

INFORMATION REPORT

FEBRUARY 2018



INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY 1

- 1) CG-FIES No. 17, OF 1/30/2018
- 2) FNDE ADMINISTRATIVE RULE No. 95, OF 2/7/2018
- 3) SUSEP CIRCULAR No. 567, of 2/27/2018
- 4) RECTIFICATION OF CNSP RESOLUTION No. 360/2017, OF 12/20/2017
- 5) SUSEP MAKES AVAILABLE UPDATED SPREADSHEETS TO CALCULATE THE CREDIT RISK CAPITAL

FINANCIAL MARKET, CAPITAL MARKET AND OTHERS 4

- 1) FEDERAL DISTRICT LAW No. 6112, OF 2/2/2018
- 2) BACEN CIRCULAR LETTER No. 3864, OF 1/31/2018

- 3) BACEN CIRCULAR LETTER No. 3865, OF 2/20/2018
- 4) CVM INSTRUCTION No. 596, OF 2/7/2018
- 5) CALL FOR PUBLIC INQUIRY No. 59/2018
- 6) CMN RESOLUTION No. 4631, OF 2/22/2018
- 7) CMN RESOLUTION No. 4633, OF 2/22/2018
- 8) CMN RESOLUTION No. 4636, OF 2/22/2018
- 9) CMN RESOLUTION No. 4637, OF 2/22/2018
- 10) CMN RESOLUTION No. 4638, OF 2/22/2018
- 11) CMN RESOLUTION No. 4641, OF 2/22/2018
- 12) CVM/SEP/SRE CIRCULAR LETTER No. 1/2018
- 13) CVM/SEP/SRE CIRCULAR LETTER No. 2/2018
- 14) BACEN COMMUNICATION No. 31708, OF 2/28/2018
- 15) DECREE No. 9292, OF 2/23/2018
- 16) CMN ANNOUNCES CHANGES IN THE REGULATION OF INVESTMENT FUNDS OF SOCIAL SECURITY ENTITIES AND INSURERS

CLOSED SUPPLEMENTARY SOCIAL SECURITY..... 13

- 1) SOCIAL SECURITY PORTAL PUBLISHES SET OF RULES FOR CLOSED SUPPLEMENTARY SOCIAL SECURITY ENTITIES (EFPCs)
- 2) FEDERAL PUBLIC SERVANTS MAY OPT FOR MIGRATING THEIR SOCIAL SECURITY REGIME UNTIL JULY 27, 2018

HEALTH..... 14

- 1) NORMATIVE INSTRUCTION – DIPRO No. 054, OF 2/6/2018
- 2) NORMATIVE INSTRUCTION – DIPRO No. 055, OF 2/7/2018
- 3) CFM RESOLUTION No. 2178, OF 12/14/2017
- 4) STF DECIDES ON DIRECT ACTION FOR DECLARATION OF UNCONSTITUTIONALITY - ADI 1931 AND EXTRAORDINARY APPEAL - RE 597.064/RJ THAT QUESTIONED PROVISIONS OF LAW 9656/1998
- 5) STF DECIDES ON ADI 4512 AND SETTLES THAT THE COMPANIES MAY BE REQUIRED TO INFORM THE REASON FOR THE DENIAL OF MEDICAL TREATMENTS.

TAX..... 19

- 1) LAW No. 13630, OF 2/28/2018
- 2) RFB NORMATIVE INSTRUCTION No. 1787, OF 2/7/2018
- 3) CARF DENIES INSURERS' APPEAL RELATED TO PIS/COFINS

SÓCIOS DO ESCRITÓRIO E RESPECTIVAS ÁREAS..... 21

INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

1) CG-FIES No. 17, OF 1/30/2018

On 2/1/2018, the Federal Official Journal published CG-FIES Resolution no. 17, which authorizes the National Fund for the Education Development (FNDE) to issue a ruling for contracts of credit life insurance for students.

