

**INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY AND
FINANCIAL MARKET**

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**INSURANCE AND OPEN SUPPLEMENTARY
SOCIAL SECURITY AND FINANCIAL
MARKET**

1) CLARIFICATIONS ON DPEM INSURANCE: speculations on DPEM insurance's requirement arose after the sole insurer that used to issue the notes ceased to do it.

Actually, DPEM is found to be under a state of suspended enforceability, because there is a lack of offer of insurance, and it shall remain obligatory as long as Law No. 8374/91 is not revoked.

To that effect, Provisional Measure 719/2016 was published, which informed the Superintendence of Private Insurance – SUSEP of its duty of notifying the Executive Office of Coasts and Ports of the “current inexistence of an insurance company that sells such insurance”.

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2) CVM RESOLUTION No. 753 of June 10, 2016: exempts the insurers, reinsurers, open social security entities and financial institutions of the requirement of registration of securities portfolio administrator, whenever they are administering portfolios relating to investment funds in which they are the sole shareholder.

The news brought by this resolution is exactly the inclusion of the reinsurers and financial institutions in the list of entities that may be exempted, enlarging the previous list included in CVM Instruction No. 244/98.

This resolution also distinguishes the treatment given to the management of own assets from the management of third parties assets, updating CVM perspective.

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3) NOTICE DG/ANTT No. 001 of June 3, 2016: end of rule-making on the sale of optional insurance by the National Terrestrial Transportation Agency - ANTT, and such exclusive authority shall now be incumbent upon the Superintendence of Private Insurance - SUSEP.

The offer of the optional travel supplementary insurance to the users of the international and interstate highway transportation services for passengers continues to be allowed by ANTT, as long as made by third parties and not by the companies that provide the transportation service.

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4) LAW No. 13195 of November 25, 2015: amends Law No. 12712 of August 30, 2012, establishing that Agência Brasileira Gestora de Fundos Garantidores e Garantias S.A. (AGBF) shall be in charge of the management of the Rural Insurance Stability Fund (FESR) until the obligations of such Fund are settled.

The great change brought by the new law was the attempt to forbid the tie-in sale of rural credit granting and the taking out of rural insurance policy usually made by the financial institutions.

To that effect, the wording of §6 of article 5 of Law No. 10823 was amended in order to forbid the government from requiring the taking out of rural insurance as a condition to access the credit for agricultural and livestock funding.

In addition, the financial institutions willing to demand the taking out of rural insurance policy as a requirement necessary for rural credit granting shall

offer to the financed party a choice between, at least, two policies from different insurers. From such policies, at least one cannot be from a company controlled, associated or belonging to the same economic-financial conglomerate of the creditor.

It is important to state that the agriculturist does not need necessarily to choose one of the policies offered by the financial institution, and may search any policy within the market to its satisfaction, and the creditor shall be required to accept it.

Such change resulted from the actions of Frente Parlamentar da Agropecuária (*Parliamentary Agricultural Front*), which was a long wanted claim of agriculturists seeking more options to take out rural insurance and better financing conditions.

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5) LAW No. 13292 of May 31, 2016: originated from Provisional Measure 701/2015, such law intends to facilitate the grant of credit insurance for export of agricultural products subject to import quotas in other countries, allowing the use of the Export Guarantee Fund (FGE) for granting of such insurance. Such Fund, according to the Ministry of Finance, has a coverage of US\$28 billion and margin for approval of another US\$7 billion.

For the purpose of increasing the number of agents that may offer insurance, the insurers and international organization, as well as reinsurers and investment funds that finance the manufacturing of goods intended for export, were included in the list of agents by the law.

During the passage thereof by the National Congress, new cases of risk guarantee were added to the text: the case of foreign export of goods and services associated to Brazilian export or Brazilian companies

with risk sharing between financial institutions; the case of national products not exiting the country sold to companies located abroad and connected to activities of research or mining of oil and natural gas from wells in the country inside the Brazilian territory.

Some provisions were vetoed by the Presidency of the Republic. Among them, the most significant one was that of articles 7 to 13 which enlarged the scope of opening of Credit Insurance for investments abroad, increasing FGE's potential risk.

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6) CNSP RESOLUTION No 339 of May 11, 2016: provided for rural insurance and Rural Insurance Stability Fund – FESR.

