

Legal 500

Country Comparative Guides 2025

Brazil

Alternative Investment Funds

Contributor

Darmont Advogados



Ihury Bastos Pereira Darmont

Head of Regulatory, Structured Finance Operations and Asset Management |
id@darmontadvogados.com

Filipe Starzynski

Head of Litigation | filipe.starzynski@darmontadvogados.com

Ariel Goldstein

Senior Associate of Regulatory and Asset Management |
ariel.goldstein@darmontadvogados.com

Artur Marangoni Cabral Fagundes

Senior Associate of Regulatory and Asset Management |
a.fagundes@darmontadvogados.com

Karyn Yoshisaki

Senior Associate of Regulatory and Asset Management |
karyn.yoshisaki@darmontadvogados.com

This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in Brazil.

For a full list of jurisdictional Q&As visit legal500.com/guides

Brazil: Alternative Investment Funds

1. What are the principal legal structures used for Alternative Investment Funds?

In accordance with the Brazilian Civil Code (*Código Civil*), investment funds are special vehicles of resources intended for investment in traditional and alternative financial assets, such as, but not limited to real estate ventures, venture capital and private equity assets, and assignment of rights of any nature.

The main structures of Alternative Investment Funds in Brazil are described in the normative annexes to Resolution No. 175 of the Brazilian Securities and Exchange Commission (CVM), dated December 23, 2022, as amended ("Resolution CVM No. 175"), which establishes the regulatory framework for these specific investment funds in Brazil. Resolution CVM No. 175 was created in a new regulatory framework in Brazil, structuring its content in a general section – generally applicable to any fund based in Brazil – and with the normative annexes, which contain specific rules for different types of vehicles.

Investment funds may be differentiated primarily by the type of strategy and asset they can invest in, and the following types of vehicles are the most effective structures within the Alternative Investment Funds markets, without limitation:

- Financial Investment Funds (*Fundos de Investimento Financeiros*): vehicles that invest primarily in traditional assets, especially liquid assets and that can be subclassified into: (a) fixed income funds, which seek returns through investments in fixed income assets, allowing strategies that involve interest rate and price index risk; (ii) stock funds, which shall have in their portfolio, primarily, variable income assets, such as stocks, share and bond deposit certificates and subscription receipts; (iii) exchange funds, which shall invest at least 80% of their portfolio in assets – of any credit risk spectrum – directly related or synthesized, through derivatives, to foreign currency; and (iv) multimarket funds, funds with investment policies that involve several risk factors, without the commitment to concentrate on any particular factor. Nonetheless, multimarket funds are often used, direct or indirectly, within alternative investment funds structures;
- Credit Rights Investment Funds (*Fundos de*

Investimento em Direitos Creditórios – "FIDC"):

investment vehicles that invest most of their net assets in credit rights. These credit rights can be of several types, such as trade notes, assignments of rights all sorts, commercial notes, debentures, structures finance instruments, checks, and credit card receivables, among others. In Brazil, Credit Rights Investment Funds are a very strong and developed financial instrument used within proprietary and third party financial structures and projects;

- Real Estate Investment Funds (*Fundos de Investimento Imobiliários*): investment vehicles established for investment in real estate projects, such as real estate companies, real estate credit rights and all sort of properties;
- Investment Fund for Agroindustrial Production Chains (*Fundos de Investimento nas Cadeias Produtivas Agroindustriais*): investment vehicles established for investment in the Agroindustrial Production Chains, serving as vehicles that can focus on agroindustrial real estate, credits and/or companies of the segment;
- Private Equity and Venture Capital Investment Funds (*Fundos de Investimento em Participações*): investment vehicles established for investment in publicly held or privately held companies and/or limited liability companies; and
- Multimarket Investment Funds (*Fundos de Investimento Financeiro Multimercado*): investment vehicles often used as part of the alternative structures as a carrier or a feeder fund to invest in the funds above mentioned. Nonetheless, there are multimarket investment funds that can, by its own structure, be created just for specific credit investment, being, in those cases, structures for alternative investments.

Regardless of the above, for each specific type of investment fund, it should be highlighted that there are specific laws, provisions, and characteristics that shall be observed when establishing, structuring, and in the day-to-day operations of such investment fund.

2. Does a structure provide limited liability to the investors? If so, how is this achieved?

The possibility of structuring limited liability investment funds in Brazil is recent, due to the modification in the Brazilian fund industry regulatory framework, made

possible only by the enactment of Federal Law No. 13,874, of September 20, 2019 (also known as the Economic Freedom Law (*Lei de Liberdade Econômica*), which amended the Brazilian Civil Code, allowing investment funds to adopt a limited liability regime for their quota holders, among other very important issues.

After the enactment of Federal Law No. 13,874, the Brazilian Securities and Exchange Commission spearheaded the process of public consultation and, with participation of the main private and public players within the investment funds industry, enacted Resolution CVM No. 175 giving efficacy to the possibility of establishing limited liability to investment funds investor.