Considering the need to set the minimum operating criteria for the insurers to offer the credit life insurance to students that take out the loan, the resolution approves the minimum requirements, the services offered, the cost of the service, and the coverages established in Technical Note no. 1/2018/COSIF/CGFIN/DIGEF to be observed by the insurers.

Among the listed requirements, we point out the insurers' obligation to submit a declaration that their retention limit with SUSEP is, at least R\$ 1,000,000.00; the insurers must also have a virtual platform for the insurance to be taken out and for the contract to be monitored (including to give notice of loss).

The entire rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=515&pagina=19&data=01/02/2018>.

2) FNDE ADMINISTRATIVE RULE No. 95, OF 2/7/2018

On 2/8/2018, the Federal Official Journal published FNDE Administrative Rule no. 17, which provides for the authority of the National Fund for the Education Development (FNDE) to issue a ruling for contracts of credit life insurance for students.

According to the administrative rule, the authority will be exercised through the publication of an administrative act that will qualify the insurers to offer

insurance policies to guarantee the payment of the debit balance of the loan granted through the FIES in the event of permanent disability or death of the student.

The entire rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=08/02/2018&jornal=515&pagina=31>.

3) SUSEP CIRCULAR No. 567, of 2/27/2018

On 2/28/2018, the Federal Official Journal published SUSEP Circular no. 567, of 2/28/2018, which suspends the new registration of insurance brokers/entities.

The entire rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=28/02/2018&jornal=515&pagina=34>

4) RECTIFICATION OF CNSP RESOLUTION No. 360/2017, OF 12/20/2017

On 2/19/2018, the Federal Official Journal published the rectification of CNSP Resolution no. 360/2017.

This resolution amends CNSP Resolution no. 321/2015, and among others, establishes how to calculate the portion 2 of the credit risk capital (related to the credit risk of exposures in transactions in which the counterparts are not insurers, reinsurers, Open Supplementary Social Security Entities (EAPCs), and capitalization companies).

Annex XV to CNSP Resolution no. 360/2017 shows how to calculate the portion 2 of the credit risk capital, and art. 6 lists the exposures to which the risk-weighted factors (75%) must be applied; among such exposures is the value of the deferred acquisition costs directly related to the Unearned Premium Reserve (PPNG) regarding commissions paid to brokers, agents and policyholders multiplied by the exposure reducing factor (FRE).

The rectification was aimed at fixing the FRE at 12% based on the technical discretion of the regulatory agencies to regulate the matter.

The entire publication may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=19/02/2018&jornal=515&pagina=19>

This is so because, by publishing the spreadsheets, SUSEP makes it clear how to calculate the credit risk capital.

The spreadsheets may be accessed at <http://www.susep.gov.br/setores-susep/cgsoa/coris/requerimentos-de-capital/capital-de-risco-baseado-no-risco-de-credito>

5) SUSEP MAKES AVAILABLE UPDATED SPREADSHEETS TO CALCULATE THE CREDIT RISK CAPITAL

CNSP Resolution no. 360/2017 significantly changed the calculation of the risk capital based on credit risk. Thus, on 2/5/2018, SUSEP, to help the insurance market, made available on its website new guidelines and calculation spreadsheets.

The measure not only helps the insurance market but also SUSEP's inspection activities along.

FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

1) FEDERAL DISTRICT LAW No. 6112, OF 2/2/2018

On 2/6/2018, the Official Journal of the Federal District published Law no. 6112, of 2/2/2018, which requires all companies that execute contracts with the Government of the Federal District, at any levels, to implement the Integrity Program.

The entire rule is available at http://www.dodf.df.gov.br/index/visualizar-arquivo/?pasta=2018/02_Fevereiro/DODF%20026%2006-02-2018&arquivo=DODF%20026%2006-02-2018%20SECAO1.pdf

2) BACEN CIRCULAR LETTER No. 3864, OF 1/31/2018

On 2/1/2018, the Federal Official Journal published BACEN Circular Letter no. 3864, of 1/31/2018.

