

MEMORANDUM TO CLIENTS AND FRIENDS

August 23, 2017

Amendments to the Puerto Rico Private Equity Funds Act

Act 93 of August 8, 2017 (“Act 93”), which is effective immediately, amends Act 185-2014, as amended, known as the Puerto Rico Private Equity Funds Act (“Act 185”), to clarify the scope and meaning of certain provisions in accordance with its legislative history of facilitating entrepreneurship and the deployment of private capital in Puerto Rico. The principal changes introduced by Act 93 deal with certain defined terms, eligibility requirements, and tax deductions related to an investment in a private equity fund (each, a “Fund”) under Act 185.

Among the salient amendments made by Act 93 are the following:

- A Fund may comply with the Puerto Rico investment requirement of 15% or 60% of the Fund’s paid-in capital by investing in entities that are engaged, directly or indirectly, in trade or business in Puerto Rico;
- An entity organized in Puerto Rico, regardless of the number or type of its shareholders (or their equivalent), or an entity organized outside Puerto Rico, whose direct or indirect shareholders (or their equivalent) are Puerto Rico residents, is a “resident investor” for purposes of the income tax deduction provided under Act 185;
- Fluctuations in the value of the Fund’s investments or the sale, liquidation or other disposition of any of the Fund’s assets are not taken into account for determining the Fund’s compliance with the 20% diversification requirement;
- Such diversification requirement does not prevent a Fund from investing more than 20% of its capital in entities that operate in the same industry or that are engaged in the same type of business, nor does it prevent a Fund from acquiring all or a majority of the proprietary interests of an entity; and
- The 30% or 60% income tax deduction that is available under Act 185 for eligible Fund investors may be claimed against any type of income subject to tax under the Puerto Rico Internal Revenue Code of 2011, as amended, including the alternate basic tax applicable to individuals and the alternative minimum tax applicable to corporations.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the following attorneys:

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