

# Juridical Handbook of Brazilian Investment Funds

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| Rafael De Conti |

*Corporate and Tax Law applied to the  
Financial & Capital Markets*

**Juridical Handbook of**

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**Brazilian Investment Funds**

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## **Introduction**

§1. On the first edition of this book, I said that the Brazilian Financial and Capital Markets became extremely interesting for foreign and national investors, being possible indicate as reasons for this not only the economic stability achieved by Brazil and the consequently increase of resistance to external economical turbulence, but, also, being possible indicate as reason the development of a sophisticated legal and regulatory system of these Markets. This was in 2009.

§2. On this second edition, 7 years later, with more practical experience as a business lawyer and in the middle of a Political and Economical crises in my country, I can say to you, dear reader, that the investment vehicles became more sophisticated and, second, that a moment of crises is an opportunity moment.

§3. Such as I wrote in the paper “Start-up and Private Equity in Brazil: crisis as the presage of paradise”:

*“...now it is time to start-up and acquisitions, everything by low price for whom have money to pass the crisis...investment in Brazil, as every investment, is an issue of calculation and passion. If 1,00 EUR is equal to R\$ 4,28, an European company can acquire a Brazilian company by three or four times less, already considering the debts. As the same time, by necessity, will arrive a new balance in future*



*among taxes and production of goods and services - we can expect better days. Even under resistance, the Brazilian State, to survive, will have to cut taxes to permit the revival of industry, commerce and services”.*

§4. But the aim of this Handbook remains the same: present the general normative structure and the mechanisms by which an investment fund is constituted, as well as, aims present, in a simple way, many species of investment funds which exist in Brazil.

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**I**  
**General Normative Structure**  
**and the mechanisms by which an**  
**Investment Fund operates and is constituted**

- 
1. General Rules for any Investment Fund in Brazil
-

# 1

## **General Rules for any Investment Funds in Brazil**

### **1.1. Rule of Regency**

§5. Normative Ruling CVM (CVM is the Securities and Exchange Commission of Brazil): present norm: ICVM 555 (Last Amendment: ICVM 572/2015); previous norm: ICVM 409 (Last Amendment: ICVM 549/2014)

### **1.2. Constitution and Operation of a Collective Investment Entity**

**1.2.1. Form** (present norm: Normative Ruling ICVM 555/2015, Articles 4, 13, 14, 18, 20, 22; previous norm: ICVM 409, Articles 5, 12, 19, 20, 22, 23, 24)

§6. Open-end Investment Fund:

(i) redemption of shares according the Regulation of the Fund;

(ii) there is no assignment or transfer of shares, excepting judicial or arbitration decision, operations of fiduciary assignment, performance of guarantee, universal succession, dissolution of marital property, transfer of pension plan or change in the administration of the pension (the new rule 555 brings other possibilities not established in the previous norm 409);

(iii) issuance of shares, by Authorized Institution, regardless of previous registration in the

CVM.

Closed-end Investment Fund:

(i) redemption only at the end of duration of the Investment Fund;

(ii) shares can be transferred if some formalities were observed, what shall be done by the Fund's Administrator; the transfer occurs by Instrument of Assignment and Transfer, or in the organized market in which the shares can be negotiated;

(iii) distribution of shares, by Authorized Institution, needs be registered in the CVM (If there is non-qualified investor > Initial Public Offering of its shares accordingly with Normative Ruling CVM 400 / If there is

only qualified investor > submission of documents, by the Internet and under Article 22 of the Normative Ruling CVM 555).

