

CONTENTS

INSURANCE, OPEN SUPPLEMENTARY PENSIONS, CAPITAL MARKET AND FINANCIAL MARKET

- 1) [CVM Instruction No. 580 of September 15, 2016;](#)
- 2) [SUSEP Resolution No. 182 of September 20, 2016;](#)
- 3) [Acting as Insurer without SUSEP authorization - Appeals heard by CRSNSP;](#)
- 4) [IBA Resolutions Nos. 09/2016, 10/2016 and 11/2016;](#)
- 5) [Electronic Circular No. 1/2016/SUSEP/DISOL/CGMOP/COPRA of August 30, 2016.](#)

CLOSED SUPPLEMENTARY PENSION

- 1) [PREVIC Instruction No. 32 of September 2, 2016;](#)
- 2) [PREVIC Ordinance No. 415 of September 08, 2016;](#)
- 3) [Circular No. 021/2016/CGMA/DIACE/PREVIC;](#)
- 4) [Strategic Oversight Committee set up in ambit of PREVIC;](#)
- 5) [DIACE/PREVIC Ordinance No. 450 of September 27, 2016;](#)
- 6) [Periodical - Annotated Supplementary Laws Nos. 108 and 109 of May 29, 2001;](#)
- 7) [Previc Ordinance No. 465 of September 29, 2016.](#)

HEALTH

- 1) [Normative Resolution No. 411 of September 21, 2016;](#)
- 2) [DIOPE Normative Instruction No. 052 of September 21, 2016.](#)

TAX

- 1) [RFB Normative Instruction No. 1658 of September 13,2016;](#)
- 2) [RFB Normative Instruction No. 1659 of September 13, 2016;](#)
- 3) [Normative Instruction RFB No. 1660 of September 15, 2016;](#)
- 4) [Central Bank Circular No. 3811 of September 14, 2016;](#)
- 5) [CGSN Resolution No. 129 of September 15, 2016;](#)
- 6) [Decree No. 8853 of September 22, 2016;](#)
- 7) [Replies to Inquiries Nos. 10068 of August 8, 2016, 10069 of September 9, 2016, and 10073 of September 19, 2016.](#)

**INSURANCE, OPEN SUPPLEMENTARY
PENSION PLAN AND FINANCIAL MARKET**

- 1) CVM INSTRUCTION NO. 580 OF SEPTEMBER 15, 2016:** amends Instruction CVM 580/2016 concerning the fund's administrator, manager and specialized consultants' related parties for the market maker role.

The new rule requires these engagements to be previously approved by a shareholders' meeting as per the instruction's Article 34.

In addition, Article 34's new §3, which was added by the abovementioned instruction, states that "the fund's acquisition of a property owned by the entrepreneur does not pose a conflict situation as long as the latter is not a related person of the fund's administrator, manager or specialized consultant."

[BACK TO CONTENTS](#)

- 2) SUSEP RESOLUTION NO. 182 OF SEPTEMBER 20, 2016:** approved SUSEP's Strategic Plan for the period 2016-2020, as stated in the abovementioned resolution's sole annex.

In principle, strategic planning provides a methodological basis for SUSEP's activities. The time for this is especially important considering the structural changes introduced by Decree 8.722/2016

(http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Decreto/D8722.htm)

mentioned in previous Newsletters.

The following are some of SUSEP's particularly noteworthy strategic drivers: (i) altering the procedure requiring prior approval of products (which has led to bottlenecks when

developing and offering new products in the Brazilian market; (ii) ensuring audit firms work effectively to assist supervision; (iii) implementing self-regulation for brokers (this matter has been subject to advances, retreats and controversies due to recent changes in SUSEP's policy orientation), (iv) implementing a new legal framework for the sector (it is not clear whether the reference is to Bill No. 3555/2004, which has been much criticized by insurers), and (v) inducing supervised entities to act as institutional investors aligned with economic policy (this may lead to some type of alteration in rules relating to investments, such as encouraging investment in equities, for example).