This liability regime can be adopted upon the fund's establishment, through its fiduciary administrator and its manager, or even after it has been established, through a decision at the quota holders' meeting. For these funds, CVM regulations require them to include a suffix demonstrating that they adopt the limited liability regime for their quota holders, namely the suffix "Limited Liability" ("*Responsabilidade Limitada*") and, after its adoption, the vehicle is submitted to very specific rules in regards of capital commitments, net equity and liquidation process.

3. Is there a market preference and/or most preferred structure? Does it depend on asset class or investment strategy?

Generally, the establishment and operation of an investment vehicle in Brazil depends on the strategy envisaged for the structure and the investors needs, as mentioned in item 1 above.

Nonetheless, in recent years the development of the alternative investment funds markets has significantly risen, and investors are strongly assessing it. Also, considering that Brazil provides a high domestic basic interest rate, companies are forced to access the alternative investment markets, especially credit rights investment funds, in order to obtain a more attractive form of fundraising than of those provided by traditional financial institutions and also to enhance its tax and capital structure.

It is important to note the aggressive increase within the search of investors, especially companies for capital structure optimization, for Credit Rights Investment Funds (*Fundos de Investimento em Direitos Creditórios – "FIDC"*). In this sense, ANBIMA disclosed that within the first semester of this year, credit rights investment funds led the investment funds markets with R\$ 22.5

billions in fund raising.

4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

As a rule, investment funds in Brazil may be differentiated by the assets in which they can invest, as provided in more detail in item 1 above.

However, some investment funds can only be established as closed-end funds, such as Real Estate Investment Funds (*Fundos de Investimento Imobiliários*), the latter by operation of Law No. 8,668, of June 25, 1993, *Investment Fund for Agroindustrial Production Chains (Fundos de Investimento nas Cadeias Produtivas Agroindustriais)* and Private Equity and Venture Capital Investment Funds (*Fundos de Investimento em Participações*). Financial Investment Funds (*Fundos de Investimento Financeiros*) and Credit Rights Investment Funds (*Fundos de Investimento em Direitos Creditórios*), in turn, can be established as both open-end and closed-end funds.

Other points differentiate investment funds in Brazil, such as the target public for investing in these vehicles. Retail investors, for example, are forbidden to invest in Private Equity and Venture Capital Investment Funds. In those whose investments are riskier, such as Credit Rights Investment Funds that invest in non-standardized receivables, only investors who meet certain regulatory requirements that demonstrate their investment experience may invest in such vehicles, in accordance with the rules issued by the CVM on this matter.

5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investors of an Alternative Investment Fund?

In open-end investment funds, investors may redeem their quotas and profits generally at any time, subject to the conversion, valuation, redemption, and grace period dates, if any, outlined in their bylaws.

In close-end investment funds, quotas may only be redeemed upon the end of the vehicle's term or in exceptional cases, such as early settlement of the investment fund or a specific class or subclass of quotas, but investors can establish the right to amortize the quota

within the structure, which gives the investor a similar liberty as an open-end investment fund. Nevertheless, CVM rules establish that, in vehicles classified as closed-end, redemptions shall always be made equally, simultaneously, and proportionally among all quota holders of the investment fund, class, or specific subclass, as applicable, and there may be no unequal treatment among such quota holders.

It is also worth noting that Resolution CVM No. 175 imposes on the fiduciary administrator and the fund's manager, jointly, the duty to adopt the policies, procedures and internal controls that are necessary so that the liquidity of the asset portfolio of the investment fund constituted, regardless if it is an open-end or a close-end vehicle, is compatible with the terms set forth in its bylaws for payment of redemption requests and compliance with the fund's obligations, as to its projections of costs and maintenance. Within open-end investment funds, the rules to establish liquidity control within the vehicle are keen to see more requirements than close-end, but, nonetheless, liquidity control is effectively a mandatory requirement for all investment funds in Brazil and subjected to strict enforcement and monitoring from the service providers and the regulatory authorities.

6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

Especially considering the enactment of Resolution CVM No. 175, managers are provided with several mechanisms to manage illiquidity, such as, redemption gates, side pockets and the power to even close a fund for redemptions in exceptional cases. Those mechanisms are usually established early on the phase of creation of the vehicle and are vital to the funds security and efficiency.

For instance, for open-end funds, in the event of market closures and exceptional cases of illiquidity of the assets comprising the investment fund's portfolio, including due to redemption requests incompatible with existing liquidity, Resolution CVM No. 175 entitles the fiduciary administrator, the asset manager, or both, depending on the case, to declare the closure of the investment fund for redemptions.

In this sense, the bylaws of an investment fund, for example, may provide for the existence of redemption barriers, through which the asset manager may, at its discretion and according to parameters established in the bylaws, limit redemption requests to a fraction of the vehicle's net asset value. Asset managers may also split

exceptionally illiquid assets from the investment fund's net equity to be used to pay for quotas in another vehicle.