**1.2.2. Steps of Constitution of a Collective Investment Entity** (present norm: Normative Ruling ICVM 555/2015, Articles 6, 8, 17, 18, 25, 42, 78; previous norm ICVM 409: Articles 3, 19, 20, 28, 30 and 33)

§7. Schedule of Events:

(i) draft of the Minute of Incorporation, of the Fund's Regulation, of the Form of Additional Information, and, when Open-end Fund for general public, also preparation of the Page of Essential Informations (called "Lâmina");

(ii) resolution of Fund's Administrator which, at the same act, enacts the Regulation, observing the specific declaration of Fund's Administrator concerning the compliance with the Brazilian norms;

(iii) enrollment of the Incorporation Act and of the Regulation in the Competent Registry, Enrollment of the Investment Fund in the Brazilian Register of Taxpayer, hiring (if necessary) of Third Parties Services, and Enrollment of the Fund in the CVM;

(iv) distribution of shares accordingly with the form of the Fund (open-end or closed-end) and the existence, or not, of

qualified investor, observing that the distribution can be done by a Third Hired and through electronic means;

a) underwriting of shares, with a Instrument, signed by shareholders, on the cognizance of the risk inherent to the investment activity, and on the rules of regency of the Fund – this Instrument shall have, at maximum, 5.000 characters;

b) payment of subscribed shares (as rule, in Brazilian Currency. The Fund for professional investors can use financial assets to payment of the shares,



according the ICVM 555,  
Articles 125, I and 129).

**1.2.3. Documentation Required for Constitution the Entity** (present norm: Normative Ruling ICVM 555/2015, Articles 41, 42, 44; past norm: ICVM 409: Articles 8º, 39, 40, 41)

§8. Documentation:

- Minute of Incorporation;
  
- Regulation/By-Law, enrolled in the Competent Registry, with the necessary devices of the Normative Ruling CVM 555: qualification of the fund administrator /manager /trustee, form of the Fund (open-end, closed-end), duration (perpetual or limited), investment policy (as maximum percentage in certain applications) and policy of

information (including tax information), rate of administration /performance/ input and out, other costs, financial year, operation of the meeting of shareholders, among others devices;

- Form of Additional Information: it is necessary be declared in this Form the term to described the portfolio of the Fund, as well as place, means and forms by which the informations are shown and required from the shareholders, risks concerning the portfolio, how the Fund can vote concerning the management of their assets, description of the taxation, description of the administration policy concerning risks, description of the Fund's

Administrator, Fund's Manager, Third Services hired, policy of share's distribution, and any other relevant fact important to investment decisions (this Form is an extend version of the old Policy of Disclose of Information, established in the repealed norm ICVM 409).

- Page of Essential Information (called, in Portuguese, “Lâmina”): this document aims to maintain the shareholders updated on the principal informations on the Fund. Some of the parts of this document are: Aims of the Fund, Investment Policy, Rules on terms, entry rate, out rate, administration rate, expenses, present portfolio, risks, historic of profitability, among other issues (\* on the regency of

the repealed norm ICVM 409, the Prospectus was a document with substantial information on investment policy, inherent risks and fund's operation, being necessary, at that time, the description of the devices established by the Normative Ruling 409, such as policy of administration, relations with Third Parties Hired, specification of charges, purchases condition of shares /redemption and the maximum concentration of shares by shareholders, among other devices. The Prospectus do not exist in the new norm 555 – this was get out of the regulation to avoid double information and reduce costs);

- Contract with Independent Auditing (accounts) and, in the

case of hiring Services of Third Parties for Administration: Contracts with Service Providers (Manager of Portfolio, Advisory of Investment, Custody Services, Distribution of Shares, Record of book-entry share, Treasury, Control and further development of the equity, Classifying Agency Risk).