According to this rule, when the transaction is recorded in the field “Legal Authorization”, the number of the document evidencing the authorization issued by the National Treasury Office must be also informed, except for credit transactions not guaranteed by the Federal Government; in such cases, the compliance with the limits and conditions, provided in art. 32 of Supplementary Law no. 101, of May 4, 2000, is verified directly by the financial institution or the institution whose creditor is a state-owned company not subject to that art. 32 of Supplementary Law no. 101/2000.

The entire rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=1&pagina=77&data=02/10/2017>;

3) BACEN CIRCULAR LETTER No. 3865, OF 2/20/2018

On 2/22/2018, the Federal Official Journal published BACEN Circular Letter no. 3865, of 2/20/2018, which explains the application of Circular no. 3857, of November 14, 2017, in regard to the presentation of documents, data or information related to the compulsory payments and submissions controlled by the Department of Banking Transactions and Payment System (Deban).

From now on, Deban will monitor the conduct of the institutions that forward information on compulsory payments, cash receipts and submissions, and such institutions and their managers will be subject to the penalties provided in the circular.

In addition, Deban may request explanations for certain conducts, call the institution's director responsible for the information sent to BACEN to give explanations, as well as to institute administrative sanction procedures.

The entire rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=22/02/2018&jornal=515&pagina=19>

4) CVM INSTRUCTION No. 596, OF 2/7/2018

On 2/8/2018, the Federal Official Journal published CVM Normative Instruction no. 596, of 2/7/2018, which revoked item VI and par. 5 of art. 21 of CVM Instruction no. 480, of 2009; this Instruction no. 480 addresses the registration of securities issuers admitted to trading on the regulated securities market.

CVM settled the understanding that the delivery of a copy of the communication published according to art. 133 of Law 6404/1976 may be dispensed with, since art. 21, VIII, of CVM Instruction 480 and arts. 6, II, and 9 of CVM Instruction 481 already require that the documents related to Annual Meetings of Shareholders are sent to the Commission within at least one month before the meeting.

The rule may be accessed at <http://www.cvm.gov.br/legislacao/instrucoes/inst596.html>

5) CALL FOR PUBLIC INQUIRY No. 59/2018

On 2/9/2018, the Brazilian Central Bank submitted to public inquiry a proposal for a resolution of the National Monetary Council (CMN) to improve the rules applicable to the exposure limits per client, which are currently regulated by Resolution no. 2844/2001.

This resolution was based on the “*Supervisory framework for measuring and controlling large exposures*,” issued by the *Basel Committee on Banking Supervision* (BCBS).

The resolution proposed by the CMN is a measure within the ambit of the permanent policy of the Central Bank to align the Brazilian financial market with the best international practices and to foster links with the OECD — the international organization dedicated to the economic development of the most developed

nations; Brazil applied for membership in the OECD in 2017.

Those interested may send the Central Bank suggestions for the proposal until 3/20/2018. The call may be accessed at <https://www3.bcb.gov.br/audpub/DetalharAudienciaPage?1>

6) CMN RESOLUTION No. 4631, OF 2/22/2018

On 2/26/2018, the Federal Official Journal published CMN Resolution no. 4631, of 2/28/2018, which defines the conditions for the financial institutions to contract rural credit transactions through rural credit agents.

This resolution amends Section 3 (Authorization to Operate with Rural Credit and Operation Structure) of Chapter I (Preliminary Provisions) of the Rural Credit Manual (MCR). One of the amendments is that the rural credit agent will be able to provide guidance to

the rural credit applicants as to the rural credit and rural insurance rules, among others.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=26/02/2018&jornal=515&pagina=45>

7) CMN RESOLUTION No. 4633, OF 2/22/2018

On 2/26/2018, the Federal Official Journal published CMN Resolution no. 4633, of 2/26/2018, amending Resolution no. 4444, of November 13, 2015, which sets the rules for investment of the funds in the technical reserves, the provisions and the funds of the insurers, capitalization companies, open supplementary social security entities, and local reinsurers, the rules for investments of the funds required in Brazil to guarantee the obligations of the admitted reinsurers, and the rules for the portfolio of the Individual Retirement Fund Program (Fapi).

