

## INCREASED LEGAL CERTAINTY FOR INVESTMENT FUNDS IN BRAZIL

The new Economic Freedom Act is a milestone in the regulation of funds in Brazil, as it brings the country into line with sound international standards and increases the level of legal certainty for investors.

The most critical changes brought by the Act are the limitation of liability for investors, the limitation and segregation of liability for service providers, and the segregation of assets among different classes of shares.

Surprising as it may sound and unreasonable as it may have been, there used to be no limitation of liability for fund's investors who could be called for additional capital whenever the net equity of the fund was negative. Now, just like companies, the liability for each investor is limited to the amount of the respective invested capital, provided that such limitation is established in the fund's bylaws.

That said, investors should bear in mind that they may still be held liable in case the corporate veil of the invested companies is lifted. This is especially relevant for private equity and venture capital funds, considering the nature of the respective portfolios and associated risks. This is particularly true in relation to consumer, environmental, tax and labor liabilities.

Additionally, the Act sets out that the fund's bylaws may also establish that service providers - such as administrators, portfolio managers and custodians - are liable for their own obligations only, before the fund and among themselves. This is a noteworthy change, as CVM Rules (the Brazilian equivalent of the Securities Commission) previously imposed on administrators joint and several liability for the acts of certain service providers.

The new Act also provides that the assessment of responsibilities shall consider the risks inherent to the markets the fund has invested in and the nature of the obligation of the service providers.

This change tends to attract new players and enhance competition among service providers, which is likely to improve the quality of the services and reduce costs.

Another important change is that the Act allows the fund's bylaws to create classes of shares with specific rights and obligations. Hence, it is now possible to segregate the fund's assets among such classes of shares.

CVM current rules already allow a few types of funds to issue classes of shares with distinct political and economic rights. But the possibility to segregate assets is an innovation in Brazil. With the segregation, each group of assets is affected only by obligations associated to the respective class of shares. This allows for the formation of umbrella funds, part of a widespread strategy in international markets.

Investors with different strategies and appetite for risk may be part of the same investment fund, holding different classes of shares, each class with its own rights and obligations, with the guarantee that the respective invested assets will be segregated. This does away with the need to use master-feeder structures for this purpose and allows for the adoption of more cost-efficient structures.

The Act is in line with international best practices and it is expected that it will allow cost reduction and foster local and international interest in the Brazilian investment funds industry, as the changes provide for a market friendlier environment. The changes were well received by CVM, who has authority to and will issue new rules to regulate Brazilian investment funds in view of the Act.

#### Authors:

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

Larissa Campos Machado  
[lmachado@levysalomao.com.br](mailto:lmachado@levysalomao.com.br)

Rodrigo Dias  
[rdias@levysalomao.com.br](mailto:rdias@levysalomao.com.br)