**1.2.4. Structure of Power** (present norm: Normative Ruling ICVM 555/2015, Articles 66, 75, 76, 78, 79, 80, 84, 90; previous norm ICVM 409: Articles 37, 43, 45, 47, 54, 56, 58, 65 and 66)

§9. Structure of Power:

(i) Meeting of Shareholders

a) exclusive authority to resolve on accounts, replacement /dismiss of

the fund administrator  
/manager /trustee,  
operations of major  
/acquisition /spin-off/  
settlement of the  
Investment Fund, issue of  
new shares in the closed-  
end Fund, amortization of  
shares, increasing of the  
rate of administration,  
custody and performance,  
amendments of the  
Regulation, changes of  
Investment Policy;

b) exercise of the Voting  
Right – Rule 1: majority  
of the votes, being 1 vote  
equal to each share; Rule  
2: Fund Manager, Fund  
Administrator, Service  
Providers and Related  
Persons don't vote

(segregation of interests).

(ii) Fund's Administrator – Agent of the Fund (The Administration is constituted by the whole of direct or indirect related services to the operation and maintenance of the fund, being the services done by the Fund's Manager or by Third Parties). The Fund's Administrator is always a legal entity, and are rules for, and powers of, this legal entity:

a) be comply with resolutions of the Meeting of Shareholders;

b) be responsible for the constitution of the Fund and to provide information to the CVM;

c) do the amendments to the Regulation that don't cause impact (such as change of the Address of the Fund and change of the Identification of the Fund's Manager) and the amendments that are necessary by reason of a Normative Ruling; Decrease of the Administration Rate;

d) the Fund's Administrator shall be intervening-consenting party in each contract with Third Parties because, accordingly with the Normative Ruling, there is joint liability between the Administrator and the



Third contracted (risk control);

e) there are the following fixed species of third services that the Fund's Administrator can hire: management of the portfolio, advisement for investment, services of treasury, control and processing of financial assets, distribution of shares, bookkeeping of the operations, custody of financial assets, risk rating, market maker;

f) liable for supervise the services hired;

g) liable for damage engendered by acts and

omissions, when these are contrary to Law, the Regulation and Normative Acts issued by the CVM.

(iii) Fund's Manager

a) empowered to trade professionally the assets of the Fund, may be natural or juridical person, and shall be accredited as a Portfolio Administrator of Securities by the CVM.

b) closing of agreements related to the negotiation and contracting of financial assets, being the agent of the fund in these cases, as well as, have the

right to vote on the mentioned assets.

(iv) Advisory /Technical /Investment Boards

a) assignments established in Regulation and duty to report cases of actual or potential conflict of interest.

b) the remuneration for these Boards can not be an expense of the Fund; they shall be payed, when necessary, with a part of the administration rate.

### 1.2.5. Liability

#### §10. Liability:

(i) of the Shareholders (present norm: Normative Ruling ICVM 555/2015, Articles 2, 15, 25, 58; previous norm ICVM 409: Articles 13, 30, 70)

a) possible negative net worth of the Fund (risk of market /credit /liquidity)  
In the new norm ICVM 555, the concept of net worth of the Fund is the difference between (a) the total assets that will be made (“ativo realizável”, in Portuguese) and (b) the liabilities that shall be paid (“passivo exigível”,

in Portuguese);

b) sign a Term of knowledge on the risks and rules of the Fund;

c) maintain with the Fund the updated informations of the registration form.

(ii) liability of the Fund's Administrator – Agent of the Fund (present norm: Normative Ruling ICVM 555/2015, Articles 2, 15, 17, 37, 39, 56, 60, 89, 90, 92, 141; previous norm ICVM 409: Articles 13, 15, 16, 21, 64, 65, 68, 72, 98 and 117)

a) liability to follow the investment policy and the limits of concentration

established in the Regulation; maintain the classification of the Fund;

b) duty to inform correctly: maintain the shareholders, the intermediates and the market always updated about the activities of the Fund, especially in what concern to substantial act or fact; preserve the assistance service to shareholders;

c) duty of care the issues related to the Investment Fund;

d) the Fund's Administrator has joint liability with the Third

Parties engaged, that shall be supervised by the Fund's Administrator;

e) observe the limit of the administration rate established in the Regulation when the engagement of Third Parties, under penalty of being responsible for costs that exceed this limit;

f) liability for delay in payment to the shareholder when leaving the Fund (redemption of shares), and liability for damages for failure to close the Fund for redemption when the situation requires;

g) to promise of profits previously determined, use of resources of the Fund for an insurance against eventual financial loss of shareholders, among other not allowed acts according the Article 89 of the norm ICVM Instruction 555;

h) subject to monetary penalties (including penalty by day), suspension, disfranchisement, temporary prohibition, in the cases established on the Normative Ruling CVM 555 – examples: don't make public substantial fact and



denaturalization of the classification of the Fund.

