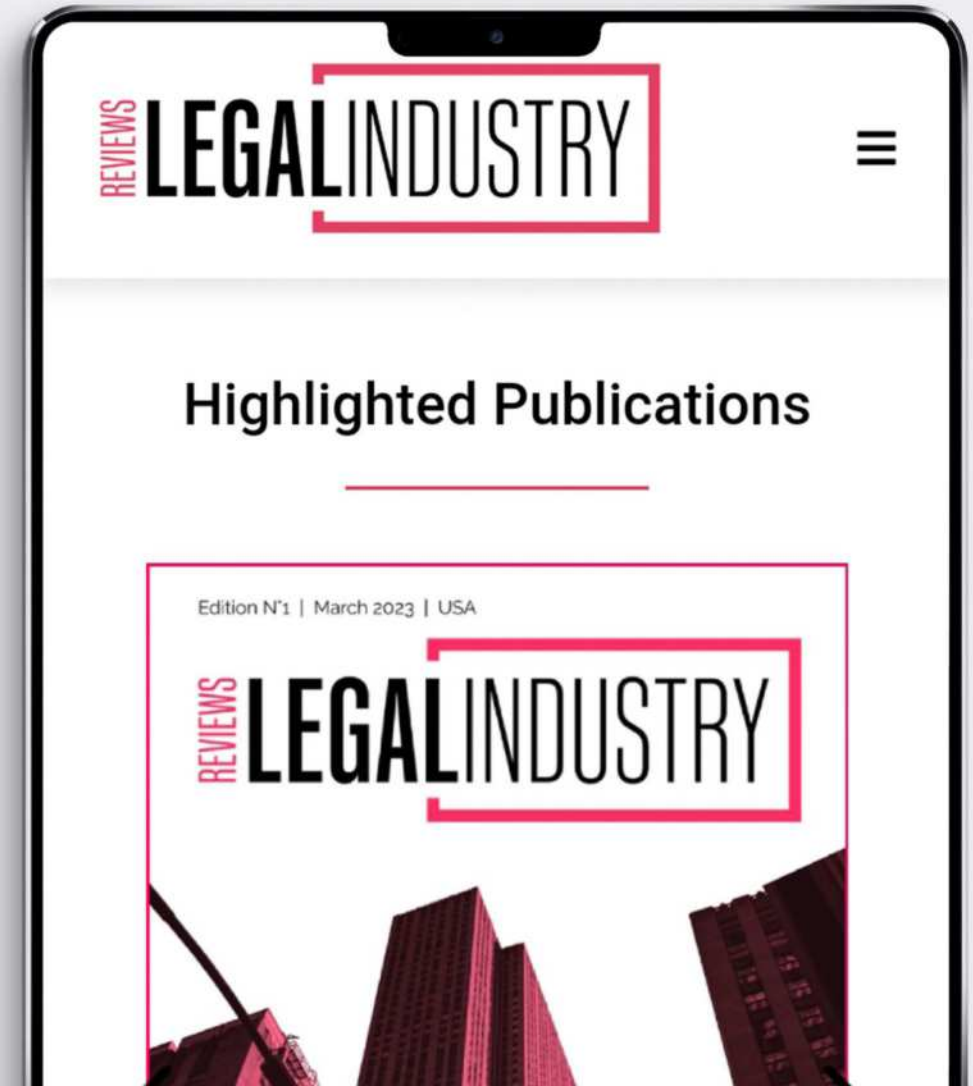


Machado Meyer Sendacz e Opice Advogados Assists Sankhya Jiva Investimentos e Participações in the Strategic Acquisition of a Majority Stake in Mindsight Desenvolvimento de Softwares. Machado Meyer Advogados provided legal assistance to Sankhya Jiva Investimentos e Participações in the acquisition of a 51% stake in Mindsight Desenvolvimento de Softwares. This strategic initiative, led by partners Diana Pacifico Henne and Elton Minasse, aligns with Sankhya's growth strategy and enhances its position in the sales engagement market. This transaction highlights Machado Meyer's commitment to facilitating key investments and strategic expansions for its clients within the business environment.

Source: Machado Meyer Sendacz e Opice Advogados.

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