The changes relate to the minimum terms for renewal of contracts and include a schedule for their definition.

The entire rule is available at <http://www.bcb.gov.br/pre/normativos/busca/normativa.asp?numero=4633&tipo=Resolu%C3%A7%C3%A3o&data=22/2/2018>

8) CMN RESOLUTION No. 4636, OF 2/22/2018

On 2/26/2018, the Federal Official Journal published CMN Resolution no. 4636, of 2/28/2018, which sets criteria and conditions for the disclosure, in explanatory notes, of information on related parties by the financial institutions and other institutions authorized by the Brazilian Central Bank to operate.

Concerning the disclosure, the resolution establishes that the Technical Pronouncement of the Accounting Pronouncement Committee - CPC 05 (R1) – Disclosure of Related Parties must be observed, with the proviso that the technical pronouncements listed in this CPC cannot be applied while they are not officially received by the National Monetary Council.

As to other CPCs, to the effects of the Resolution, they must be interpreted as references to the pronouncements of the CPC received by the CMN, as well as references to the provisions pertinent to the Accounting Plan of the Institutions of the National Financial System (Cosif).

The entire rule is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=26/02/2018&jornal=515&pagina=46&totalArquivos=252>

9) CMN RESOLUTION No. 4637, OF 2/22/2018

On 2/26/2018, the Federal Official Journal published CMN Resolution no 4637, of 2/26/2018, amending Resolution no. 3844, of March 23, 2010, which provides for foreign capital in Brazil and its registration with the Brazilian Central Bank, and makes other provisions.

The amendments introduced by the resolution relate to foreign credit transactions. Not only funds derived

from foreign loans taken out directly or through bonds issued in the international market, but also acquisitions of privately placed debentures will be subject to registration, according to the Regulation annexed to CMN Regulation no. 3844.

Also, after the entry of the funds, the borrower will be liable for any changes of the maturity date or the financial conditions (new agreement) and for the change of the debtor (assumption) and will be required to cancel the registration of the original debt and make another registration, in the RDE-ROF (Electronic Declaration Registration-Financial Transaction Registration) module.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=26/02/2018&jornal=515&pagina=47&totalArquivos=252>

10) CMN RESOLUTION No. 4638, OF 2/22/2018

On 2/26/2018, the Federal Official Journal published CMN Resolution no. 4638, of 2/22/2018, amending Resolution no. 4593, of August 28, 2017, which provides for the registration and centralized deposit of financial assets and securities by financial institutions and other institutions authorized by Brazilian Central Bank to operate and for financial assets custody services.

The effectiveness date of the Resolution was changed.

Previously, all resolutions went into effect 180 days after their publication. With the amendment, the provisions on the deposit of bonds and credit rights as well as other financial instruments that is required from the financial institutions and other institutions authorized by the Brazilian Central Bank to operate, including contracts for deposit for a term, will come into effect 360 days after the publication date of Resolution no. 4593; the term of 180 days remains in effect for all others.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=26/02/2018&jornal=515&pagina=47&totalArquivos=252>

11) CMN RESOLUTION No. 4641, OF 2/22/2018

On 2/26/2018, the Federal Official Journal published CMN Resolution no. 4641, of 2/22/2018, which updates the rules applicable to the monitoring of rural credit transactions carried out by the financial institutions.

These rules, which will be in effect from July 2018, aim at helping the Brazilian Central Bank's monitoring along. The financial institutions will monitor their own transactions according to the instructions of the regulatory entity, which may monitor them as well or require information on, or make recommendations for, the monitoring carried out by the institutions.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=26/02/2018&jornal=515&pagina=47&totalArquivos=252>

[jsp?data=26/02/2018&jornal=515&pagina=47&totalArquivos=252](http://www.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/sep-sre/anexos/OficioCircularN012018CVMSEPSRE.pdf).