[BACK TO CONTENTS](#)

- 3) ACTING AS INSURER WITHOUT SUSEP'S AUTHORIZATION - APPEALS HEARD BY CRSNSP:** the National Private Insurance System's Appeals Board (CRSNSP) recently heard several appeals submitted from entities fined by SUSEP for doing insurance business without authorization, acting as if they were insurers.

In this context, note Appeal No. 6712 relating to SUSEP Case No. 15414.004481/2011-07 in which the appellant was the United States based *National Western Life Insurance Company*. In this case, the CRSNSP confirmed the merits of the complaint submitted by SUSEP and ruled that the foreign company had indeed acted as insurer without proper authorization, as claimed by SUSEP. The decision was based on the foreign insurer's use of representatives in Brazil to find customers and act as brokers between insured and insurer, which characterized marketing and selling in Brazilian territory. However, pursuant to the new wording of Article 113 of

Decree-Law 73/66, the fine levied by SUSEP was reduced from R\$11,738,534,400.00, to R\$3,000,000.00.

In addition to the abovementioned appeal involving a foreign entity, other appeals involved associations that act as insurers by illegally selling insurance products to their members. Prominent among these entities are *Associação de Proteção de Empresas de Transportes de Carga* (Freight Protection Companies Association) (Appeal No. 6796); *Shalom – Associação de Proteção Veicular* (Shalom - Vehicle Protection Association) (Appeal No. 6814); *Associação de Proteção aos Proprietários de Automóveis* (Automobile Proprietors Protection Association) (Appeal No. 6037); and *UPS – Serviços – Sociedade Brasileira de Gestão em Assistência Ltda.* (UPS - Services - Brazilian Assistance Management Company Ltda.) (Appeal No. 5220), all of which were fined R\$3,000,000.00.

[BACK TO CONTENTS](#)

- 4) IBA RESOLUTIONS 09/2016 10/2016 AND 11/2016:** three new resolutions were issued by the Brazilian Institute of Actuaries (IBA) on September 20, 2016:
- IBA Resolution No. 09/2016 establishes minimum procedures to be followed by independent actuaries and companies' technical actuaries concerning the form and content of reports and opinions they issue.
 - IBA Resolution 10/2016 states best procedures, criteria and principles to be used by companies when accruing technical provisions or reserves.
 - IBA Resolution 11/2016 concerns the responsibility of independent actuaries for applying the materiality concept throughout all stages of their actuarial auditing and it defines how

materiality is applied when planning and scaling actuarial activities.

[BACK TO CONTENTS](#)

5) ELECTRONIC CIRCULAR NO. 1/2016/SUSEP/DISOL/CGMOP/COPRA OF AUGUST 30, 2016: deals with the relation between the reloading of the Periodic Information Forms - FIP - and their corresponding Statistical Tables, which must be carried out as follows:

- FIP Table 02 => Statistical Tables 378 and 382
- FIP Table 06 => Statistical Tables 376 and 379
- FIP Table 07 => Statistical Tables 377 and 380
- FIP Table 08 => Statistical Tables 378 and 382
- FIP Tables 110, 111, 112 and 113 => Statistical Table 381
- FIP Table 106, 107, 108 and 109 => Statistical Table 381

The reload of the FIP tables must be succeeded by the reload of its respective Statistical Tables, as shown above.

Given the huge amount of information provided to SUSEP by the supervised companies and how often faults are penalized in this context, such explanations are always helpful and should be evaluated carefully by the supervised entities.

[BACK TO CONTENTS](#)

PENSIONS

- 1) PREVIC INSTRUCTION NO. 32 OF SEPTEMBER 2, 2016:** Determines procedures to be adopted by closed private pension entities to devise, approve and implement plans to cover deficits.

The Instruction was published to attend to CGPC Resolution No. 26 of September 29, 2008 on devising, approving and implementing plans to cover deficits.

[BACK TO CONTENTS](#)

- 2) PREVIC ORDINANCE NO. 415 OF SEPTEMBER 08, 2016:** Lists directors of closed pension plans authorized by the Technical Review Board (Ditec) of the National Pension Plan Superintendence (Previc) in the period August 1 - 31, 2016, as per Article 16, II of Previc Instruction No. 28 of May 12, 2016.