(iii) Of the Third Parties Hired:

a) liabilities which, originally, would be of the Fund's Administrator, such as supply of information, observing the mutual liability of the Administrator and the Third.

§11. The Liability, which enables the right to compensation of those who suffer damage, must be observed in each case, including for the measure of the damage and its justification, which can be originated from the disruption of a contractual duty or even of a legal duty established by the State.

**1.2.6. Charges** (present norm: Normative Ruling ICVM 555/2015, Articles 2, 85, 86, 87, 109, 132; previous norm: ICVM 409, Articles 61, 62, 93, 94 and 99)

§12. Charges:

- Administration Rate, which one shall encompass Services of Third hired, and need be fixed in the Regulation;

- Performance's Rate (shall be established in the Regulation if the Performance is based on results of the Fund, or if is based on the result of each operation made by each shareholder, or if is based on the result of the Fund, plus individual adjusts);

- Rate of Entry and Out;

- Taxes and charges of enrollment /communication /fee for public services, commissions per transaction, honorarium (audit, attorney), custody and settlement, exchange closing, annual contributions to stock exchange and other entities, among others established in the Article 132 of the norm ICVM 555.

**1.2.7. Classification of the Funds according the Assets** (present norm: Normative Ruling ICVM 555/2015, Articles 108, 109, 112-117; Normative Ruling CVM 409: Articles 92-96 and 97)

§13. Classification:

(i) Fixed Income (and, additionally, as Long Term): at least 80% of assets related

directly, or summarized through derivatives, to the variation in the domestic interest rates or price indexes, or both. According some characteristics of the assets composition the Fund can be additionally classified as Referenced, Foreign Debt, Short Term, and Simple;

a) when Fixed Income Referenced Fund: at least, 80% of the Net Equity represented, isolated or cumulatively, per bonds issued by the Brazilian State – Federal Administration, and per bonds and securities of fixed income which one the Fund's Manager classifies as low credit risk, or shares of Index

Funds which invest mainly in the mentioned assets;

b) when Fixed Income Fund of External Debit (and, additionally, as Long Term): at least 80% of its Net Equity in securities representing the foreign debt of the Brazilian Federal Government, also being possible, in some situations, allocate resources in the International Derivative Market;

(ii) Fund of Stocks (and, additionally, as Long Term): at least 67% of the portfolio in stocks admitted to trade at the Sight Market of Stock Exchange or entity of Over-the-counter

Market, bonus or subscription receipt related to the mentioned stock, shares of Stocks Funds as well as shares of Index of Stocks Funds related with the mentioned stocks, Brazilian Depository Receipt;

(iii) Foreign Exchange Funds (and, additionally, as Long Term): at least 80% of assets related directly, or summarized through derivatives, to the variation in the foreign currency rates, or the variation in the foreign exchange coupon;

(iv) Multi-market Fund (and, additionally, as Long Term): shall has investment policies which considers different risks of investment (price index, interest rates, index of stocks, fluctuation

of the foreign currency), without the commitment with any special concentration factor;

\* In Brazil, are financial assets: public debts, derivative agreements, shares, debentures, warrants, coupons, rights, subscription receipts and certificates developments, certificates of deposit of securities, debenture bills, shares of investment, promissory notes, other securities, Commercial Contracts of Sale of Products, Goods and Services for Future Consideration or Call, any operational agreement of Financial Institutions, gold. In a recent workshop, occurred at 31th May 2016 in São Paulo, and called “Luxembourg: Brazil's partner in International Finance, an agent of the Brazilian Securities and Exchange Commission expressed that they yet do not considers Bitcoins as an asset. Maybe this position is the same of fighting against reality. In the end, everything can be measured.