7. Are there any restrictions on transfers of investors' interests?

Quotas in investment funds set forth as open-end vehicles, as a rule, may not be subject to assignment or transfer of ownership, except in cases expressly determined by law, such as, but not limited to judicial or arbitration decision, fiduciary assignment transactions, payment of shareholdings in companies or in the share capital of limited companies and redemption or amortization of quotas into quotas of other classes, thus passing the latter quotas into the ownership of the investor whose quotas were redeemed or amortized.

Quotas in investment funds established as close-end vehicles, as well as their subscription rights, may be transferred, either through a term of assignment and transfer, signed by the assignor and the assignee, or through trading on an organized market, in accordance with the provisions established in the vehicle's bylaws.

8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification requirements)?

The normative annexes to Resolution CVM No. 175, each applicable to a different category of investment fund as mentioned, set forth the items that must be included in the vehicle's bylaws, including a description of its investment policy and the level of diversification it can be designed by product, especially considering tougher restrictions for vehicles by the type of investor.

In this regard, it is worth noting that the regulation already provides an exhaustive list of assets that may be invested by each type of vehicle and the percentage of such assets that each investment fund must hold in its portfolio.

For instance, stock funds, for example, shall have at least 67% of their net equity invested in: (a) stocks and stocks-deposit certificates admitted to trading on an organized market; (b) subscription bonuses and receipts admitted to trading on an organized market; (c) quotas of classes typified as 'Stocks;' (d) ETF of stocks; (e) BDR-stocks; and (f) BDR-ETF of stocks. Credit Rights Investment Funds shall have at least 50% of their net equity invested in credit rights for regulatory purposes and 67% for a more efficient tax regime.

Furthermore, in certain cases, the regulation also imposes restrictions, such as the prohibition of Credit Rights Investment Funds from investing abroad or certain categories of Private Equity and Venture Capital Investment Funds from investing more than 33% of their total subscribed capital in debentures and other non-convertible debt bonds.

9. What is the local tax treatment of (a) resident, (b) non-resident, (c) pension fund and (d) sovereign wealth fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax status or preference of investors or the tax treatment of the target investments primarily dictate the structure of the Alternative Investment Fund?

In Brazil, taxation on investment funds varies depending on the type of investor and the nature of the vehicle.

There are, in summary, two (2) main types of taxation that may be applied to investment funds: taxation on transactions and taxation on invested assets.

In taxation on transactions, taxes are levied whenever there is a movement of resources in the fund, such as a redemption or a distribution of income. In this case, a Withholding Income Tax rate is applied to the capital gain, which is calculated as the difference between the sale price of the fund's quotas and their purchase price.

In the case of taxation on invested assets, taxes are levied twice a year, on the last business day of May and November, based on the income obtained in the period (previous six months) (a mechanism known as "*come-cotas*"). Nonetheless, there are special investment funds that can be created in order to differ this obligation.

For **resident investors**, whether individuals or legal entities, taxation is generally based on Withholding Income Tax (WIT) (*Imposto de Renda Retido na Fonte – IRRF*).

Traditionally, such tax may apply in accordance with the following regressive rates:

Short Term Fixed Income Funds	
Investment Term	WIT Tax Rate
0-180 days	22.5%
181-360 days	20%
Long Term Fixed Income Funds	
Investment Term	WIT Tax Rate
0-180 days	22.5%
181-360 days	20%
361-720 days	17.5%
More than 720 days	15%

Nonetheless, and especially for alternative investment funds, there are other rates and rules. For instance, for Credit Rights Investment Funds, Multimarket Investment Funds and Private Equity and Venture Capital Investment Funds it is possible to have a fixed tax rate of only 15%, provided that the structure complies with some rules, especially of management control and administrative discretion of the vehicle, as well as certain levels of net liquidity and assets composition.

In this sense, it is very important within the process of creation of the vehicle to observe the above mentioned rules and decide if the fund will be created to reach the tax rate regime enacted by Law No. 14,754/2023 (being classified according to Brazilian rules as "*investment entities*" (*entidades de investimento*)) and adopt the above mentioned regime, as well as observe if it will attend to the differed tax payment or the anticipated tax payment regime (known as "*come-cotas*").

Furthermore, other types of funds, such as real estate investment funds and Investment Fund for Agroindustrial Production Chains, have specific tax rates, as well as tax reliefs for its investor, if the investment funds attends to specific rules of composition and other provisions of trade and register.

Financial investments made by **non-resident investors** in investment funds are, generally, benefited.

Generally, in this regard, it should be noted that distributions made to non-resident investors not domiciled in locations considered as tax havens shall be subject to a Withholding Income Tax at a benefited rates and specific tax reliefs, depending on the type of investment fund and its portfolio. In the other hand, distributions made to non-resident investors domiciled in locations considered as tax havens shall be subject to a Withholding Income Tax at a higher rate.

