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MAY 2018

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INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

1) BILL No. 3139/2015

The House of Representatives approved Law no. 3139/2015, as a substitute, that regulates associations and cooperatives that offer vehicle protection. If no objection is presented, the bill will be sent to the Senate, which may approve it in full, and then, it will be submitted to the President for sanction, or may modify it, in which event the bill will be sent back to House of Representatives to be voted.

The bill was proposed by Federal Representative Lucas Vergilio (Solidarity- SD political party/State of Goiás) and is intended to put the so-called “pirate

associations” under the supervision of the Private Insurance Superintendence (SUSEP) and the National Council of Private Insurance (CNSP). The term “pirate associations” was created to designate cooperatives and mutual funds that offer insurance to their members or develop insurance activities, as if they were insurers in fact.

Although acting as typical insurers, currently, these associations are not subject to the rules set by CNSP and inspection by SUSEP – therefore they are not required to meet the strict requirements set by CNSP and SUSEP.

Santos Bevilaqua’s lawyer and President of the National Group of Consumer Relations from AIDA - Brazil, Ana Paula Bonilha de Toledo Costa, and National Confederation of Companies in General Insurance, Private Pension and Life, Health Insurance and Capitalization – CNSeg’s lawyer and Vice-President of the National Group of Consumer Relations from AIDA - Brazil, Nathália Rodrigues, are co-writing an article about this theme that will be published soon.

The course of Bill no. 3139/2015 may be checked at:

<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1805742>

2) DECREE No. 9374, OF 5/14/2018

On 5/15/2018, the Federal Official Journal published Decree no. 9374, of 5/14/2018, amending Decree no. 3937, of September 25, 2001, which regulates Law no. 6704, of October 26, 1979, that provides for the Export Credit Insurance (SCE).

The decree amends item IV of article 3 of Decree 3937 to specify what is considered a political risk in regard to any act or decision of the authorities of a debtor country preventing the performance of a guaranteed contract.

In addition, par. 10 of art. 8 was changed and now it determines that the Federal Government's guarantee for the SCE operations will apply not only to the principal but also to the interest. Therefore, it will be applied, as a whole, to the principal, and the interest charged on the financing, with the addition of interest

between the date of the obligation default and the deadline for the loss to be characterized in the cases of credit risk.

The text of par. 14 of the mentioned art. 8 was also amended and now it provides that the default, to be considered a commercial risk or an extraordinary or political risk that requires the SCE coverage (that is, a loss), must correspond to 90 days, instead of 180 days, from the maturity date of the first non-paid installment of the guaranteed contract, except for operations designed for the air sector.

Decree no. 9374 included par. 15 in art. 8 establishing that the guarantee of Federal Government, given through the Ministry of Finance, may comprise, in a sole guarantee, export credit operations of different exporters and importers.

Finally, the decree also inserted par. 16 in art. 8, which determines that the Federal Government's guarantee in insurance transactions covering commercial risks, in the phase before the shipment, will be given to transactions, whose financing period exceeds two years, beginning on the date the credit was granted, involving manufactured and semi-manufactured products. Until then, only exporters

that were Micro, Small, and Medium-Size Companies (MPMEs) had the SCE coverage in the phase before the shipment, for transactions with a financing period of 180 days beginning on the date the credit had been granted.

The entire rule may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/1428592/5/do1-2018-05-15-decreto-n-9-374-de-14-de-maio-de-2018-14285921

3) Private Insurance Superintendence - SUSEP STATEMENT No. 207, OF 5/8/2018

On 5/11/2018, the Federal Official Journal published SUSEP Statement no. 207, of 5/8/2018, about the regulation of the Internal Audit of SUSEP (Audit)

The entire rule may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/1394524

[1/do1-2018-05-11-deliberacao-n-207-de-8-de-maio-de-2018-13945237](http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/13945237/1/do1-2018-05-11-deliberacao-n-207-de-8-de-maio-de-2018-13945237)

4) SUSEP CIRCULAR No. 569, of 5/2/2018

On May 3rd, 2018, the SUSEP Circular no. 569/2018 was published, which can be considered the new regulatory framework for Capitalization. Such Circular came out with important changes which will come into force 120 days from the date of its publication (August 30th, 2018).

The mentioned Circular is result from the SUSEP's efforts to solve problems related to the distortion using of the capitalization bonds. As a result of this initiative, a draft rule was submitted to the public consultation no. 19/2017, which was turned into this new Circular.