\* Long Term: Middle Term of the Portfolio is higher than 365 days, which shall be composed by: Private

Bonds or Public Federal Bonds, fixed or indexed by SELIC rate or by another interest rate, price index or by exchange gain variation, or, yet, by matched transaction guaranteed by Public Federal Bonds (according the Brazilian Tax Norms: Normative Rulling of the Brazilian Federal Revenue n° 1585/2015, Article 3°);

Short Term: Middle Term of the Portfolio lower than 60 days, which shall be composed, exclusively, by Private Bonds or Public Federal Bonds, fixed or indexed by SELIC rate or by another interest rate, or bonds indexed per price index, with maximum term to arise from 375 days.

**1.2.8. Qualified and Professional Investors** (present norm: Normative Rulling ICVM 554, Article 9-A and 9-B; previous norm: ICVM 409, Article 109 and Annex 1)

§14. Professional and Qualified Investor: the total legal and regulate protections, applied to not-qualified investors, do not apply to qualified and



professional investors, being allowed, for example, the use of securities in payment and redemption of shares of the Fund.

(i) Professional Investors: financial institutions; insurance companies and capitalization companies; public and private social welfare entities, natural persons or legal entities with investment amounts greater than R\$ 10.000.000,00 and that attest this condition in writing, investment funds, investment clubs in some situations, autonomous agents of investment, portfolio managers, analysts and consultants of securities authorized by Brazilian Securities and Exchange Commission, in relation to their own resources, not resident investors;

(ii) Qualified Investors: professional investors, natural persons or legal entities with more than R\$ 1.000.000,00, natural person with certificate issued by Brazilian Securities and Exchange Commission, investment clubs in some situations.

**1.2.8.1. Funds for Qualified Investors:** two or more qualified investors.

**1.2.8.2. Funds for Professional Investors:** two or more professional investors (can exist a qualified investor that is not professional).

**1.2.8.2.1. Exclusive Funds** (present norm: Normative Rulling ICVM 555, Article 130; previous norm: ICVM 409, Article 116): constituted for receive

investment of only one shareholder, who shall be professional investor.

**1.2.8.3. Pension Funds:** for the entities of public and private pension.

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## II

### Other Investment Funds

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2. Investment Fund in Shares of Investment Funds
  3. Participation Investment Fund (Private Equity Fund)
  4. Investment Fund in Shares of Private Equity Fund
  5. Emerging Companies Investment Funds (Venture Capital Fund)
  6. Credit Receivables Investment Fund
  7. Investment Fund in Shares of Credit Receivables Investment Fund
  8. Real Estate Investment Fund
  9. Exchange Traded Fund (ETF)
-

## 2

### **Investment Fund in Shares of Investment Funds**

#### **2.1. Rule of Regency**

§15. Present Normative Ruling ICVM 555, Article 119; previous norm: ICVM 409, Article 112

#### **2.2. Some Attributes**

- minimum of 95% of its equity shall be vested in shares of investment funds of same class regulated by the Normative Ruling ICVM 555, except the investment fund in shares classified as Multi-market, which may invest in shares of funds of different class;

- Fixed Income Funds and the Funds classified as Multi-market may invest in another Funds, such as, but not limited to, Real Estate Investment Fund, Credit Receivables Investment Funds;

- the Administration's Rate of a Fund which invests in shares of others Funds shall be declared in its Regulation together with the Administration Rates of the invested Fund.