12) CVM/SEP/SRE CIRCULAR LETTER No. 1/2018

On 2/23/2018, the Company Relationship Superintendence (SEP) and the Securities Registration Superintendence (SRE) of CVM published CVM/SEP/SRE no. 01/2018. The circular letters issued by SEP instruct the securities issuers as to the procedures that they must follow to send periodical and occasional information.

In this case, the circulars explain the requirements for registration of a publicly held company and/or offering of public distribution of securities by companies, valid from 4/2/2018.

The document may be accessed at <http://www.cvm.gov.br/export/sites/cvm/legislacao/oficios-circulares/sep-sre/anexos/OficioCircularN012018CVMSEPSRE.pdf>

13) CVM/SEP CIRCULAR LETTER No. 2/2018

On 2/28/2018, the Company Relationship Superintendence (SEP) of CVM published CVM/SEP Official Letter no. 2/2018, with general instructions about the procedures to be followed by publicly held, foreign companies benefiting from tax incentives; the technical area of SEP highlighted the following points:

- i) changes in the procedures for remote voting (item 7.1.6);
- ii) recent changes in the Reference Form (item 3.3.2 and Chapter 10);
- iii) guidelines on the new Information Report on the Brazilian Corporate Governance Code - Publicly Held Corporations (item 3.3.6);
- iv) recent decisions of the Collective Board of CVM related to elections of managers of companies within the scope of the Law of State-Owned Companies (item 7.1.5);

v) guidelines on compensation contracts (items 3.4.2.a, 10.2.12.i, and 10.2.13.k).

The document may be accessed at
<http://www.cvm.gov.br/legislacao/oficios-circulares/sep/oc-sep-0218.html>

14) BACEN COMMUNICATION No. 31708, OF 2/28/2018

On 3/1/2018, the Federal Official Journal published BACEN Communication no. 31708, of 2/28/2018, which informs the percentage and the maximum limit of the interest rate to be used in loan contracts with prefixed interest rate executed within the ambit of Housing Finance System (SFH).

The rule is available at
<http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=530&pagina=76&data=01/03/2018>

15) DECREE No. 9292, OF

2/23/2018

On 2/26/2018, the Federal Official Journal published Decree no. 9292, of 2/23/2018, which establishes the characteristics of the bonds of the Federal Government-Bond Debt, and makes other provisions.

The rule may be accessed at
<http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=515&pagina=3&data=26/02/2018>

16) CMN ANNOUNCES CHANGES IN THE REGULATION OF INVESTMENT FUNDS OF SOCIAL SECURITY ENTITIES AND INSURERS

On 2/22/2018, the CMN announced the end of the average term for minimum renewal of agreements (PRC) related to fixed-income securities of the

 [BACK TO SUMMARY](#)



investment funds especially constituted (FIE) of insurers and open supplementary social security entities.

The rule, established in 2015, determined that the minimum term of a portfolio of securities was 2 years, in order to stimulate longer terms and remove the indexation of investments to the SELIC interest rate. To meet this rule, the open supplementary social security entities and insurers used to purchase long-term pre-fixed securities and derivatives, to reduce the exchange rate volatility risk.

However, the PRC calculation did not take into account the existence of the derivatives, creating distortions in the future interest and the government bond markets.

Thus, the purpose is to reduce the PRC gradually until it comes to zero in 2020.

CLOSED SUPPLEMENTARY SOCIAL SECURITY

1) SOCIAL SECURITY PORTAL PUBLISHES SET OF RULES FOR CLOSED SUPPLEMENTARY SOCIAL SECURITY ENTITIES (EFPCs)

To celebrate the 40 years of the Supplementary Social Security Regime, the Social Security Portal of the government published a Set of Rules for the Closed Supplementary Social Security Entities, updated until December 2017.