The article 2 defines Capitalization as an operation aimed at constituting minimum capital, perfectly determined at each plan, and paid in Brazilian currency, to the holders of the right to redemption

and the right to lottery premium, reinforcing thus its main objective of capitalization quotas' constitution.

It is worth highlighting the maintenance of the possibility, in whole or in part, of assigning capitalization bond rights or obligations, faculty that will not apply to the popular modality, and shall be exercised by explicit and clear consent of the bond' subscriber, forbidding the charge of any amount for the assignment.

To the current modalities¹ were added (i) guarantee instrument; and (ii) awardable philanthropy.

The edition of a complementary Circular is expected to specify the applicable rules to the operation of the Capitalization bonds and its commercialization materials. Additionally, other themes shall be regulated such as the limit of quotas in each modality, instant gratification and the minimum size of the bond series.

¹ Traditional, Popular, Incentive, and Scheduled Purchase.

This new rule will revoke SUSEP Circulars no. 365/2008; no. 378/2008; no. 396/2009; no. 416/2010; no. 453/2012; no. 459/2012; no. 472/2013; no. 475/2013; no. 502/2014; no. 504/2014; and articles 7, 8, 9, 13, and 16 of no. 460/2012.

The circular may be accessed at http://www.impresanacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/12710605/do1-2018-05-03-circular-n-569-de-2-de-maio-de-2018-12710601

5) Foreign Trade Chamber - CAMEX RESOLUTION No. 33, OF 5/11/2017

On 5/14/2018, the Federal Official Journal published CAMEX Resolution no. 33, of 5/11/2017, which sets the guidelines on the use of SCE for the transactions of the Micro, Small, and Medium-Size Companies, with the Federal Government's guarantee, supported by the Export Guarantee Fund.

The Resolution establishes that the Federal Government's guarantee may be granted before and after the shipment, jointly or separately.

It also sets the conditions in regard to gross revenue and annual revenues that the Micro, Small, and Medium-Size Companies must meet simultaneously to be granted the SCE.

The entire resolution is available at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/14150722/do1-2018-05-14-resolucao-n-33-de-11-de-maio-de-2018-14150718.

6) SUSEP PUBLISHES THE PRELIMINARY REPORT OF THE SPECIAL COMMISSION CREATED BY ITS ADMINISTRATIVE RULE No. 7070/2018

SUSEP Administrative Rule no. 7070, of 3/2/2018, created a Special Commission to analyze the proposals of the work groups responsible for revising the amounts charged for the Compulsory Insurance against Personal Injury caused by Land Vehicles

(DPVAT) of 2015 and 2016 and for the related supervisions.

The Commission met on 3/21/2018 and 4/12/2018, and after that, it prepared a Report with its preliminary comments.

In brief, the Leader Insurer proposed that the insured amount should be revised and regulated by the Legislative to prevent legal disputes and be adjusted by the Broad Consumer Price Index (IPCA). However, the Commission discussed if an indirect indexation would occur given that the indemnity impacts the amount charged.

The Commission also contemplated the replacement of the current remuneration (2% of the amount charged) with a model in which the consortium members would have 50% of the profit, with the charged amount defined by an actuarial study ordered by the Leader Insurer.

The Ministry of Finance's representative objected that the proposal was not feasible, that the charged amount should be calculated by the regulatory agency given that the model is not competitive and the funds designed for the indemnity for loss cannot

be used for other purposes. Instead of the model defended by the Lead Insurer, the representative proposed creating a model covering profit, administrative expenses and expenses within the ambit of the regulation, so the results of the Consortium would come from the difference between the foreseen amount and the amount effectively realized.

SUSEP's representatives pointed out that had the model proposed by the Lead Insurer been in effect currently, it would be a compulsory payment model, with the Lead Insurer's monopoly, a charge defined by the monopoly and half of the profit obtained with such charge would benefit the consortium members themselves, even in the face of the crises and reports on frauds involving the insurer.

SUSEP, in turn, presented the basic concepts of the models it indicated, emphasizing that the focal point is the discussion about the essence of the transaction. In spite of the precedents that uphold the private nature of the transaction, SUSEP understands that it is an essentially public transaction, since the risk is run by the society and the insurance is not contingent on an effective

contract, and no insurer takes the insurance risk. Therefore, if the market is not interested in free competition, SUSEP proposes that the transactions should be structured based on the concepts of public transaction.

It is noteworthy that the very representative of the Ministry of Finance stressed that, in this phase, it is important that the possibilities be presented and discussed, which also comprises the discussion about the end of the DPVAT and its sale by the insurers operating in the market.