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### 3

## **Participation Investment Fund (Private Equity Fund)**

### **3.1. Rule of Regency**

§16 Normative Ruling CVM 391 (Last Amendment: ICVM 554/14)

**3.2. Investment in:** stocks, debenture, subscription bonds, or other securities and shares convertible or exchangeable into shares of publicly held or private companies, participating in the decision making process of the invested company (by shares which integrate the control block of the Company, shareholders' agreement or other legal instrument for participation in decision making).

### **3.3. Some Attributes**

- (i) Closed-end Investment Fund;
- (ii) Only Qualified Investors;

### **3.4. Investment in Publicly-held Corporation:**

- Criteria defined in Regulation.

### **3.5. Investment in Privately-held Corporation:**

- The Privately-Held Corporation has the necessity to practice the Governance according the rules of the Normative Ruling 391, such as the necessity of uniform term of 1 year to the entire Board of Directors, necessity of Arbitration Panel for resolution of corporate disputes, annual audit by independent auditors, among others rules.

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## 4

### **Investment Fund in Shares of Participation Investment Fund**

#### **4.1. Rule of Regency**

§17. Normative Ruling ICVM 391 (Last Amendment: ICVM 554/14)

**4.2. Investment in:** at least, 90% of the Fund's Assets shall be invested in shares of Participation Investment Funds, as well as in shares of Emerging Companies Investment Funds, or invested in shares of Stocks Funds – Access Market.

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## 5

### **Emerging Companies Investment Funds (Venture Capital Funds)**

#### **5.1. Rule of regency**

§18. Normative Ruling ICVM 209 (Last Amendment: ICVM 554/2014)

**5.2. Investment in** (Normative Ruling ICVM 209, Articles 1º, 26): minimum of 75% of investment in stocks, convertible debenture, or subscription bond issued by emerging companies. Emerging Companies = annual net profit of less than R\$ 150.000.000,00. It is not possible for this Fund invest on corporation that the control power are owned of a group of legal entities, of fact or law, with net profits higher than R\$ 300.000.000,00

**5.3. Some Attributes** (Normative Ruling CVM 209, Articles 1, 2, 6):

- (i) Closed-end Investment Fund;
- (ii) Limited duration of 10 years;
- (iii) only for qualified investor

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## 6

### Credit Receivables Investment Fund

#### 6.1. Rule of Regency

§19. Normative Rulings ICVM 356 (Last Amendment: ICVM 558/2015)

**6.2. Investment in:** more than 50% of its Net Equity shall be constituted by rights and securities related to credit receivables, generated from financial sector, commercial sector and real estate sector, from mortgage, from leasing and from rendering of services, warrants, commercial contracts of sale of products, goods and services for future consideration or call, as well as bonds or certificates representing such contracts.

### 6.3. Some Attributes:

- (i) Open-end or Closed-end Investment Fund;
- (ii) Average Net Equity greater than R\$ 500.000,00;
- (iii) Can only receive applications, as well as have shares of the Fund traded on the Secondary Market, when the subscriber or purchaser of shares is professional investor;
- (iv) The administration of the Fund may be exercised by multiple bank, commercial bank, Brazilian CEF, investment bank, company of credit, finance and investment, brokerage company for securities, distributing company of stock and securities.

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**Investment Fund in Shares  
of Credit Receivables Investment Fund**

**7.1. Rule of Regency**

§20. Normative Ruling ICVM 356 (Last Amendment: ICVM 558/2015)

**7.2. Investment in:** minimum of 95% of its Net Equity shall be constituted by shares of Credit Receivables Investment Fund.