The rules may be accessed at <http://www.previdencia.gov.br/wp-content/uploads/2018/02/Colet%C3%A2nea-de-Normas-2017.pdf-At%C3%A9-dezembro1.pdf>

2) FEDERAL PUBLIC SERVANTS MAY OPT FOR MIGRATING THEIR SOCIAL SECURITY REGIME UNTIL JULY 27, 2018

The federal public servants who were hired until February 4, 2013 may change their social security regime until July 27, 2018.

When opting for migrating, the servants may adhere to the pension fund as regular active participants, and as a consideration, 8.5% of their salary will be withheld; they will be entitled to a special benefit based on the contributions made in the payment period, funded by the adequate regime (RPPS).

Public servants should analyze carefully the possibility of migration in view of the several factors that must be considered to make such a decision. The entire report, which mentions João Marcelo Carvalho, from Santos Bevílaqua Advogados, may be accessed at <http://blogs.correiobrasiliense.com.br/vicente/correio-economico-aposentadoria-de-servidor-e-turbinada/>

HEALTH

1) NORMATIVE INSTRUCTION – DIPRO No. 054, OF 2/6/2018

On 2/7/2018, the Federal Official Journal published Normative Instruction - DIPRO no. 054, which adds art. 7-A to Normative Instruction NR no. 46, of October 3, 2014, and provides for applications for replacement of hospitals and re-dimensioning of the network through reduction.

Such art. 7-A determines that, from March 1, 2018, the applications for replacement of hospitals and re-dimensioning of the network through reduction must be submitted by electronic means, using the system “Application for Hospital Network Change,” available at the portal “*operadoras*” of the website of the National Agency of Supplementary Health (ANS). It should be pointed out that par. 6 of the article determines that, from the date set in the head provision, the applications for replacement of hospitals

or re-dimensioning of the network through reduction presented in a physical document will not be accepted and will be disregarded.

The entire rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=515&pagina=29&data=07/02/2018>

2) NORMATIVE INSTRUCTION – DIPRO No. 055, OF 2/7/2018

On 2/8/2018, the Federal Official Journal published Normative Instruction – DIPRO no. 055, of 2/7/2018, amending Normative Instruction – IN no. 49, of December 22, 2016, of DIPRO, which provides for the administrative measures arising from performance evaluation of the health care plan companies as to the Monitoring of Assistance Risks, and Normative Instruction – IN no. 53, of July 18, 2017, of DIPRO, which regulates the technical-assistance visit for identification of assistance abnormalities regarding health care plan companies.

The instruction gives preference to the Periodical Plan to Monitor the Assistance Risk, now a three-month plan, that will establish the order of priority for the administrative measures addressed in IN 49.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=08/02/2018&jornal=515&pagina=148>

As a result, these applications will have to be adapted to this new reality to meet the regulation requirements, such as, the election of a Technical Director who must have to be a doctor, and the registration of the doctors with the CRM, as if they were a conventional medical company.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=515&pagina=138&data=28/02/2018>

3) CFM RESOLUTION No. 2178, OF 12/14/2017

On 2/28/2018, the Federal Official Journal published CFM Resolution no. 2178, of 12/14/2017, which regulates the applications offering medical consultation at home.

The regulation became necessary due to the increasing number of applications and on-line platforms that offer medical consultation. From the publication of the resolution, the home medical assistance platforms will be allowed to contract such services through mobile and similar applications.

4) FEDERAL SUPREME COURT - STF DECIDES ON DIRECT ACTION FOR DECLARATION OF UNCONSTITUTIONALITY - ADI 1931 AND EXTRAORDINARY APPEAL - RE 597.064/RJ THAT QUESTIONED PROVISIONS OF LAW 9656/1998

On 2/7/2018, the Federal Supreme Court decided on ADI no. 1931 and RE no. 597.064/RJ, with general repercussion, that questioned provisions of the Health Care Plan Law - Law 9656/1998.