The tax treatment of **pension funds** in Brazil depends on their legal structure and the type of investment fund allocated. Nevertheless, as a general principle, income and returns earned by Brazilian pension funds are exempt from income tax, and any withholding tax applied to gains

is regarded as definitive.

10. What rights do investors typically have and what restrictions are investors typically subject to with respect to the management or operations of the Alternative Investment Fund?

Generally speaking, investors do not have any interference regarding the management and/or operations of investment funds. Such acts are solely the responsibility of the asset manager and the fiduciary administrator, subject to their respective responsibilities and fields of competence. Nonetheless, there is the possibility to establish vehicles which investors are more active and can have more discretionary interference, but this type of choice can come with tax burdens, especially with the enactment of Law No. 14,754/2023.

Notwithstanding, investors always have properly secured the rights to receive profits, amortize quotas in close-end funds, and in open-end funds, redeem their quotas, as well as the right to monitor the vehicle and its service providers and to have fully attained the transparency fiduciary regime mandatory to the funds service providers, especially by Resolution CVM No. 175 and Resolution No. 21, of February 25, 2021, as amended ("[Resolution CVM No. 21](#)").

Furthermore, quota holders always have the right to modify the most important aspects of the fund's structure, such as its service providers, its investment policy, amortization and redemption terms, as applicable, among other matters, through their participation and voting at the fund's quota holders' meetings, observing the quorum established by law, when applicable, and the fund's bylaws.

11. Where customization of Alternative Investment Funds is required by investors, what types of legal structures are most commonly used?

Customization shall depend on the investor's target public (retail or more sophisticated investor), their investment and return objectives, and also the assets to be invested in by the vehicle to be structured. Additionally, tailoring such vehicles is usually linked to a structured finance project of the investor or a structured finance specific transaction. Capital structure and companies' financial reorganization, as well as tax relief designs are the most common customizations required by investors, and nowadays the use of credit rights

investment funds, as well as private equity, real estate and agroindustrial production chains funds are pivotal to better tax and finance design.

12. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Yes, it is a regulated activity that requires accreditation and authorization from the Brazilian Securities and Exchange Commission to be performed.

Fiduciary administrators and asset managers shall comply with CVM Resolution No. 21, of February 25, 2021, as amended ("[Resolution CVM No. 21](#)"), which provides for the professional exercise of managing investment funds, an activity which is divided into two categories: fiduciary administration (*administração fiduciária*) and asset management (*gestão de recursos*).

Asset managers are legally responsible for investment decisions, for defining fund limits, and for hiring services such as distribution of quotas, investment consultancy, and risk rating by a credit risk rating agency, among others. The fiduciary administrator is responsible for the fund's administrative activities, such as accounting, including treasury, control, and processing of assets.

Both the fiduciary administrator and the asset manager shall be headquartered in Brazil and are subject to minimum requirements regarding infrastructure, human resources, internal controls, segregation, Chinese wall rules, and information disclosure, among others.

Many asset managers and fiduciary administrators also adhere to the rules and regulations of Brazilian self-regulatory entities, such as the Brazilian Association of Financial and Capital Market Entities (ANBIMA), to enable them to interact with more entities in the Brazilian financial and capital markets and to afford greater credibility to investors, within a more objective, efficient and strong corporate governance framework.

13. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

In Brazil, all investment funds, including so-called alternative investment funds, are subject to regulation, authorization, and registration with the Brazilian Securities and Exchange Commission.

The constitution and operation of these funds are mainly

regulated by CVM Resolution No. 175/2022, which contains a general section applicable to all funds and specific annexes for each investment strategy. As the funds do not have their own legal personality, being constituted in the form of a condominium of investors, it is up to its service providers – who must be previously authorized by the CVM – to carry out their constitution, register the by-laws, and ensure compliance with all the regulatory framework. Thus, in Brazil, it is not possible to create alternative funds without supervision or outside the regulatory framework.

14. Does the Alternative Investment Fund require a manager or advisor to be domiciled in the same jurisdiction as the Alternative Investment Fund itself?

In Brazil, CVM Resolution No. 175/2022 and [Resolution CVM No. 21](#) provides guidelines for investment funds and establishes that the fund's fiduciary administrator must be an institution authorized to operate by the CVM and domiciled in Brazil. In addition, the contracted asset manager must also be a legal entity duly registered with the CVM and headquartered in the country.

On the other hand, most alternative investment funds may hire investment consultants or specialized service providers located in other jurisdictions, provided that ultimate responsibility for administration and management remains with the Brazilian entities registered by CVM.

15. Are there local residence or other local qualification or substance requirements for the Alternative Investment Fund and/or the manager and/or the advisor to the fund?

Yes, as mentioned in item 14 above.

