

THE ANGEL INVESTOR LEGAL LANDMARK IN BRAZIL

Supplementary Law 155/2016 (LC 155)

Brazil has always been a promising market for innovative and creative enterprises, even when considered all the social and economic problems. The latest market research show that during 2016 occurred an increase of “angel investing”. In 2016 the amount was R\$ 851 million, 9% higher than previous year (R\$ 784 million)¹.

Expecting to boost this entrepreneurship movement and aiming to regulate this raising wave of investments, the supplementary law 155/2016 was created. Among its principal subjects, this new law regulates and creates legal relations for these kind of investors, establishing concepts and limits to situations until then not protected by any specific law.

This legal landmark intends to increase the creation and development of micro² and small size business³, allowing individuals or companies, without restrictions, to invest in those two kinds of enterprises.

According to the article 61-A, *caput*, of LC 155/2016, these two species of enterprises will be able to admit new vested interests, without taking them as part of the equity capital. Due to this, the angel investor won't become part of the ownership structure.

Another relevant point, is that the angel investor is legally protected of the business risks related to third parties. This is determinate in the § 4º, article 61-A of LC 155.

¹ <http://www.anjosdobrasil.net/blog>

² Faturamento limite de R\$ 360.000, 00 em 2017.

³ Faturamento limite até R\$ 3.600.000,00 em 2017 e R\$ 4.800.000,00 a partir de 2018.

The law allows the entrepreneur to obtain the external investment needed to develop the business without creating a debt, and reduces the risks of all parts involved. The LC 155 follows the same spirit and tendencies of other legislations around the world, and allows investment funds to be angels investors.

The LC 155 does not allow the investor to be the controller of the business or to take their daily decisions. In other hand, there is no prohibition of creating contractual agreements establishing special rights to veto in situations that might harm or jeopardize their interests, such as taking new debts or changes in the administration or equity composition.

Besides this, the follow rights are predicted:

- 1- Withdrawal the invested amount with monetary correction after the contracted investment period;
- 2- Receive a share of the profits (limited to 50% of the total distributed in each fiscal period);
- 3- Conversion of the investment as equity;
- 4- Tag Along with the stakeholders if the business is sold;

As the LC 155/2016 has a clear objective of strengthening *start-ups* and make small business grow, it has some limits (i) time limits for maintaining the angel investor and (ii) limits of investments remunerations.

The investor is not allowed to receive any income before 2 (two) years of the investment. After this initial lapse, the investor can get results during 05 (five) years, this means the investor will have up to 07 (seven) years to decide to join as a shareholder or if will just take the invested money back.

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Related to the profits distribution the investor cannot receive more than 50% of the total amount, and if he decides not to become a shareholder and take out the investment this payment cannot surpass the original amount add with monetary correction (§ 7º, article 61-A).

Although being a new law, the LC 155 tends to become a great way of increasing investments flow in a growing sector, creating new and better business opportunities to everyone involved.