Although the discussions are just beginning, it seems clear that the current structure of the offer of the DPVAT insurance will have to be adjusted.

It is expected that such adjustments will consider the situations occurred before the creation of the consortia and the Lead Insurer, when the frauds and defaults reached extremely high levels to the point of making the insurance offer unfeasible.

The full report, and the minutes attached thereto may be accessed at <http://www.susep.gov.br/setores-susep/cgsoa/comissoes/comissao-especial-2013-novo-modelo-dpvat-portaria-susep-no-7070-2018>

7) SUSEP CIRCULAR No. 570, of 5/22/2018

On 5/24/2018, the Federal Official Journal published SUSEP Statement no. 570, of 5/22/2018 that provides for the information on agreements with foreign insurers related to the Green Letter, Blue Letter and the Civil Liability Insurance against losses or damages to cargo (RCTR-VII-C).

The Circular requires the forwarding of information on agreements with foreign insurers and also establishes obligations of different types, such as the Brazilian Insurers' obligation to assign to one of their officers the responsibility for establishing and supervising the agreements addressed in the Circular.

A period of 30 days as from the publication of the Circular was set for the information to be sent.

The circular may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/1571880

[2/do1-2018-05-24-circular-n-570-de-22-de-maio-de-2018-15718798](http://www2.doj.br/doj/noticias/verNoticiaDetalhada.action?idNoticia=2/do1-2018-05-24-circular-n-570-de-22-de-maio-de-2018-15718798)

8) PRECEDENT 616 OF THE SUPERIOR COURT OF JUSTICE - STJ - INSURANCE INDEMNITY

On 5/23/2018, the 2nd Section of the STJ approved the precedent no. 616, which states as follows: “*The insurance indemnity is due where no previous communication was sent to the insured on a delayed payment of the premium as the communication is an essential requirement for the suspension or termination of the insurance contract.*”

This precedent consolidated the STJ's understanding of the matter, which is evidently mistaken. The default that does not need to be notified (*mora ex re* or default by operation of law) cannot be confused with the default on the premium payment that must

be notified (*ex personae* or default that is established when the creditor notifies the debtor).

In practice, considering that no loss occurs in regard to the majority policies, the insureds are encouraged to pay only the premium installments subsequent to the first in the event of loss or in the event they are notified (when they will decide if they will pay or not, also depending on the remaining effective period at the moment they are notified).

That is, the Precedent disregards the nature of the insured's default and the dynamics of the insurance whose cost will be (as it is currently) borne by the non-defaulting insureds.

FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

1) Federal Controller Office - CGU NORMATIVE INSTRUCTION No. 002, OF 5/16/2018

On 5/21/2018, the Federal Official Journal published CGU Normative Instruction no. 002, of 5/21/2018, which approves the method for the calculation of administrative fines provided in art. 6, item I, of Law no. 12846, of August 1, 2013, to be imposed within the ambit of the lenience agreements executed by the Ministry of Transparency and the Federal Controller Office.

The instruction is available at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=515&pagina=71&data=21/05/2018>.

2) National Land Transportation Agency - ANTT Statement No. 213, OF 4/25/2018

On 5/3/2018, the Official Journal of the Federal District published ANTT Statement no. 2013, of 5/3/2018, amending the annex to Statement no. 325, of September 28, 2017, which provides for the insurance entry recorded in the document characteristic of a transportation (art. 23, X, of ANTT Resolution no. 4799/2015).

The statement may be accessed at <http://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=03/05/2018&jornal=515&pagina=76>

3) Brazilian Securities Commission - CVM INSTRUCTION No. 598, OF 5/3/2018

On 5/4/2018, the Federal Official Journal published CVM Instruction no. 598, of 5/3/2018, which provides for the activities of securities analysts.

According to this instruction, the analysts will be licensed by entities authorized by CVM, provided that such entities are self-regulated and prove that they have an adequate structure and technical capacity to fulfill the obligations set in the instruction, as well as self-regulatory structure confirming their technical capacity and independence.

In respect of the requirements to obtain and keep the license, provided in art. 9 of the Instruction, we highlight that the analyst is required to prove, among others, that he is not disqualified nor unable to perform this function in financial institutions and other entities authorized by the CMV, the Brazilian Central Bank (BACEN), the Private Insurance

Superintendence - (SUSEP), or the National Supplementary Social Security Superintendence (Previc).