**7.3. Some Attributes:**

- (i) Open-end or Closed-end Investment Fund;
- (ii) Average Net Equity greater than R\$ 500.000,00

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## 8

### Real Estate Investment Fund

#### 8.1. Rules of Regency

§21. Normative Ruling ICVM 472 (Last Amendment: ICVM 554/2014); Act 8.668/1993

**8.2. Investment in:** investment in real estate projects, such as building of real estate and the acquisition of already existent real estate;

#### 8.3. Some Attributes:

- (i) Closed-end Investment Fund;
- (ii) Fund's Administrator has the trust ownership of the real estates;
- (iii) The shareholder can not exercise any real right on real estate and real estate ventures which constitute the Assets of the Fund, possessing no

liability by any legal or contractual obligation concerning to these buildings and real estate ventures;

(iv) Payment of subscribed shares: Brazilian currency, and, if established in the Regulation, the payment can be made by real estate and rights related to these;

(v) The Fund may hold part of its property permanently applied in quotas of Investment Funds or fixed income securities, public or private, to keep its liquidity needs;

(vi) Can be constituted a FII only for qualified investors

\* the Normative Ruling ICVM 528/2012 brings the "market maker" as new function in the structure of Real Estate Investment Funds, function that can not be rendered nor by the administrator, nor by the manager.



## 9

### Exchange Traded Fund (ETF)

#### 9.1. Rules of Regency

§22. Normative Ruling CVM 359, with last amendment by ICVM 545/2014

**9.2. Investment in:** investment in portfolio of financial assets that aims to reflect the changes and return of a benchmark index, indefinitely, observing which the benchmark index is the index of specific market recognized by the Brazilian Securities and Exchange Commission, and is the index to which the investment policy of the Fund is related;

- at least 95% of its assets invested in assets that are part of the benchmark index, or in positions acquired in the futures market.

### 9.3. Some Attributes:

- (i) The Fund is passive: the investment risk is just the market;
- (ii) Open-end Investment Fund;
- (iii) The asset value of the share is obtained by dividing the net asset value of the Fund by the number of existing shares at the close of the day, calculated on the same criteria used for calculating the closing value of the benchmark index;
- (iv) The Regulation of the Fund can establish a minimum and maximum of financial assets to subscription or redemption of shares, based on the portfolio.

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### **III**

## **Taxation**

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#### 10. Brazilian Taxation of Investment Funds

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## **10 Taxation**

### **10.1. Income Tax**

§23. Normative Ruling of the Brazilian Federal Revenue INRFB 1585/2015. This norm considers as first criteria for taxation the tax residence of whom get profits trough Investment Funds. The second one is related to the Fund be of Long-Term or Short-Term, such as established above, in the topic “Classification of the Funds according the assets”. As general rule, the investor of a Long-Term Fund shall pay income tax when the redemption of shares according the following proportions: 22,5% - term up to 180 days, 20% - term from 180 to 360 days, 17,5% - term from 361 to 720 days, 15% higher than 720 days. As general rule, the investor of Short-Term

Funds shall pay income tax when the redemption of shares according the following proportions: 22,5% - term up to 180 days, 20% - term higher than 180 days. Stocks Investment Funds, e.g. has special taxation of 15% on the earnings when the redemption of shares, considering as calculation basis the positive difference between the value of the shares when the redemption and the value of shares when the acquisition, considering the asset value. Other examples of Funds with special tax treatment are: Real Estate Funds, Funds with portfolio in Debentures, Equity Funds in Infra-Structure, Equity Funds in Innovation.

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**IV**  
**Other Important Issues on**  
**the Brazilian Industry of Funds**

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11. The Issuer of Securities
  12. Understandings of the Brazilian Securities and Exchange Commission
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## 11

### Issuer of Securities

#### 11.1. Rule of Regency

§24. Normative Ruling ICVM 480/2009, with last amendment by ICVM 569/2015

#### 11.2. Some Attributes

§25. The Issuer of Securities shall provide to the Brazilian Securities and Exchange Commission periodic informations, such as financial statement, the call notice to the general meetings of shareholders, documents related with the right to vote, among others. One important information is the Reference Form.