The purpose of FESR is to guarantee stability to the Rural Insurance transactions and provide supplementary coverage for catastrophe risks. The subject-matter of this Resolution is to regulate such Fund and several Rural Insurance groups (agricultural, livestock, aquiculture, etc.) brought by article 3 thereof.

In a comprising manner, this Resolution addresses all qualification, contribution and recovery process of FESR, including delimiting the financial control thereof by its manager.

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7) CMN RESOLUTION No. 4493 of May 31, 2016: amends the Regulation attached to Resolution No. 3932 of December 16, 2010, which consolidates the rules on directing of funds raised from savings deposits by entities integrating the Brazilian Savings and Loan System (SBPE).

Such amendment makes a reduction of the amount required in item II of the main

provision of article 1 for financial institutions which own a Level I Reference Equity below R\$5,000,000.00.

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8) CCFCVS RESOLUTION No. 412 of June 1, 2016: amends Exhibit 12 of the Manual of Housing Insurance Operating Procedures and Rules of the Housing Financial System – MNPO/SH.

The amended paragraph predominantly address the 90-consecutive day term for FCVS's Administrator to analyze a request, notify the result of the analysis to the corresponding insurer and, if granted, release the financial funds.

Such term is also applied to lawsuits in which the first reimbursement request is filed with FCVS's Administrator.

In addition, the insurers may file a re-analysis request to FCVS's Administrator within the term of 180 days, and such Administrator shall have another 90 days to make the re-analysis.

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SOCIAL SECURITY

1) PREVIC INSTRUCTION No. 30 of June 22, 2016: amends PREVIC Instruction No. 28/2016, adding a new § 2 to article 1 and creating article 19-A, which determines that, for purposes of risk-based inspection, the number of directors certified with EFPC shall be complied with.

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2) PREVIC INSTRUCTION No. 29 of June 6, 2016: introduces sector plans which are benefit plans created by co-federations, federations, cooperatives or any other legal entities representing a certain economic or social sector.

This rule defines relevant concepts to such topic, as sector founder, plan and sector member, in addition to defining the essential procedures for such specific type of social security plan to be made available and used.

Such measure intends to enlarge associative social security, the purpose of which has been sought by the Government in the last few years, still having limited actual results.

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3) RISK SHARING BETWEEN EFPC AND THE INSURANCE MARKET: public hearing and public inquiry were made for the purpose of concluding the discussion on rules for risk sharing among closed-end entities and the insurance and reinsurance market.

The preparation of a Normative Instruction is expected to regulate CNPC Resolution No. 17/2015, which even having been enacted more than one year ago failed to promote such type of product for the insurance market.

This is not the first attempt of regulatory bodies to increase the interaction between closed-end supplementary social security markets and the insurance market, whereupon resolutions to that effect were already enacted by the National Council of Supplementary Social Security, as well as by the National Council of Private Insurance.

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4) PREVIC/DITEC ORDINANCE No. 297 of June 29, 2016: provides for the acknowledgement of autonomous certifying institutions by Previc, for purposes of qualification according to CNPC Resolution No. 19/2015.

This instruction establishes how the Technical Analysis Office shall act regarding the qualification process of directors of closed-end supplementary social security entities – EFPC.

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HEALTH

1) ANS ORDINANCE No. 67 of June 3, 2016: allows the delegation of authority to render a first level decision in the ratifying administrative proceedings included in Article 2 of Normative Resolution No. 388/2015 of the Inspection Office to the Deputy Inspection Officer and Manager in charge of the General Management of Inspection Operations.

Such delegation is applicable to the reconsideration judgment provided for in article 43 of RN No. 388/2015.

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2) NORMATIVE RESOLUTION – RN No. 406 of May 31, 2016: amends the Internal Regulations of the National Supplementary Health Agency and Normative Resolution No. 198/2009, which defines the roll of commission-based positions and technical commission-based positions of ANS.

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3) NORMATIVE RESOLUTION - RN No. 407 of June 3, 2016: amends Normative Resolution No. 387 in answer to the recent Zika virus outbreak, regulating the use of diagnostic tests for virus infection, adding them to the compulsory coverage.