In regard to the ADI, art. 10, par. 2, and art. 35-E of Law 9656/1998, and art. 2 of Provisional Presidential Decree MP 2177-44/2001, were declared unconstitutional because they provide for the application of the new rules related to the health care plans to contracts executed before the introduction of the Health Care Plan Law, in violation of the vested

right and the perfect legal act, prescribed in art. 5, XXXVI, of the Federal Constitution.

Concerning arts. 10, 11, and 12 of Law 9656/1998 that set parameters for specific activities in the health care plan market, their constitutionality was recognized. This is so because they obey the command enshrined in art. 197 of the Federal Constitution, which recognizes the public relevance of health actions and services, so that the Government has authority to provide, in accordance with the law, for their regulation, enforcement and control.

Art. 15 of Law 9656/1998, which bars the variation of pecuniary considerations established in health care plans for consumers above 60 years of age, was declared constitutional as well. All this on the grounds of art. 230 of the Constitution, which determines that it is a duty of the family, the society and the State to support the elderly.

Likewise, the constitutionality of par. 5 of art. 19 of Law 9656/1998, which guarantees all users of health care plans contracted from January 2, 1999 all access benefits and coverages provided in this Law and its regulations, was recognized as well. The reason is that the rule is in accordance with the principle of

 [BACK TO SUMMARY](#)

reasonability by establishing that the consumers cannot be harmed, irrespective of the deadlocks in the administrative registration of the health care plan companies or the adequacy to the rules.

Finally, the STF declared the constitutionality of art. 32 of Law 9.656/1998, which addresses reimbursement by health care plan companies for expenses related to assistance services, provided in contract, rendered to the consumers by entities of Single Health System (SUS).

The STF understood that the rule does not establish a new form for the Social Security funding, but rather *"prevents unjust enrichment of the companies and the perpetuity of the model in which health services are exclusively oriented to profits, even though at the expenses of the taxpayer money."* This is so because, should the reimbursement be considered unconstitutional, the health care plan companies and the insurers would not perform the contract, even if they receive what was agreed with the beneficiary, violating both the consumer rights and the adequacy of SUS.

Concerning RE 597064/RJ, decided under the general repercussion regime, the reimbursement to SUS was

also addressed. Likewise in the case of the ADI, the court also recognized the constitutionality of the procedure: *"The reimbursement provided in article 32 of Law 9656/1998, which is applicable to medical, hospital and medical clinic procedures funded by SUS and carried out after 6/4/1998, is constitutional, however, the adversary proceeding and the opportunity to be heard are guaranteed by all legal frameworks."*

These decisions, which constitute a binding precedent for all instances of the Judiciary, put an end to the discussions in the health care plan market, especially in regard to the reimbursement to the SUS.

5) STF DECIDES ON ADI 4512 AND SETTLES THAT THE COMPANIES MAY BE REQUIRED TO INFORM THE REASON FOR THE DENIAL OF MEDICAL TREATMENTS.

On 2/7/2018, the STF dismissed the Direct Action for Declaration of Unconstitutionality (ADI) no. 4512, filed by the National Association of the Self-Managed Health Institutions [*União Nacional das Instituições de Autogestão em Saúde - Unidas*] disputing the constitutionality of Law no. 3885/2010 of the State of Mato Grosso do Sul, which provides that the health care plan companies and the insurers are required to explain their reasons to deny the payment of any medical assistance.

According to the opinion of Justice-Rapporteur Carmen Lucia, “*The law of Mato Grosso do Sul is in compliance with item XXXII of article 5 of the Federal Constitution, which establishes that the State will*

promote, in accordance with the law, the consumer protection, and in compliance with the Consumer Protection Code, which recognizes, as a basic right of the consumer, adequate and clear information on different products and services, with the correct specification of quantity, characteristics, composition, quality, applicable taxes and price, as well as the risks they carry.”

In addition, the court settled the understanding that this is not an addition to the list of contractual obligations assumed by the company/insurer and the beneficiary, but only in the interest of a transparent relation.

