

AN OPPORTUNITY TO OFFER FOREIGN SECURITIES TO THE BRAZILIAN MARKET

The interest of Brazilians for opportunities to invest abroad is increasing due to recent events in the domestic and global political-economic landscape. In order to be able to access and take advantage of this potential market and to offer foreign securities in Brazil, issuers must overcome some regulatory challenges.

The drop in Brazil's base interest rate – which is anchored at a record low of 6.50 percent per year since May 2018 – prompted even investors with low risk appetite to diversify their portfolios. Since the end of 2017, the number of individuals investing in the Brazilian stock market has increased by 69%. Issuances in the Brazilian capital markets achieved approximately BRL 480 billion in the same period.

Foreign securities are also attracting Brazilian investors, particularly those looking for diversification and for protection against local market volatility. By way of comparison, while in the US there are 7,200 listed companies with a total market capitalization of US\$ 42 trillion, in Brazil there are only around 330 listed companies with a total market cap of approximately USD 1 trillion.

The attractive prospect, however, imposes regulatory challenges for marketing and distribution of foreign securities in Brazil. As a default rule, only securities that are registered with the Brazilian Securities Commission (*Comissão de Valores Mobiliários* – CVM) and issued by CVM-registered issuers, may be publicly offered in Brazil. Despite recent interest in global investments, CVM has not yet adopted regulation for the registration of foreign issuers and offers.

Provided that no fundraising activity occurs, Brazilian securities rules do not prohibit foreign issuers to carry out institutional presentations to promote investment management strategies etc. Precautions are needed to avoid significant implications. Promoting irregular public offerings of securities in Brazil is a crime subject to imprisonment for two to eight years and fine, and may also result in administrative sanctions, such as fines and mandatory disclosure to the market that the offer is irregular.

Although private offerings of securities are not subject to registration obligations, the concept of a “public offer” in Brazil is broader than common sense would indicate. It encompasses, for instance, any sales efforts performed by anyone other than the issuer. There is no safe harbor establishing a maximum number of investors to whom securities may be offered without

characterizing a public offering, or a qualified investor type exemption.

In addition to private offerings, legal means for foreign issuers to reach Brazilian investors include: (i) offers directed only to investors that have a continuous commercial, credit, corporate or labor relationship with the issuer of the securities, (ii) offers that occur abroad, as Brazilian law applies only to offerings carried out totally or partially within the Brazilian territory and (iii) offers where the investor initiates the conversation and spontaneously (i.e. not in reaction to any sales effort) reaches the issuer of the securities.

In the current landscape, the easiest way to access the public in Brazil is the formation of a Brazilian feeder fund with the purpose of purchasing foreign securities. Once registered with the CVM, such Brazilian feeder fund may have its shares publicly offered to investors in Brazil. From an economic perspective, the result would be the same, as Brazilian investors would be indirectly investing in foreign securities. From a legal standpoint, however, the public offer would be regular as there would be a CVM-registered vehicle involved.

Authors:

[Allan Nascimento Turano](mailto:aturano@levysalomao.com.br)
aturano@levysalomao.com.br

[Fernando de Azevedo Peraçoli](mailto:fperacoli@levysalomao.com.br)
fperacoli@levysalomao.com.br