

NEWSLETTER No. 104

MAY 2023



São Paulo

Rua Gomes de Carvalho, nº 1507
2º andar – Vila Olímpia
04547-005 – São Paulo – SP
+55 (11) 4210-4010

Rio de Janeiro

Rua Joana Angélica, nº 228
Ipanema
22420-030 – Rio de Janeiro – RJ
+55 (21) 2523-5960

 **moreira
menezes,
martins**
ADVOGADOS

SUMMARY

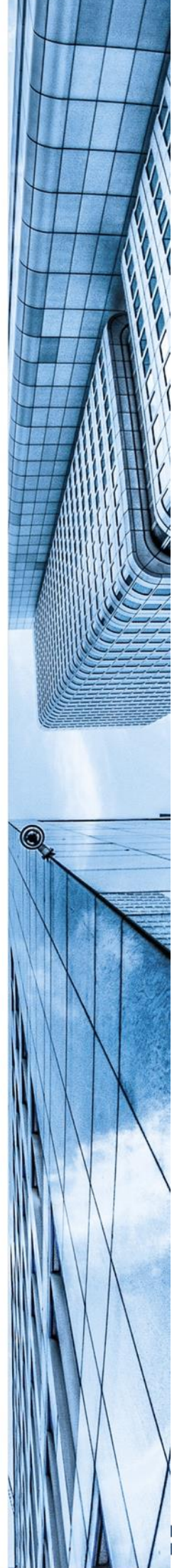
NEWSLETTER No. 104 | MAY 2023

**NEW CIRCULAR LETTER FROM THE CVM CLARIFIES PROVISIONS
OF RESOLUTION 175/2022**

3

**RESOLUTION FROM THE RIO DE JANEIRO STATE COMMERCIAL
REGISTRY BOARD FACILITATES REGISTRATION OF
ENTREPRENEURS AND COMPANIES**

4



NEW CIRCULAR LETTER FROM THE CVM CLARIFIES PROVISIONS OF RESOLUTION 175/2022

On May 3, 2023, the Superintendency for Supervision of Institutional Investors (SIN) of the Brazilian Securities Commission (CVM) released Circular Letter CVM/SIN 2/2023 (“[Circular Letter 02/2023](#)”), with the purpose of disclosing the interpretations of the technical area of some provisions of CVM Resolution 175/2022, covering the establishment, functioning and disclosure of information of investment funds and about the provision of services to those funds (“[Resolution](#)”).

Circular Letter 02/2023 is divided into 17 topics and presents responses to 39 doubts expressed by market participants regarding the regulation of Financial Investment Funds (FIFs), governed in Normative Annex I of the Resolution (“[Annex I](#)”).

In this respect, the following orientations provided by the CVM’s technical area are most relevant:

- (i) Exposure to risk capital:
 - a. Long and short funds: According to art. 73, § 5, of the Resolution, long and short funds are specifically excused from complying with the limits of exposure to risk capital established in current regulations. However, Circular Letter 02/2023 emphasizes the need for (a.1) forecast of the classification of the fund regarding its investment policy; and (b) forecast of the maximum margin limits to which the fund can be exposed in its bylaws.
 - b. Transactions abroad: Circular Letter 02/2023 clarifies that in the scope of the controls for risk capital exposure, the portfolio manager must define the method for this calculation taking into consideration (b.1) the amount of the margin required in transactions carried out with guarantees, (b.2) plus the potential margin of transactions with derivatives abroad without guarantee, (b.3) plus the margins required for positions with derivatives assumed in the local market. Besides this, the responsibility for consolidation of the money invested abroad regarding margins rests with the manager, subject to verification by the administrator, as set forth in art. 25, numeral I, of Annex I.
- (ii) Portion of the performance fee to be paid to the distributor: It will only be possible to allocate a portion of the performance fee to the distributor by investment funds aimed at qualified and professional investors, under the terms of art. 113, numeral III, of the Resolution, a possibility that does not exist for funds targeted at the public at large. About this matter, the CVM reiterated that the performance fee of funds targeted at the public in general must be paid only to the portfolio manager, as specified in art. 28 of Annex I.
- (iii) Declassification and time limits for communication: According to Circular Letter 02/2023, the time frames for communication of declassification shall be counted in business days and will be applicable to all FIFs with the entry into force of CVM Resolution 175, both

new and existing funds, regardless of whether or not an existing fund is adapted to the Resolution.

- (iv) Verifications attributed to the administrator: Pursuant to art. 25 of Annex I, the administrators must verify after the conclusion of a transaction by the manager (a) the compatibility of the prices involved with market prices; and (b) the compliance of the portfolio of assets with the limits on composition, concentration, and as the case may be, capital risk exposure, with frequency compatible with the investment policy of the class of assets. According to Circular Letter 02/2023, the moment of this verification is at the discretion of the administrator, based on its routines and policies, as well as observing the duties, obligations and standards of conduct set forth in the regulations.
- (v) Cryptoassets: According to Circular Letter 02/2023, (v.1) the 10% limit on investment in cryptoassets indicated in art. 45 of Annex I (covering funds targeted at the general public) encompasses investment in the shares of offshore funds whose main risk factor is exposure to the performance of cryptoassets. In turn, the limit on investment in exchange-traded funds (ETFs) specialized in cryptoassets must respect the limit set forth for ETFs (art. 45, numeral IV, letter “g”, of Annex I), since ETFs are considered to be “final assets” for the effects of regulations. In any event, the risk factor associated with each investment fund must be respected, so that a cryptoasset ETF can only receive investments, for example, from funds classified as multimarket (given that cryptoasset ETFs do not have risks typical of stock or fixed-income funds).

More Information, including the full text of the Circular Letter, can be found at the CVM’s website (www.gov.br/cvm/pt-br).

RESOLUTION FROM THE RIO DE JANEIRO STATE COMMERCIAL REGISTRY BOARD FACILITATES REGISTRATION OF ENTREPRENEURS AND COMPANIES

On May 2, 2023, COGIRE Resolution 07/2023 was published, which facilitates the registration of entrepreneurs and companies, by giving new wording to COGIRE Resolution 05/2020.

COGIRE Resolution 05/2020 established the classification of risk of economic activities for the purpose of analysis and waiver of public release acts (administrative acts required as a condition for engaging in economic activities).

In this context, the activities are now classified as follows: (i) low risk (no need for public release acts); (ii) medium risk (requiring an automated electronic permit issued after registration by the State Integrator System (REGIN), which is subject to the acceptance of the entrepreneur’s self-declaration of responsibility); or (iii) high risk (subject to electronic permission issued by the REGIN after prior inspection and satisfaction of any requirements imposed by oversight bodies).

With the issuance of COGIRE Resolution 07/2023, COGIRE Resolution 05/2020 was altered to reclassify the risk level of 67 economic activities as having low risk. Therefore, the registration of entrepreneurs or companies that engage in those activities becomes simpler.

More Information, including the full text of COGIRE Resolution 07/2023, can be found in the Rio de Janeiro State Official Gazette, edition of May 2, 2023 (<http://www.ioerj.com.br/>).