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4) NORMATIVE RESOLUTION – RN No. 408 of June 6, 2016: provides for procedures to apply for review and copies within the scope of administrative proceedings, for the defense of rights and

clarification of situations, as well as for the criteria to hold meetings with individuals.

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5) ANS DECISION of June 1, 2016: analysis of ANS Proceeding No. 33902.362832/2012-54, the decision of which was the unanimous approval of the maximum adjustment rate of 13.57% for pecuniary compensations of private supplementary health assistance plans, whether individual or family-based, hospital-medical plans with or without dental coverage.

Effective from May 1, 2016 to April 30, 2017.

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6) SUPERIOR COURT OF APPEALS – STJ DECLARES THE HEALTH INSURANCE POLICYHOLDER TO BE A PARTY LACKING STANDING TO BE SUED IN THE ACTION OF THE BENEFICIARY AGAINST THE BROKER: the Third Panel of the Superior Court of Appeals upheld the understanding of the Court of Appeals of the State of São Paulo. The Reporting Justice, in his opinion, compared the Health Plan and the Collective Life Insurance contracts, addressing the policyholders of Health Plans as mere intermediaries.

Such precedent shall be carefully applied since not rarely the policyholders have greater comprehensive performance than that verified by the Superior Court of Appeals, assuming the cost of premiums and holding information of the beneficiaries' employment contracts.

It is also valid to state that such precedent, as verified in the comments made by the Reporting Justice, may also be used for cases involving life insurance, which fact demands that the matters in the courts are carefully followed.

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LABOR

1) LABOR ALERT – Law No. 13301/2016: on June 28, 2016, Law No. 13301/2016 was published which provides for several legislative amendments as a direct consequence of the growing epidemic in the country of diseases originated from dengue, chikungunya and zika viruses.

In short, the term of the maternity leave provided for in the Consolidated Labor Laws was extended from one hundred and twenty (120) days to one hundred and eighty (180) days in the cases involving children suffering neurological effects from diseases transmitted by *Aedes aegypti*. The guarantee hereby described is applicable, if any, to special insured, individual taxpayer, autonomous and optional worker.

On the other hand, such Law also guaranteed the grant of the social work benefit for microcephaly cases (article 20, Law No. 8742/93) consisting in the payment of a monthly minimum wage for the term of three years, and the beginning of such payment shall occur after the end of the enjoyment of the maternity leave originated by the birth of the child suffering from microcephaly, which is now considered under equal terms as a person with disability for social security purposes.

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TAX

1) RFB NORMATIVE INSTRUCTION No. 1648 of May 31, 2016:

RFB Normative Instruction No. 1647/2016 has been changed, which exceptionally extended the deadline for submission of e-Financeira to determine that in the event reportable account closures are identified of persons defined by the Agreement between the Federal Government and the

US Government to exchange information and improve international tax compliance and implementation of the Foreign Account Tax Compliance Act in the period between January and November 2015, this information should be provided by August 12, 2016.

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2) RFB NORMATIVE INSTRUCTION No. 1649 of June 7, 2016:

RFB Normative Instruction No. 1649/2016 changed the RFB Normative Instruction No. 907/2009, which provides for the IOF [Tax on Financial Transactions], to determine that: a) the term "acquisition of foreign currency in cash" refers to the exchange transaction in which delivery of foreign currency by the institution authorized to operate in the foreign exchange market to its customer is made in cash, regarding the provisions dealing with IOF rate in the settlement of the exchange transactions as from May 3, 2016; b) settlements of exchange transactions for the acquisition of foreign currency in cash held between institutions authorized to operate in the foreign exchange market remain taxed at a zero rate; c) transactions carried out by portfolios of investment funds and investment clubs with debentures issued by institutions of the same economic group are subject to a 1%-rate per day, provided for in the main provision of art. 32 of Decree No. 6306/2007, without applying the zero rate thereto.

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3) INQUIRY REPLY No. 9011 of May 27, 2016 to No. 9024 of May 30, 2016:

Provides for SISCOSEV, TRANSACTION WITH GOODS, INCOTERM and RELATED SERVICES.

