

MEMORANDUM TO CLIENTS

PRIVATE EQUITY

August 31, 2016

CVM approves new regulations on private equity funds and establishes accounting standards for those funds

On August 30, 2016, the Brazilian Securities Commission (“CVM”) issued CVM Rule no. 578, to amend the rules that govern private equity funds (“FIPs”) and CVM Rule no. 579, to establish accounting standards for FIPs. The new rules move the Brazilian regulatory framework closer to offshore standards, in line with recent discussions promoted by industry participants.

In a nutshell, the most relevant changes for offshore players are:

- (i) FIPs are now permitted to invest up to 20% of their net equity in offshore private equity assets;
- (ii) A special class of FIPs, offered exclusively to professional investors, has been created to invest up to 100% of their net equity abroad;
- (iii) Subject to certain restrictions and limits, FIPs are now permitted to invest in: (a) non-convertible debentures; and (b) Brazilian limited liability companies (*sociedades limitadas*), expanding the investment strategies and types of assets suitable for FIPs;
- (iv) FIPs are now permitted to have authorized capital, which means that the administrator may issue new quotas in FIPs, without requiring investor approval;
- (v) The different classes of quotas may now have different rights, permitting differentiation as to, among others: (a) hurdle rates; (b) management fees and performance fees; (c) the timing of capital calls, amortization and redemption; and (d) veto rights and the appointment of members of committees;

The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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- (vi) FIPs are now required to prepare and submit audited financial statements whenever there is a material change in the fair value of the investment company during the fiscal year; and
- (vii) In an effort to harmonize the Brazilian accounting principles with international standards, FIPs qualified as investment entities should mark the portfolio assets according to their fair value, while FIPs that do not qualify as investment entities should register their investments in accordance with the rules applicable to affiliates of publicly traded companies.

We remain at your disposal to discuss these changes to the regulations.

Attorneys of the Private Equity Practice

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