16. What service providers are required by applicable law and regulation?

In Brazil, the constitution and operation of investment funds are disciplined by CVM Resolution No. 175/2022, which establishes a minimum core of mandatory service providers and allows for the hiring of additional providers depending on the type of fund and its complexity. Also, these service providers have to observe the provisions of accreditation and fiduciary duties established by [Resolution CVM No. 21](#).

The essential service providers for a investment fund in

Brazil are the fiduciary administrator and the vehicle asset manager, which are institutions that must be authorized by the Brazilian Securities and Exchange Commission.

17. Are local resident directors / trustees required?

Under the Brazilian investment fund regulations, the Brazilian Securities and Exchange Commission requires that institutions providing essential services to the fund – such as the fiduciary administrator and asset manager – be legal entities based in Brazil and duly authorized by the CVM itself. In practice, this means that these institutions must have directors or administrators residing in the country, as the CVM only registers and supervises companies incorporated under Brazilian law, with local management responsible for compliance with regulations.

18. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

In Brazil, the activities of foreign managers or consultants in relation to investment funds domiciled in the country are subject to the rules of CVM Resolution No. 175/2022 (which regulates funds) and CVM Resolution No. 21/2021 (which deals with the registration of securities portfolio managers). The logic of the system is clear: only institutions duly registered with the CVM and headquartered in Brazil may directly perform the core functions of fiduciary administration and portfolio management of local funds.

Thus, a foreign manager cannot, on its own, take over the management of a Brazilian fund without being registered with the CVM and having a presence in the country.

19. What are the common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

Alternative investment fund managers in Brazil face risks that go beyond asset selection and affect the fund's day-to-day operations. Among the most common besides credit risks are regulatory framework and new legislation risk; operational risk, and back-office processes; liquidity risk, resulting from a necessary adequacy of the composition of illiquid assets, liquidity structure, costs and redeemable/amortization liabilities. Also noteworthy are the risk of conflicts of interest in transactions

between related parties that are permitted only in a few types of alternative investment funds and with full transparency and authorization of its investors.

20. What is the typical level of management fee paid? Does it vary by asset type?

In general, the management fee for investment funds in Brazil is not standardized by the CVM and varies according to the type of asset and the complexity of management. In traditional and liquid funds, it is usually low, between 0.2% and 2% per year, as they require less sophistication in its creation and maintenance. In the other hand, alternative investment funds have a higher management fee and different types of performance fee created to compensate the manager due to the sophistication and complexity of the structure and its transactions. Thus, alternative investment funds are usually more expensive within service providers fees than traditional vehicles.

21. Is a performance fee or carried interest typical? If so, does it commonly include a "high water mark", "hurdle", "water-fall", "preferred return" or other condition? If so, please explain.

Performance fees are common practice in investment funds in Brazil, especially in alternative investment funds. This fee acts as an incentive for the manager for the sophistication and complexity of the structure and its operation.

Usually, the performance fee are due when the fund exceeds a certain profitability parameter linked to inflation, the stock exchange and other market indexes, and, to protect shareholders, it is usually accompanied by specific conditions. In investment fund that are distributed to a not that sophisticated type of investor or investors protected by special regulations, such as pension funds, the performance fee are controlled by a high water mark. Nonetheless, alternative investment funds usually are not structured with this limit, being the common practice to create a specific hurdle not necessarily linked to previous measurements..

In alternative investment funds it is also common to have a preferential return, which guarantees shareholders a minimum return before the manager participates in the profits, and the so-called cascade, which organizes the order of distribution of results, prioritizing the reimbursement of capital and the remuneration of investors before the payment of carried performance fee to the manager. Thus, the performance fee in Brazil

alternative investment fund is generally linked to mechanisms that seek to align the interests of the manager with those of investors and avoid remuneration for temporary gains or simple recovery of losses, being usually linked to specific metrics of the whole operation designed.

22. Are fee discounts / fee rebates or other economic benefits for initial investors typical in raising assets for new fund launches?

It is common for initial investors to receive economic benefits during the fundraising phase within alternative investment funds, subject to specific provisions. To make these incentives feasible, different classes of shares are usually structured within the same fund, allowing anchor investors to enter with reduced management or performance fees compared to other classes, as permitted by regulation in certain funds.

In addition, in specific structures, it is relatively common to grant preferential returns or priority in distribution cascades, ensuring minimum remuneration or greater security for early investors or investors that seek different types of risks, such as senior class investor in credit right investment funds as opposed to subordinated investor in those structures.

23. Are management fee "break-points" offered based on investment size?

In the Brazilian market, it is relatively common for funds to provide for "break-points" in the management fee, so that the percentage paid by the shareholder decreases as the volume invested increases.

24. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?

This mechanism is more common in foreign markets and is not widely used in Brazil.

25. What are the typical terms of a seeding / acceleration program?

Terms usually negotiated in seeding or acceleration programs initially involve a commitment to allocate capital on the part of the investor, which is usually

conditional on maintaining the invested resources for a minimum period, through lock-up clauses.