In assets and goods foreign trade transactions, the freight, insurance and

external agent services, as well as other services related to assets and goods foreign trade transactions, shall be subject to registration with SISCOSERV for not being incorporated to assets and goods, provided that they are agreed upon between residents or domiciled in Brazil and residents or domiciled abroad. Therefore, in import transactions carried out by the inquirer with regard to freight, the definition on the obligation of registration with SISCOSERV shall depend on the division of liabilities agreed upon between it and the foreign exporter as to the contracting and payment of the service. If the contracting and payment of freight are the foreign exporter duties, the inquirer shall not be liable for arranging registration with SISCOSERV; otherwise, that is, in case the inquirer is liable and being required to carry out the contracting, it shall arrange for the registration.

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4) INQUIRY REPLY No. 10030 of May 2, 2016 to No. 10036 of May 6, 2016:

Provides for SISCOSERV. CARGO INTERNATIONAL TRANSPORTATION SERVICE. INFORMATION. LIABILITY.

The legal entity domiciled in Brazil is not liable for registering with SISCOSERV the cargo international transportation services and related services provided by residents or domiciled abroad when the providers of such services are contracted by the goods exporter domiciled abroad, although the cost is included in the price of imported goods.

The legal entity domiciled in Brazil undertaking the contracting of services with residents or domiciled in Brazil is not required to register with the SISCOSERV information regarding such transaction.

The liability for registering with SISCOSERV derives from the legal relationship established by the services agreement executed between residents and domiciled

in Brazil and residents and domiciled abroad and not from the liabilities mutually undertaken in the goods purchase agreement, which relate only to the importer and the exporter.

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5) INQUIRY REPLY No. 10047 of May 25, 2016 to No. 10053 of June 14, 2016:

Provides for SISCOSERV, INTERNATIONAL TRANSPORTATION SERVICE, INFORMATION, LIABILITY.

The international transportation services provider is the one that agrees with whomever wants to send things (service taker) to transport them from one place to another, delivering them to whomever was appointed to receive them, being such obligation evidenced by the issue of the bill of lading. Those who agree to transport, but are not a vehicle operator, shall subcontract someone to effectively carry out the transportation. Thus, it shall be both the provider and taker of the transportation service.

If the taker and the provider of international transportation services and related services are both either resident or domiciled in Brazil, there shall be no obligation to provide information to SISCOSERV. The legal entity domiciled in Brazil is not subject to register with SISCOSERV the international transportation services and related services provided by a resident or domiciled abroad when the providers of these services are contracted by a person who is also resident or domiciled abroad.

When the international express transportation company, domiciled in Brazil, contracts on its own behalf the express shipping transportation service and transport-related ancillary services with a resident or domiciled abroad, it is up to such company to register these services with SISCOSERV. However, if the

international express transportation company domiciled in Brazil is contracted by a resident or domiciled in Brazil just to represent them before the provider(s) of international express transportation services and related services, whether residents or domiciled abroad, it shall not be liable for registering such information with SISCOSERV.

The deconsolidating agent, either resident or domiciled in Brazil, undertakes to register with SISCOSERV the deconsolidation service provided to the cargo consolidator, either resident or domiciled abroad, the amount of which corresponds to that received as consideration for the service provided.

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PARTNERS OF THE LAW FIRM AND RESPECTIVE AREAS



Daniela Matos
Insurance and
Reinsurance
Phone: (11) 5643-
1065



**João Marcelo dos
Santos**
Insurance and
Reinsurance
Phone: (11) 5643-1066

jsantos@santosbevilaqua.
com.br



**Julia de Menezes
Nogueira**
Tax Law
Phone: (11) 5643-
1062

jnogueira@santosbevilaqua.
com.br



**Juliano Nicolau de
Castro**
Labor Law
Phone: (11) 5643-
1061

jcastro@santosbevilaqua.
com.br



Keila Manangão
Litigation and Legal
Arbitration
Phone: (21) 2103-
7638

kmanagao@santosbe
vilaqua.com.br



Marco Antonio Bevilaqua
Insurance, Reinsurance,
Supplementary Social Security
and Supplementary Health
Phone: (11) 5643-1063

mbevilaqua@santosbevilaqua.com.
br



Roberto F. S. Malta Filho
Corporate, Contracts,
Merger and Acquisitions,
Arbitrations and Judicial
Reorganizations/Restructur
ing
Phone: (11) 5643-1064

rmalta@santosbevilaququa.com
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