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Limited liability in Brazilian investment funds

The Brazilian federal government issued, on April 30, 2019, the Provisional Measure (*Medida Provisória*) No. 881 (“**MP 881**”), commonly known as the “Economic Freedom Provisional Measure”, whose main purpose is to diminish the bureaucracy and State’s intervention in the economic activities, easing the initiation of new business. Additionally to providing for principles and rules with respect to the economic freedom and free market, MP 881 also determined amendments to certain laws, one of which is Law No. 10,406, dated January 15, 2002 (“**Brazilian Civil Code**”), creating specific provisions about investment funds (new articles 1,368-C to 1,368-E).

Until now there was no statute providing specifically for the nature of investment funds, which gap was fulfilled only by the regulatory framework (i.e., the Brazilian Securities Commission - “**CVM**”), as it is the case, for example, of real estate investment funds.

Article 1,368-C focuses on the legal nature of investment funds in Brazil, which are organized as unincorporated pool of assets, with the purpose of investing in financial assets. The CVM’s empowerment to rule about investment funds, already set forth in Law No. 6,385, dated December 7, 1976, as amended (Capital Markets statute), is also set forth in the sole paragraph of Article 1,368-C of the Brazilian Civil Code.

Aiming to meet the market’s desire of safer business environment to investors and funds fiduciary administrators and investment managers Article 1,368-D allows the possibility of establishing that the liability of each quota holder is limited to the amount of its quotas - provided that such limitation is determined in the fund’s bylaws (i.e., in a manner similar to the limited liability of shareholders of corporations and limited liability companies in Brazil). The limitation of liability in Brazilian-formed investment funds may also be extended to service providers (such as the fiduciary administrator, the investment manager and the custodian), before the quota holders and amongst each other.

It is important to highlight that, as provided in Article 1,368-E of the Brazilian Civil Code, the liability limitation in Brazilian investment funds shall only be effective as from the date of the amendment to their bylaws.

Note that the Provisional Measures (“MP”) are rules with the same legal effects of statutes, issued by the President of the Republic in situations of urgency or materiality, which have immediate effect, but are also subject to a later resolution by the National Congress (House or Representatives and Senate) in order to be definitely converted into ordinary statutes. The initial effectiveness term of a MP is of 60 (sixty) days, automatically extendable for the same period in case the resolutions of the Congress are not finished.

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