[BACK TO CONTENTS](#)

- 3) CIRCULAR NO. 021/2016/CGMA/DIACE/PREVIC:** Sent to closed private pension entities (EFPC), this circular is about sending Actuarial Technical Notes.

It determines the format in which new notes Technical Actuarial Notes (NTA) should be sent to PREVIC by December 31, 2016.

[BACK TO CONTENTS](#)

- 4) STRATEGIC OVERSIGHT COMMITTEE SET UP IN THE AMBIT OF PREVIC:** The Strategic Oversight Committee will be set up as the new supervisory instance and be attached to Previc's Intelligence Center. The new Committee's first meeting should be held in early November.

According to Fabio de Sousa Coelho, Previc's director for Actuarial, Accounting and Economic Affairs, "the goal is to have a body that can assess the system's risks, to be based on the model used by the Central Bank's Financial Stability Committee working within a prudential supervision guideline."

[BACK TO CONTENTS](#)

- 5) DIACE/PREVIC ORDINANCE No. 450 of September 27, 2016:** Concerning benefit plans authorized to send Simplified

Actuarial Statements for the 2016 financial year in accordance with Previc Instruction No. 12 of October 13, 2014.

It listed benefit plans that were rates low probability and impact using the Risk Based Supervision methodology criteria adopted by Previc, and that had sent in complete Actuarial statements (DAs) at the end of one of the four preceding years. These plans will be allowed to send Simplified Actuarial Statements for the year ended December 31, 2016.

[BACK TO CONTENTS](#)

- 6) PERIODICAL - ANNOTATED SUPPLEMENTARY LAWS NOS 108 AND 109 OF MAY 29, 2001:** The Supplementary Pension Policies Office (SPPC) issued annotated Supplementary Laws Periodical No. 108 and 109 of May 29, 2001 (https://www.editoraroncarati.com.br/v2/phocadownload/leis_complementares_108_109_atualizada.pdf).

The purpose of the publication is to ensure more transparent private pension arrangements (RPC) through nimbler outreach for the rules governing closed private pension entities.

The periodical will be published bimonthly

[BACK TO CONTENTS](#)

- 7) PREVIC ORDINANCE NO. 465 OF SEPTEMBER 29, 2016:** provides for the classification and profiling of closed private pension entities (EFPC) for supervisory purposes under PREVIC, starting from the 2017 exercise.

This ordinance classifies the closed private pension entities for PREVIC's supervisory purposes, according to the size, complexity and risks inherent in the benefit plans administered by them.

[BACK TO CONTENTS](#)

HEALTH

- 1) **NORMATIVE RESOLUTION - RN NO. 411 OF SEPTEMBER 21, 2016:** introduces electronic communication between the National Health Agency (ANS) and private healthcare plan operators.

This resolution will come into force thirty days after its publication.

[BACK TO CONTENTS](#)

- 2) **DIOPE NORMATIVE INSTRUCTION – NO. 052 OF SEPTEMBER 21, 2016:** governs electronic communication between the Operator Standards and Qualifications Board (DIOPE) and private healthcare plan operators.

This instruction will come into force together with Normative Resolution No. 411/2016.

[BACK TO CONTENTS](#)

TAX

- 1) **RFB NORMATIVE INSTRUCTION NO. 1658 OF 13/SEPTEMBER 2016:** amends RFB Normative Instruction No. 1037/2010, which deals with countries or dependencies with favored taxation and privileged tax regimes.

RFB Normative Instruction No. 1658/2016 was rectified in the Federal Gazette (DOU) of September 19, 2016, to correct the date of producing effects from August 1, 2016 to October 1, 2016. This act updated Brazil's list of Countries with Favored Taxation and Privileged Tax Regimes to include the following countries: a) Curaçao; b) St. Martin; c) Ireland. It also determined privileged tax regime status with reference to the legislation of the Republic of Austria, arrangements applicable to legal

entities organized as holding companies. The Dutch Antilles and St. Kitts and Nevis were excluded from the list of countries or dependencies with favored taxation and privileged tax regimes.

[BACK TO CONTENTS](#)

- 2) **RFB NORMATIVE INSTRUCTION NO. 1659 OF SEPTEMBER 13, 2016:** amends RFB Normative Instruction No. 1422/2013, which concerns Tax Bookkeeping (ECF).