TAX

1) LAW No. 13630, OF 2/28/2018

On 3/1/2018, the Federal Official Journal published Law no. 13630, of 2/28/2018, which amends Law no. 13606, of 1/9/2018, and extends the period for the taxpayers to join the Rural Tax Compliance Program (PRR) to April 30, 2018.

The rule may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=515&pagina=1&data=01/03/2018>

2) RFB NORMATIVE INSTRUCTION No. 1787, OF 2/7/2018

On 2/8/2017, the Federal Official Journal published RFB Normative Instruction no. 1787, of 2/7/2018, which provides for the Report on Federal Tax

Liabilities related to the Social Security and Other Entities and Funds (DCTFWeb).

This new type of report replaces the Document for Deposit in the Unemployment Savings Fund and Information to the Social Security (GFIP), according to art. 13 of the Normative Instruction, to simplify the bureaucratic procedures for the taxpayers.

DCTFWeb will be prepared based on the information entered in the Digital Bookkeeping of Tax, Social Security and Labor Obligations (eSocial) or the Digital Tax Bookkeeping of Withholdings and Other Tax Information (EFD-Reinf), which are modules of the Public Digital Bookkeeping System (Sped), pursuant to art. 4 of the Normative Instruction.

The full text of the instruction may be accessed at http://normas.receita.fazenda.gov.br/sijut2consulta/lin_k.action?visao=anotado&idAto=89949

3) CARF DENIES INSURERS' APPEAL RELATED TO PIS/COFINS

When deciding on proceeding 16682.721131/2013-65, the 3rd Higher Chamber of the Administrative Board of Tax Appeals - CARF upheld the understanding that the technical financial revenues of the insurers must be computed in the base for the calculation of the PIS (Contribution for the Social Integration Program) and COFINS (Contribution for Social Security Funding).

In the case record, the Federal Revenue alleged that the financial institutions must calculate the PIS and the COFINS based on their billing, meaning all revenue deriving from the performance of the typical activities of the company (gross revenue), which encompasses the revenue derived from the technical reserves of the insurers. These revenues, derived from the assets that guarantee the technical provisions, are operating revenues, specific to insurance, social security, and capitalization activities.

The taxpayer, in turn, alleged that the financial revenue is not a revenue derived from sales of goods and services and that the STF has already declared that the part of Law no. 9718, of 1998, which limited the application of the PIS and COFINS to the billing, meaning revenue deriving from sales of goods and provision of services, is unconstitutional. The taxpayer also cited the opinion given by the Office of the General Counsel for the Federal Treasury (PGFN/CAT 2773, of 2007), according to which the premium is computed in the base for the calculation of PIS and COFINS, but the revenue derived from financial investments is not.

In spite of CARF's understanding favorable to the Tax Authority, as soon as the appellate decision becomes definite, the taxpayer may file a motion for clarification of obscure, contradictory or omitted issues or may resort to the Judiciary.

SÓCIOS DO ESCRITÓRIO E RESPECTIVAS ÁREAS



Daniela Matos

Seguro e Resseguro
(11) 5643-1065
dmatos@santosbevilaqua.com.br



João Marcelo dos Santos

Seguro e Resseguro
(11) 5643-1066
jsantos@santosbevilaqua.com.br



Julia de Menezes Nogueira

Direito Tributário
(11) 5643-1062
jnogueira@santosbevilaqua.com.br



Juliano Nicolau de Castro

Direito do Trabalho
(11) 5643-1061
jcastro@santosbevilaqua.com.br



Keila Manangão

Contencioso Judicial e Arbitragem
(21) 2103-7638
kmanangao@santosbevilaqua.co
m.br



Marco Antônio Bevilaqua

Seguro, Resseguro, Previdência
Complementar e Saúde Suplementar
(11) 5643-1063
mbevilaqua@santosbevilaqua.com.br



Roberto F. S. Malta Filho

Societário, Contratual, Fusões e
Aquisições, Arbitragens e Recuperações
Judiciais/Reestruturações
(11) 5643-1064
rmalta@santosbevilaqua.com.br