In return for the initial contribution and the commitment to remain, it is common to negotiate differentiated economic conditions and additional governance rights, such as participation in advisory or risk committees, and veto rights in strategic decisions, subject to specific rules. In certain cases, exclusive rights over the strategy or preference in future funding rounds are agreed upon.

Investment exit mechanisms are also usually regulated, providing for early liquidity, preferential amortization, or sale of quotas to third parties. Specific conditions vary according to the investor's profile, the type of fund, and the strategy.

26. What industry trends have recently developed regarding management fees and incentive/performance fees or carried interest? In particular, are there industry norms between primary funds and secondary funds?

The calculation of administration fees applicable to investment fund fiduciary administrator generally follow simpler and more standardized structures, based on (i) a fixed fee in local currency or (ii) an annual percentage of the fund's net assets, calculated based on 252 business days. In certain cases, tiered models can be observed, in which the management fee varies according to net asset value ranges, reflecting the degree of operational complexity.

Management fees and performance fees payable to fund managers are more variable, especially in alternative funds structured for qualified or professional investors. In these cases, Brazilian regulations, particularly under Resolution CVM No. 175, give the parties greater contractual freedom to define sophisticated fees mechanisms, such as hurdle rate, high-water mark, catch-up, among others, including variable remuneration linked to the overall performance of the portfolio (carried interest).

It should be noted that, in funds intended for the general public (retail), the regulations impose stricter limits on the charging of fees and the method of calculating them, with a view to ensuring standardization and transparency of economic conditions.

With regard to the differentiation between primary funds and secondary funds, Brazilian regulations do not establish normative distinctions regarding the form of fee collection. Resolution CVM No. 175 treats the matter

uniformly, focusing on the profile of the target investor (retail, qualified, or professional), as well as the category of the fund (and not on the primary or secondary nature of the investments made by the fund class, even though it is common to establish within feeder structures in order to not create any unreasonable burden within the primary and secondary vehicles.

27. What restrictions are there on marketing Alternative Investment Funds?

The distribution of investment fund shares in Brazil is subject to specific regulatory requirements and is permitted exclusively to intermediaries duly authorized by the CVM, i.e., institutions that are part of the securities distribution system, such as securities distributors and securities brokers. Fiduciary administrators and asset managers who do not fall under the above provisions may distribute the shares of funds they administer or manage, provided they comply with the regulatory and self-regulatory rules for doing so. In addition, such intermediaries must have been formally contracted to distribute the fund's quotas, by applicable regulations, especially the provisions of CVM Resolution No. 160, dated July 13, 2022, as amended ("[Resolution CVM No. 160](#)"), and Resolution CVM No. 175.

In general, the marketing of AIFs may be subject to scrutiny in order to protect investors, such as the classification of some funds as restricted or exclusive, intended for qualified or professional investors due to the complexity and risks of the assets.

Given this, as long as the product is suitable for the target audience specified in the fund's regulations, there are no restrictions.

With regard to the registration regime for public offerings, there are significant differences between open-end and closed-end funds. Offers of shares in open-end funds do not require prior registration with the CVM. However, public offerings of closed-end funds, which include most alternative funds, are subject to prior registration under one of the following regimes provided for in Resolution CVM No. 160: (i) automatic distribution registration, upon submission of standardized documentation; (ii) automatic registration with prior review by an entity authorized by the CVM; or (iii) ordinary registration, which depends on technical review and formal approval by the CVM.

Initial and subsequent public offerings of alternative funds intended exclusively for qualified or professional investors may, as a rule, be registered through the

automatic procedure. On the other hand, initial offerings directed to the retail public necessarily require registration with prior review, either by an authorized entity or by the CVM itself, as the case may be. Subsequent retail offerings may also use automatic registration, provided that cumulatively: (i) there has been a previous offering with prior analysis; and (ii) there has been no change in the investment policy or expansion of the target audience. Otherwise, ordinary registration of the new offering will be required.

In addition, the prospectus requirement will depend on the type of fund and the target audience of the offering. In general, alternative fund offerings require the submission of this document, unless they are directed exclusively at professional investors. Such materials must contain, in a clear and sufficient manner, information on the nature and objectives of the offering, characteristics of the fund, service providers, fee structure, risks involved, and tax aspects.

It is important to note that CVM Resolution No. 160, in its Article 8, establishes cases of exemption from registration of the offering, such as in the cases of: (i) initial or subsequent offerings of exclusive closed-end funds; (ii) subsequent offerings of closed-end funds with fewer than 100 shareholders, provided that they are directed exclusively to existing shareholders and whose shares are not admitted to trading on an organized market; and (iii) single and indivisible lot offerings intended for a single investor. In these cases, the use of any advertising or promotional material for the offering is prohibited.

28. Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

Brazilian law expressly recognizes a practice equivalent to the concept of pre-marketing, through the concept of prior consultation with professional investors, pursuant to Article 12 of CVM Resolution No. 160. This mechanism allows the offeror to assess, in a confidential and controlled manner, the market's interest in the potential public offering of securities, before formalizing the application for registration of the offering with the CVM.