The full text of the instruction may be accessed at

http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/12903647/do1-2018-05-04-instrucao-n-598-de-3-de-maio-de-2018-12903643

4) CVM STATEMENT No. 792, OF 5/4/2018

On 5/8/2018, the Federal Official Journal published CVM Statement no. 792, of 5/4/2018, amending CVM Statement no. 757, of November 24, 2016, which establishes the Integrated Risk Management System of CVM.

New duties were assigned to the Risk Management Committee (CGR) of CVM, among them, to discuss and approve proposals related to the issues of risks addressed within the ambit of Committee for the

regulation and supervision of the Financial, Capital, Insurance, and Social Security and Capitalization Markets ("COREMEC").

The entire statement is available at

<http://www.cvm.gov.br/legislacao/deliberacoes/deli0700/deli792.html>

5) Brazilian Antitrust Authority - CADE ADMINISTRATIVE RULE No. 283, OF 5/11/2018

On 5/16/2018, the Federal Official Journal published CADE Administrative Rule no. 283, of 5/11/2018, which updates the Policy on the Governance, Integrity Management, and Management Risks and Controls of CADE.

For the purposes of establishing the principles, guidelines and minimum requirements to be observed in the management of integrity, risks and internal controls of strategic plans, programs, projects, and procedures of the CADE, this is another

example of the public entities' efforts to adopt a stricter position towards the denunciations of corruption in the Government.

In addition, said measure, focused on the risk management, is intended to implement a faster and more effective decision-making process at CADE, as well as to privilege the transparency of the information shared with the society.

The rule may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/14551033/do1-2018-05-16-portaria-n-283-de-11-de-maio-de-2018-14551029

6) National Monetary Council - CMN RESOLUTION No. 4660, OF 5/17.2018

On 5/18/2018, the Federal Official Journal published CMN Resolution no. 4600, of 5/17/2018, regulating art. 36 of Law no. 13606, of January 9, 2018, which

permits the renegotiation of the rural credit for funding and investment contracted by rural producers and farming cooperatives in the cities supervised by the Superintendence for the Development of the Northeastern Region (Sudene) and the State of Espírito Santo.

The resolution upholds the determinations set in art. 36 of Law no. 13606/2018, including rural funding transactions whose losses were covered in part by the Farming Security Program (Proagro) or any type of rural insurance.

These transactions may be renegotiated only upon the exclusion of the amount related to the indemnity received by the beneficiary, which is recognized as revenue, according to art. 5 of the resolution and par. 4 of art. 36 of Law 13606/2018.

Thus, the resolution is a mere formality prescribed by par. 7 of the mentioned art. 36 of Law 13606/2018, which provides that the CMN will regulate the provision, as applicable, within thirty days.

The resolution is available at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/1495800

[4/do1-2018-05-18-resolucao-n-4-660-de-17-de-maio-de-2018-14958000](http://www.do1-2018-05-18-resolucao-n-4-660-de-17-de-maio-de-2018-14958000)

7) CMN RESOLUTION No. 4662, OF 5/25/2018

On 5/28/2018, the Federal Official Journal published CMN Resolution no. 4662, of 5/28/2018, which addresses the required guarantee bilateral margin in transactions with derivatives carried out in Brazil or abroad by financial institutions and other institutions authorized by the Brazilian Central Bank to operate, and not liquidated through an entity involved as a central counterpart.

According to the resolution, the covered counterparts are institutions authorized by the Brazilian Central Bank to operate (covered institution) or other institutions (for example, open and closed social security entities and insurers), whose operating group has a notional exposure (the total value of the underlying asset controlled by the derivative) to

derivatives corresponding to an amount above R\$ 25 billion.

It should be pointed out that, for the purposes of the Resolution, covered transactions are derivative transactions, except for derivative financial instruments that are part of the portfolio of assets of Secured Real Estate Credit Bonds (LIGs), derivatives between institutions in the same prudential conglomerate, forward contracts and currency swaps with physical liquidation

The resolution may be accessed at http://www.imprensa nacional.gov.br/web/guest/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/16138977/do1-2018-05-28-resolucao-n-4-662-de-25-de-maio-de-2018-16138973

8) Brazilian Central Bank - BACEN CIRCULAR No. 3900, OF 5/17/2018

On 5/21/2018, the Federal Official Journal published BACEN Circular no. 3900, of 5/17/2018, which sets

the procedures for the definite transfer of credits entered in an account designed for the recording and control of cash flows related to payment of salaries, public servant's pays, remunerations, soldier's pays, remunerations, retirement pensions, alimonies and similar payments (salary - bank account) to deposit accounts or pre-paid payment accounts (salary portability).