### 11.3. Reference Form

§26. In order to maintain an informed and transparent market, and, consequently, a rationalized market, the Securities and Exchange Commission of Brazil enacted the Normative Ruling ICVM 480/2009, replacing the IAN (Annual Information Form) by the Reference Form, which content is established in Annex 24 of the Normative Ruling mentioned.

§27. The deadline for delivery the Reference Form is up to 5 months after the close of the fiscal year, observing the necessity of constant updating of the Form when happens relevant facts according the Article 24 of the Normative Ruling ICVM 480/2009. It is also necessary the delivery of the Form at the date of application for registration of public distribution of securities.



§28. The Reference Form requires the following information: identification of persons responsible for the content of the Form; independent auditors; selected financial data; risk factors that may influence the investment decision; the main market risks (quantity and quality, including exposure and the currency risks and interest rates); management policies of risk and any significant changes; issuer's history; activities developed by the issuer and its subsidiaries; composition of the economical group; relevant assets; directors' comments; projections and estimates; general meeting and administration (structure); remuneration of members of the management board; human resources; control power (shareholder or group of shareholders); transactions with related parties; capital; securities; plans to repurchase securities in company treasury; policy of trading securities; policy of disclosure of information; extraordinary business.

## 12. Understandings of Brazilian Securities and Exchange Commission (CVM)

### 12.1. Adherence Term

§29. One example of understand of the Brazilian Securities and Exchange Commission on the previous Normative Ruling ICVM n° 409/2004, which one can be applied to the new norm ICVM 555/2014. This understanding is based on the Circular Letter called Ofício-Circular/CVM/SIN/No 01/2010: *“The Adherence Term is not the correct mean or instrument to a concession, by the Investor, of any others concessions of another nature, to the Agent of the Fund, such as: previous authorization to the practice of future acts, or power to act in the shareholder name. In this sense, it is worth noting, for example, the irregularity of the*

*adoption of mechanisms for prior informed consent, in Adhesion Term, in the case of matters requiring prior approval by the general meeting of shareholders - questions related to any of the matters set in article 47 of the Normative Ruling”*. In the new norm, the Article 47 is the Article 66 (ICVM 555/14, Art. 66 - It is privately of the general meeting of shareholders the resolutions on: the accountant statements submitted by the fund's administrator; the replacement of the administrator, manager or custodian of the fund; the merger, incorporation, spin-off, transformation or liquidation of the fund; increasing the administration fee; change the investment policy of the fund; issue of new shares in closed-end fund; redemption of shares, if not set by the regulation; and amendment of the Regulation, with the exception of some situations)

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## On Author

§30.



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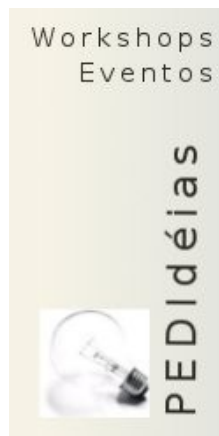
| other books authored by Rafael De Conti:

<https://rdc.pro.br/books>

**This Handbook is part of the Project named**

***Cross-border Finances in Brazil***

**and have the kind SUPPORT of**



| more on the Project on next page

## **The Project**

### *Cross-border Finances in Brazil*

§31. Observing an increase of the demand for knowledge on the field of cross-border finances in Brazil, I decided to found this Project.

In a start-up moment, we will expand the juridical technical content, in English, on Brazilian Law for Foreign Investors, as well as we will expand the legal content, in Portuguese, on Foreign Law for Brazilians. The focus: *Law on Finances*

This start-up moment of the Project has as goal the expansion of the two initial publications of the Project: this book, in English, and the paper, in Portuguese, concerning Investment Funds in Luxembourg. The expansion shall extend, at minimum, the double of content of the initial publications.

To SUPPORT the Project Cross-border Finances in Brazil, and get more details on the SUPPORT PLANS, contact Rafael De Conti trough the email [rafaeldeconti@rdc.pro.br](mailto:rafaeldeconti@rdc.pro.br)