According to the rule, this consultation may be carried out directly by the offeror, by legally qualified intermediary institutions, or, until the time of filing the registration application, by persons hired by the offeror who are acting as its advisors in the preparation of the offering.

During the consultation phase, a confidentiality

agreement must be formalized with the consulted investors, in which they undertake to keep confidential both the information received and the very possibility of the public offering, until the official disclosure of the notice to the market announcing the start of the distribution. This commitment is an essential condition for the regularity of the practice.

It is important to note that CVM Resolution No. 160 expressly prohibits any binding of potential investors to the investment that is the subject of the consultation. In other words, under no circumstances is it permitted to (i) accept or formalize the offer, (ii) pay or receive amounts, assets, or rights related to the future offer, or (iii) establish any contractual obligation or investment commitment between the parties, directly or indirectly.

The prior consultation mechanism has gained practical relevance, especially in transactions involving alternative funds and structured offerings, enabling a preliminary approach to the market without compromising the regulatory process or the integrity of the offering.

29. Can Alternative Investment Funds be marketed to retail investors?

Brazilian law allows certain alternative investment funds to be offered to retail investors, provided that the criteria and restrictions set forth in CVM regulations are observed, in particular Resolution CVM No. 175 and CVM Resolution No. 160.

Among the vehicles that fall into this category and that can be accessed by retail investors are Real Estate Investment Funds, FIAGROs, Credit Rights Investment Funds, and Multimarket Investment Funds with exposure to alternative assets. Eligibility for retail distribution depends, however, on the structure of assets and risks assumed.

To protect retail investors, the regulations establish specific regulatory restrictions, such as: (i) prohibitions on the acquisition of certain assets considered complex or higher risk; (ii) more restrictive concentration and diversification limits in the investment policy; (iii) prohibition on the payment and redemption of shares in assets (which must be carried out exclusively in national currency); (iv) restrictions on leverage, derivatives, and repurchase agreements, depending on the fund class; and (v) minimum transparency and governance requirements, including with regard to the provision of periodic information and the preparation of informational documents.

In addition, as mentioned above, the CVM imposes additional requirements for the registration of public offerings of these funds, under CVM Resolution No. 160.

30. Does your jurisdiction have a particular form of Alternative Investment Fund be that can be marketed to retail investors (e.g. a Long-Term Investment Fund or Non-UCITS Retail Scheme)?

Certain funds with strategies or exposure to alternative assets may admit retail investors, provided that the limits and regulatory restrictions applicable to their category and investment policy are observed, by CVM regulations.

31. What are the minimum investor qualification requirements for an Alternative Investment Fund? Does this vary by asset class (e.g. hedge vs. private equity)?

As mentioned above, the minimum investor qualification requirements vary according to the fund's class and investment policy, under Resolution CVM No. 175.

32. Are there additional restrictions on marketing to government entities or similar investors (e.g. sovereign wealth funds) or pension funds or insurance company investors?

Brazilian law does not impose specific restrictions on the distribution of alternative investment funds to government entities, sovereign wealth funds, or other public entities. However, the constitution and investments of these vehicles are normally subject to specific regulations (laws or decrees) issued by the respective federal entity (Union, States, or Municipalities), which define guidelines regarding the origin of funds, purpose, and investment policy. Thus, any restrictions arise from the specific regulations of each entity, and not from general CVM rules.

In the case of open pension plan entities (EAPCs) and insurance companies, investments must comply with the limits and conditions outlined in CMN Resolution No. 4,993, of March 24, 2022, as amended, and complementary rules of the Superintendência de Seguros Privados ("SUSEP"). Such investors may invest guarantee funds in funds such as Credit Rights Investment Funds (senior subclass), Real Estate Investment Funds, Multimarket Funds, and Private Equity and Venture Capital Investment Funds qualified as investment entities, under Brazilian tax regulations, provided that specific

requirements are met, such as restrictions on leverage, maintenance of a minimum percentage of capital subscribed by the manager or managers belonging to its economic group, as well as a prohibition on privileges for the manager and related parties in relation to other shareholders.

It should be noted that investments made by EAPCs and Insurance Companies in any assets, including alternative funds, must always be made through a specially constituted investment fund (FIE), in the form of an open condominium, in which EAPCs and Insurance Companies will be the sole shareholders.

Pension funds (EFPCs) are subject to CMN Resolution No. 4,994/2022, of March 24, 2022, as amended, and to the regulations of the Superintendência Nacional de Previdência Complementar ("PREVIC"). Investments in alternative funds — such as Credit Rights Investment Funds, FIAGROs, Real Estate Investment Funds, Multimarket Funds, and Private Equity and Venture Capital Investment Funds — are permitted, provided that the fund complies with specific rules, including, without limitation, in the case of Private Equity and Venture Capital Investment Funds, qualification as an investment entity, under Brazilian tax regulations, maintenance of a minimum participation by the manager or managers of its economic group, absence of privileged treatment for the manager and/or persons connected to it in relation to other shareholders, prohibition of investment abroad, limitation of shareholders' liability to the amount subscribed by them.