RFB Normative Instruction No. 1659/2016 amended RFB Normative Instruction No. 1422/2013 on Tax Bookkeeping (ECF), to clarify that inactive companies are not obliged to submit a declaration; companies deemed inactive are those that have not had any operational activity, non-operational activity, or financial activity, including investment in the financial or capital market, throughout the calendar year, which must comply with accessory obligations stipulated in the specific legislation. Furthermore, it was established that ECF must be digitally signed using a certificate issued by an entity accredited by the Brazilian Public Key Infrastructure (ICP-Brasil) in order to guarantee the authorship, authenticity, integrity and legal validity of the digital document.

[BACK TO CONTENTS](#)

- 3) **RFB NORMATIVE INSTRUCTION NO. 1660 OF SEPTEMBER 15, 2016:** amends RFB Normative Instruction No. 1420/2013 on Digital Bookkeeping (ECD).

[BACK TO CONTENTS](#)

- 4) **BACEN CIRCULAR NO. 3811 OF SEPTEMBER 14, 2016:** amends Circular No. 3691/2013, which regulates the

currency exchange market, concerning classification of international bodies' transactions.

[BACK TO CONTENTS](#)

- 5) CGSN RESOLUTION NO. 129 OF SEPTEMBER 15, 2016:** amends CGSN Resolution No. 94/2011 on simplified tax arrangements for certain companies (*Simples Nacional*).

CGSN Resolution No. 129/2016 amended CGSN Resolution No. 94/2011, concerning the simplified company tax arrangement known as Simples Nacional in relation to rules covering revenues earned by micro and small companies.

[BACK TO CONTENTS](#)

- 6) DECREE NO. 8853 OF SEPTEMBER 22/2016:** amends Decree No. 7574/2011, which regulates the process of determining and requiring federal tax credits, the consultation process for the application of federal tax laws and other processes on matters administered by Brazil's Federal Revenue Office.

Decree No. 8853/2016 amended Decree No. 7574/2011 to regulate the process of determining and requiring federal tax credits, the process of inquiring as to interpretations of tax and customs legislation, tax

classification of goods and merchandise, classification of services, intangibles and other operations that produce variations in assets and other specified processes for matters administered by Brazil's Federal Revenue Office (RFB). Subjects amended include: a) deadlines for summons issued by electronic means; b) the competent authority to issue tax credits; c) the effects and competence to decide on Compensation Declarations and assess applications for restitution, compensation and reimbursement of taxes administered by the RFB and applications for relief relating to anti-dumping and countervailing duties; d) deadlines for submitting appeals against decisions on undeclared compensation, which now becomes 10 days.

[BACK TO CONTENTS](#)

- 7) REPLIES TO INQUIRIES NOS. 10068 OF AUGUST 8, 2016, 10069 OF SEPTEMBER 9, 2016, AND 10073 OF SEPTEMBER 19, 2016:** Concerning the obligation to inform Siscoserv when a transporter in another country is retained by a Brazilian company and other aspects related to the accessory obligation in question.

[BACK TO CONTENTS](#)

PARTNERS AND AREAS OF PRACTICE



Daniela Matos
Insurance and Reinsurance
Tel (11) 5643-1065

dmatos@santosbevilaqua.com.br



João Marcelo dos Santos
Insurance and Reinsurance
Tel (11) 5643-1066

jsantos@santosbevilaqua.com.br



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

jnogueira@santosbevilaqua.com.br



Juliano Nicolau de Castro
labor Law
Tel (11) 5643-1061

jcastro@santosbevilaqua.com.br



Keila Manangão
Judicial Litigation and Arbitration
Tel (21) 2103-7638

kmanagao@santosbevilaqua.com.br



Marco Antonio Bevilaqua
Insurance, Reinsurance, Private
Pensions and Healthcare Plans
Tel (11) 5643-1063

mbevilaqua@santosbevilaqua.com.br



Roberto F. S. Malta Filho
Corporate, Contract, M&A,
Arbitration and Court-
Supervised Reorganization
Tel (11) 5643-1064

rmalta@santosbevilaqua.com.br