This resolution will take effect only on 7/1/2018 and may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/15131619/do1-2018-05-21-circular-n-3-900-de-17-de-maio-de-2018-15131615

9) BACEN CIRCULAR No. 3899, of 5/17/2018

On 5/21/2018, the Federal Official Journal published BACEN Circular no. 3899, amending Circular no. 3862, of December 7, 2017, which sets the procedures for the calculation of risk-weighted assets

in the simplified form (RWA_{S5}) related to the credit risk exposures subject to the calculation of the capital requirement through the standard simplified approach (RWA_{CSimp}).

Given this amendment, for the calculation of the capital requirement through the standard simplified approach (RWA_{CSimp}), the following exposures will no longer be considered: checks, bank-issued invoices, and credit documents (DOCs) to be credited to clients' accounts where the release of the funds is linked to the effective clearance; linked effective transactions carried out according to Resolution no. 2921, of January 17, 2002; and units of Funds of Investment in Credit Rights (FIDC) associated with sales or transfers of underlying assets that will remain, in their totality, recorded in the asset account of the institution.

In addition, the 75% Risk-Weighted Factor (FPR) will be applied to the following transactions: leases, advancements granted, accommodations, suretyships, co-obligations and any other type of personal guarantee for the performance of third parties' financial obligations. And the following FPRs will be applied to the exposures related to

investments in units of subordinate class of a FIDC: 833% where such exposures are held by a singular credit cooperative affiliated to the central cooperative; and 588% in the other cases.

These higher rates may be explained to the extent the holders of the units of subordinate class of FIDC will receive earnings only after all other holders of units of the other classes receive their part.

The circular is available at http://www.imprensa nacional.gov.br/web/guest/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/15131606/do1-2018-05-21-circular-n-3-899-de-17-de-maio-de-2018-15131602

10) CVM ANNUAL REPORT - 2017

On 5/28/2018, the Brazilian Securities Commission (CVM) published its 2017 Annual Report.

During 2017, the transactions involving *spoofing* (market manipulation that creates artificial liquidity with offerings of expressive lots in a non-standard

size) and *layering* (it is similar to *spoofing*, but the simulated pressure does not involve expressive lots, but many offerings of smaller lots and in successive layers of price levels) caused concern to CVM and it began to closely monitor the Initial Coin Offerings (ICOs) in view of their disruptive potential.

Concerning 2018, CVM opted to give priority to the regulation of matters arising from the enactment of Law 13506 (on the administrative sanction procedure within the scope of the Brazilian Central Bank and the Brazilian Securities Commission), in particular the provisions on administrative agreements in the supervision process, punitive fines, and administrative sanction procedures instituted by CVM.

In addition to those matters, it will also give priority to the regulation of IT for intermediaries; amendments to CVM Instruction 461 involving the market structure and self-regulation; and the establishment of rules for the funds for the infrastructure and improvement of the FIDCs.

The entire document is available at http://www.cvm.gov.br/export/sites/cvm/noticias/anexo/2018/relatorio_cvm_25_05_2018compressedrev.pdf

[os/2018/relatorio_cvm_25_05_2018compressedrev.pdf](http://www.cvm.gov.br/export/sites/cvm/noticias/anexo/2018/relatorio_cvm_25_05_2018compressedrev.pdf)

CLOSED SUPPLEMENTARY SOCIAL SECURITY

1) National Supplementary Social Security Superintendence - PREVIC INSTRUCTION No. 001, OF 5/3/2018

On 5/8/2018, the Federal Official Journal published PREVIC Instruction no. 001, of 5/3/2018, which amended Ministry of Social Security / Supplementary Social Security Department MPS/SPC Instruction no. 34, of September 24, 2009 by including the following accounts in the Standard Accounting planning, Administrative Fund with Participation in the Plans (Code 2.3.2.2.01.01.00), Shared Administrative Fund (Code 2.3.2.2.01.02.00), and Expenses with Development (Code 4.2.5.0.00.00.00).

Item 3 of annex B – Function and Operation of the Accounts of MPS/SPC Instruction no. 34 was also changed by the insertion of the mentioned accounts.

The rule may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/13371090/do1-2018-05-08-instrucao-n-1-de-3-maio-de-2018-13371086

2) Supplementary Pension Plan Superintendence/Collective Board - PREVIC/DICOL ADMINISTRATIVE RULE No. 376, OF 5/3/2018

On 5/8/2018, the Federal Official Journal published Previc/Dicol Administrative Rule no. 376, of 5/3/2018, which provides for the Governance Policy of Previc,

the creation of a Governance Committee (CGOV) of Previc, and the creation of the Integrity Program.