The Special Social Welfare Policy (RPPSs), in turn, must comply with the requirements of CMN Resolution No. 4,963, dated November 25, 2021. RPPSs may invest in Multimarket Funds, Real Estate Investment Funds, Private Equity and Venture Capital Investment Funds, and senior quotas of Credit Rights Investment Funds, provided that regulatory requirements are met, which include, depending on the fund category, without limitation, credit rating, history of public offerings closed and settled by the manager, governance structure of the fund and the manager, and specific rules for charging performance fees.

In summary, although there are no restrictions on offering alternative funds to public and private institutional investors, their ability to invest is subject to specific rules from their respective regulatory bodies, which impose technical, operational, and governance requirements that, in practice, restrict the universe of funds eligible for this audience.

33. Are there any restrictions on the use of intermediaries to assist in the fundraising process?

The use of intermediaries in the process of raising funds through the distribution of investment fund shares is permitted and widely used in the Brazilian market, provided that such intermediaries are duly qualified and authorized by the CVM and/or, where applicable, by the Central Bank of Brazil, in accordance with their respective powers.

Under current regulations, participants in the securities distribution system may act as distributors of securities, including investment fund shares. This includes, among others, securities brokers and distributors. In addition, managers or fiduciary administrators, when duly authorized, may act in the distribution of shares under their administration or management, as the case may be.

34. Is the use of "side letters" restricted?

Brazilian regulations do not expressly prohibit the execution of side letters in the context of investment funds. However, Resolution CVM No. 175 imposes significant limitations on their use, particularly concerning the principle of equality among shareholders belonging to the same class or subclass of shares.

Although the rule does not specifically address side letters, Resolution CVM No. 175 requires that various conditions applicable to the fund, its classes, and subclasses be formally reflected in its constitutive documents—including the regulations, class annexes, and subclass appendices—which must comply with the minimum requirements outlined in the regulations.

In this context, the use of side letters may be permitted, provided that their terms do not imply undue privileged treatment among shareholders of the same class or subclass, do not violate the fiduciary duties of the administrator or manager, and do not modify the economic or political rights provided for in the documents of the fund, class, and/or subclass. Furthermore, such instruments must not compromise the principles of fairness and good faith that govern the relationship with other investors.

Considering the nature and purpose of this type of instrument, the practice of side letters is more common in

the context of alternative funds, whose complexity allows for complementary agreements, especially in structures aimed at qualified and professional investors, who have a greater capacity to individually assess and negotiate such conditions.

35. Are there any disclosure requirements with respect to side letters?

Currently, Resolution CVM No. 175 and Brazilian fund regulations do not regulate the use of side letters and, in this sense, do not impose any specific obligation for public or regulatory disclosure of any side letters signed. However, these instruments mustn't violate the principle of equality among shareholders of the same class or subclass, as provided for in the applicable regulations and highlighted in item 34 above.

Thus, although there is no formal disclosure requirement, the validity and admissibility of side letters in the Brazilian market will depend on their compliance with fiduciary duties and the principles of equity among shareholders that govern the management of investment funds.

36. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?

In the Brazilian alternative investment fund market, the most common terms in side letters include protection clauses that guarantee investors the right to conditions that are economically equivalent to those granted to other investors; specific governance rights, such as seats on advisory committees and veto rights on strategic decisions; economic benefits, such as reduced management and performance fees, co-investment rights, tag-along rights, preference in future funding rounds, as well as provisions related to lock-up periods and other specific political, economic, and governance rights.

Although the use of side letters is not yet as widespread in Brazil as in other jurisdictions, there has been a growing adoption of these instruments in more complex funds aimed at qualified and professional investors, reflecting a gradual evolution of the local market in line with international best practices.

Contributors

Ihury Bastos Pereira Darmont

Head of Regulatory,
Structured Finance
Operations and Asset
Management

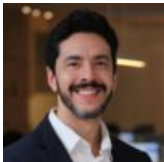
id@darmonthadvogados.com



Filipe Starzynski

Head of Litigation

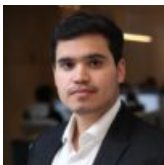
filipe.starzynski@darmonthadvogados.com



Ariel Goldstein

Senior Associate of
Regulatory and Asset
Management

ariel.goldstein@darmonthadvogados.com



**Artur Marangoni Cabral
Fagundes**

Senior Associate of
Regulatory and Asset
Management

a.fagundes@darmonthadvogados.com



Karyn Yoshisaki

Senior Associate of
Regulatory and Asset
Management

karyn.yoshisaki@darmonthadvogados.com