The Committee for Risk and Internal Controls Management created by Administrative Rule no. 536, of May 19, 2017, is now named Governance Committee (CGOV) and its members are: Superintendent Director - Disup, Inspection and Monitoring Director - Difis, Technical Direction and Rules Director - Dinor, Licensing Director - Dilic, and Administration Director – Dirad.

The purpose of the Executive Committee of Previc Integrity Program is to coordinate the preparation of the Program and monitor and evaluate it until November 30, 2018, according to Federal Controller Office - CGU Administrative Rule no. 1089, of April 25, 2018.

Previc Integrity Program contemplates the institutional measures oriented to the prevention, detection, punishment and remediation of frauds and corruption practices to support the good governance. It will be coordinated by the Executive Committee, proposed by the participant units according to their competencies, based on the definition of the main risks to the integrity, and will be submitted to the

Previc Governance Committee. The program follows the trend in the fight against the corruption at closed supplementary social security entities.

The Administrative Rule also sets the attributions of each of those committees and the actions to be executed by Previc Integrity Program.

The rule may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/13365887/do1-2018-05-08-portaria-n-376-de-3-de-maio-de-2018-13365883

3) National Supplementary Social Security Council - CNPC RESOLUTION No. 029, OF 5/13/2018

On 5/21/2018, the Federal Official Journal published CNPC Resolution no. 029, of 5/21/2018, which

provides for the accounting procedures of the Closed Supplementary Social Security Entities [*Entidades Fechadas de Previdência Complementar* - EFPCs].

The Resolution, which establishes accounting procedures to guide and standardize the accounting records of facts related to the EFPCs, provides that the EFPCs must observe the Brazilian Accounting Standards set by the Federal Accounting Council (CFC) and, in regard to specific accounting records and procedures, the rules laid down by CNPC and Previc (Previc was authorized to enact supplementary instructions for the compliance with this Resolution).

The Resolution establishes that the procedures contained therein are universal, so they must be followed by all EFPCs, but the peculiarities of each of them will be respected. For example, this is the case of art. 21, which establishes that an EFPC that manages health care plans registered with the National Agency of Supplementary Health (ANS) must follow the CNPC instructions as to the formation of provisions.

The new ruling provides that the Administrative Management Plan (PGA) will have its own regulation

approved by the EFPC's Decision-Making Board and that this regulation, among others, will contain the source of funding and the creation and allocation/use of the Administrative Fund recorded in the PGA in the situations specified in it. And it also provides for the accounting recording and assessment of bonds and securities.

The resolution may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/15124950/do1-2018-05-21-resolucao-n-29-de-13-de-abril-de-2018-15124946.

4) National Monetary Council - CMN RESOLUTION No. 4661, OF 5/25/2018

On 5/29/2018, the Federal Official Journal published CMN Resolution no. 4661, of 5/21/2018, which sets

the guidelines for the investment of guarantee funds of the plans managed by the EFPCs.

This Resolution, issued after the scandals involving the EFPCs and the government companies, is intended to be a guidance for the improvement of the EFPCs' internal management, mitigating the risks of the management of assets and ensuring safety for participants, beneficiaries and sponsors.

One of the major changes introduced by the resolution was prohibiting the EFPCs from making direct investments in real estate. From now on, the EFPCs, to make investments in real estate, must use financial instruments such as Real Estate Investment Funds [*Fundos de Investimentos Imobiliários* - FII] or Funds for Investment in Units of FII [*Fundo de Investimento em Cotas de FII* - FICFII].

Therefore, the EFPCs that have, among their assets, pieces of real property will have 12 years to sell them or transform them into FII.

This is the direct result of real estate investments made by large funds that did not generate return or that generated losses.

In addition, the limit for investments in Equity Investment Funds [*Fundos de Investimento em Participação* - FIP] was reduced from 20% to 15% of the assets of each benefit plan, and in regard to new investments in FIP, the manager is required to participate with at least 3% of the subscribed capital of the fund. This way, the expectation is that the parties involved will exert all efforts to manage investments to obtain higher returns.

The resolution may be accessed at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/16299167/do1-2018-05-29-resolucao-n-4-661-de-25-de-maio-de-2018-16299163

5) PREVIC ADMINISTRATIVE RULE No 429, OF 5/9/2018

On 5/24/2018, Previc published Administrative Rule no. 429, of May 9, 2018, which provides for the April List of Qualified Managers of Closed Supplementary

Social Security Entities, as determined by Instruction no. 6/2017.

The rule may be accessed at <http://www.previc.gov.br/central-de-conteudos/Noticias/previc-publica-lista-dos-dirigentes-habilitados-do-mes-de-abril-1>



HEALTH

1) DIRECT ACTION FOR DECLARATION OF UNCONSTITUTIONALITY - ADI No. 5756, WHICH DISPUTES THE RULES OF THE NATIONAL AGENCY OF SUPPLEMENTARY HEALTH IS PENDING AT THE FEDERAL SUPREME COURT

ADI no. 5756 was filed by the Liberal Social Political Party (PSL) to dispute the entire Normative Resolution 196/2009 issued by the National Agency of Supplementary Health (ANS); articles 5, 9, and 14 of ANS RN 195/2009; paragraph 2 of article 2 of ANS Normative Resolution 205/2009 and article 30 of ANS Normative Resolution 295/2012, all related to the benefit plan managing companies.

The political party alleges that the rules created the benefit management companies, and as they gather several legal entities in a sole health care plan, they generate unbalance among the market participants, violating the free competition (as the rules would have created a market reserve for the managing companies), equality, and cooperative system.

The party also alleges that the rules prohibit the companies from collecting payments directly from the beneficiaries of the group plans, making it unfeasible contracting this type of plan without the intermediation of the managing companies.

The Justice that reported this case, Gilmar Mendes, applied the procedure provided in art. 12 of Law 9868/99, according to which, in view of the relevance of the matter and its special meaning for the social order and legal certainty, the case is directly submitted to the court that will pronounce the final judgment.

However, despite the application of the summary proceeding, the latest development occurred on 10/31/2017, when the Federal Prosecution Office issued opinion for dismissal of the action, as a direct action for declaration of unconstitutionality is not

proper to judge regulatory acts, which are based on the infraconstitutional legislation. *“In the event the regulatory power is exceeded, there would be a crisis of the legality, and not of constitutionality, evidencing the impossibility of this action being entertained. Indeed, the analysis of the constitutionality of the regulation enacted by ANS should have been preceded by the analysis of compatibility with the infraconstitutional legislation mentioned above before the action has being sent to the constitutional level, determining a typical case of indirect violation the Constitution.”*

Apart the procedural issue, the action, in our view, should not proceed. The creation of managing companies does not generate unbalance in the market. On the contrary, they reinforce the regulation of a type of business that already existed and was carried out through the so-called “Benefit Clubs”, whose operation structure is very similar to that of the managing companies, but without the interference of the ANS.

Added to this, the existence of the benefit managing companies does not entail the prohibition of direct

collection of payment from the beneficiaries of the group plans by the companies.

This is a business issue of the plan companies that may use or not the benefit managing companies to sell their plans, and, even if they use, they may opt for establishing the individual collection of payment from the insureds. And, usually, this does not occur due to a practical problem.

For that matter, it should be noted that the plan companies and the managing companies are supplementary and both benefit from the market, and there is no cut-throat competition whatsoever.

The case may be consulted at

<http://stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=5240397>

TAX

1) Federal Revenue Office - RFB NORMATIVE INSTRUCTION No. 1805, OF 5/4/2018

On 5/7/2017, the Federal Official Journal published RFB Normative Instruction no. 1805, of 5/4/2018, amending RFB Normative Instruction no. 1784, which regulates, within the ambit of the Brazilian Federal Revenue, the Rural Tax Compliance Program (PRR) instituted by Law no. 13606/2018.

The changes are intended to update the terms for the payment of installments, filing of petitions for discontinuance of judicial actions, and other accessory obligations that are an inherent part of installments programs and the tax compliance.

The instruction may be accessed at

<http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=91863>

2) Management Committee of the Simples Nacional - CGSN RESOLUTION No. 140, OF 5/22/2018

On 5/24/2018, the Federal Official Journal published CGSN Resolution no. 140, of 5/22/2018, which provides for the Special Program for Tax Compliance of Micro and Small-Size Companies (Simples Nacional).

The resolution reproduces the text of Supplementary Law no. 123/2006 (which implemented the Simples Nacional) and prohibits companies that perform activities of a commercial bank; investment and development bank; savings bank; credit, financing, or real estate credit association; securities, bond, or foreign exchange broker or distributor; lease; private insurance and capitalization, or supplementary social security from joining the Simples Nacional.

It should be noted that the resolution took effect on the date of its publication, however its effectiveness was delayed as follows:

I - in regard to art. 144 (which deals with the division of payment of debts within the ambit of the Simples Nacional assessed by the RFB), from the date of publication; and

II - in regard to the other provisions, from August 1, 2018.

The resolution is available at http://www.imprensa nacional.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/15742362/do1-2018-05-24-resolucao-n-140-de-22-de-maio-de-2018-15742358

3) ANSWER TO INQUIRY No. 51, OF 3/28/2018

SUBJECT: CONTRIBUTION FOR THE SOCIAL SECURITY FINANCING - COFINS

SYNOPSIS: CLOSED SUPPLEMENTARY SOCIAL SECURITY ENTITY. FUTURE CONTRIBUTIONS. ADVANCE. APPLICATION.

The amounts received on account of advance on the future contributions by the closed supplementary social security entities that were used to cover administrative expenses are subject to the Cofins.

3) ANSWER TO INQUIRY PARTIALLY LINKED TO THE ANSWER TO INQUIRY No. 54, Tax Coordination Office - COSIT, OF MAY 12, 2016.

Legal provisions: Federal Constitution of 1988, art. 202; Supplementary Law no. 109, of 2001, arts. 1, 8, 9, 12, 31, and 32; Law no. 8212, art. 22; Law no. 9701, of 1998, art. 1; Law no. 9718, of 1998, arts. 2 and 3; Law no. 10833, of 2003, art. 10; Law no. 12618, of 2012, art. 25; Decree-Law no. 1598, of 1977, art. 12, and RFB Normative Instruction no. 1285, of 2012, arts. 1 to 3, 7, 11, 12, and 14.

SUBJECT: CONTRIBUTION TO THE SOCIAL INTEGRATION PROGRAM - PIS / PUBLIC SERVANT FUND - PASEP

SYNOPSIS: CLOSED SUPPLEMENTARY SOCIAL SECURITY ENTITY. FUTURE CONTRIBUTIONS. ADVANCE. APPLICATION.

The amounts received on account of advance on the future contributions by the closed supplementary social security entities that were used to cover administrative expenses are subject to the PIS/PASEP.

3) ANSWER TO INQUIRY PARTIALLY LINKED TO THE ANSWER TO INQUIRY No. 54, Tax Coordination Office - COSIT, OF MAY 12, 2016.

Legal provisions: Federal Constitution of 1988, art. 202; Supplementary Law no.109, of 2001, arts. 1, 8, 9, 12, 31, and 32; Law no. 8212, art. 22; Law no. 9701, of 1998, art. 1; Law no. 9718, of 1998, arts. 2 and 3; Law no. 10637, of 2002, art. 8; Law no. 12618, of 2012, art. 25; Decree-Law no. 1598, of 1977, art. 12, and RFB Normative Instruction no. 1285, of 2012, arts. 1 to 3, 7, 11, 12, and 14.

FERNANDO MOMBELLI

GENERAL COORDINATOR

4) 2018 EDITION OF THE COMPILATION “QUESTIONS AND ANSWERS” OF THE BRAZILIAN FEDERAL REVENUE WAS PUBLISHED

The Tax Coordination Office (Cosit) of the Brazilian Federal Revenue published the 2018 edition of the Questions and Answers of the Legal Entity, a single version with over 900 questions about the most varied aspects of the taxation applied to legal entities. The document may be accessed at

<http://idg.receita.fazenda.gov.br/orientacao/tributaria/declaracoes-e-demonstrativos/ecf-escrituracao-contabil-fiscal/perguntas-e-respostas-pessoa-juridica-2018>

5) BRAZIL AND SWITZERLAND SIGN DOUBLE TAXATION AGREEMENT

[/maio/brasil-e-suica-assinam-acordo-para-evitar-a-dupla-tributacao](#)

The Convention between the Swiss Confederation and the Federative Republic of Brazil for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance was signed on 5/3/2018

By limiting the taxation power of the countries, the Convention is intended to eliminate or minimize the possibilities of double taxation on income and lends greater certainty to the businesses in general.

The Convention, which derives from an agreement signed in 2015 for exchange of tax information, incorporates minimum standards of the Base Erosion and Profit Shifting Project (BEPS Project) of the Organization for Economic Co-operation and Development (OCDE).

This news was published on the official website of the Brazilian Federal Revenue and may be accessed at

<http://idg.receita.fazenda.gov.br/noticias/ascom/2018>

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