

# INFORMATION REPORT

NOVEMBER 2017

## INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY ..... 1

1) Private Insurance Superintendence - SUSEP ADMINISTRATIVE RULE No. 7018, OF 10/24/2017

2) BILL 3139/2015

3) Ministry of Finance - MF ADMINISTRATIVE RULE No. 494, OF 11/13/2017

4) CALL FOR SUSEP PUBLIC INQUIRY No. 14, OF 11/10/2017

5) CALL FOR SUSEP PUBLIC INQUIRY No. 15, OF 11/16/2017

6) CALL FOR SUSEP PUBLIC INQUIRY No. 16, OF 11/16/2017

7) CALL FOR SUSEP PUBLIC INQUIRY No. 17, OF 11/16/2017

- 8) Foundation for Support of the Accounting Pronouncement Committee - FACPC HOLDS A TECHNICAL MEETING TO DISCUSS IFRS 17
- 9) SUSEP STATEMENT No. 199, OF 11/8/2017
- 10) NORMATIVE RESOLUTION No. 429, OF 11/10/2017
- 11) International Insurance Law Association - AIDA and National Insurance and Social Security Academy - ANSP held the I Seminário Manuel Póvoas
- 12) International Air Transport – Federal Supreme Court determines that the liability limitation provided in international treaty prevails over the Consumer Protection Code
- 13) NEW SUSEP DIRECTOR APPOINTED
- 14) INSURANCE IS THE SUBJECT OF A MEETING BETWEEN CORIOLANO AND TEMER
- 15) CIRCULAR SUSEP No. 560/2017
- 16) REINSURANCE COMPANY IRB CREATES IT OWN ASSET MANAGEMENT COMPANY
- 17) PUBLIC INQUIRY - CPA 014 AND CPAO 014
- 18) PUBLIC HEARING – CPC 49 – ACCOUNTING AND REPORTING BY RETIREMENT BENEFIT PLANS
- 19) National Supplementary Social Security Superintendence - PREVIC ADMINISTRATIVE RULE No. 1001, OF 10/19/2017
- 20) PREVIC ADMINISTRATIVE RULE No. 1002, OF 10/19/2017

21) PREVIC ADMINISTRATIVE RULE No. 1003, OF 10/8/2017

22) AMENDMENTS TO DECREE No. 4942/2003 ARE UNDER DISCUSSION

## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS..... 12

1) LAW No. 13502, OF 11/1/2017

2) Brazilian Securities Commission - CVM INSTRUCTION

3) CVM's AUTHORITY TO REGULATE THE ACTIVITY OF INDEPENDENT AUDITORS HAS REPERCUSSIONS

4) DECREE No. 9194, OF 11/7/2017

5) Provisional Presidential Decree - MP No. 808, OF 11/14/2017

6) DECREE No. 9188, OF NOVEMBER 1, 2017

7) Financial Activities Control Commission - COAF ADMINISTRATIVE RULE No. 010, OF 11/3/2017

8) CVM INSTRUCTION No. 591

9) BACEN CIRCULAR No. 3857, OF 11/14/2017

10) BACEN CIRCULAR No. 3,858, OF 11/14/2017

11) BACEN COMMUNICATION No. 31379, OF 11/16/2017

- 12) INITIAL COIN OFFERINGS (ICOs)
- 13) CVM RESOLUTION No. 783, OF 11/17/2017
- 14) CVM INSTRUCTION No. 592, OF 11/17/2017
- 15) CVM INSTRUCTION No. 593, OF 11/17/2017
- 16) LAW No. 13.509, OF 11.22..2017
- 17) NATIONAL LAND TRANSPORTATION AGENCY - ANTT RESOLUTION No. 5577, OF 11/22/2017
- 18) NATIONAL LAND TRANSPORTATION AGENCY - ANTT RESOLUTION No. 5,581, OF 11/22/2017
- 19) CVM RELEASES STUDY ON GREENSHOE OPTION AND PRICE STABILIZATION PRACTICES
- 20) BRAZILIAN ACCOUNTING RULE OF 11/24/2017
- 21) Federal Accounting Council - CFC RESOLUTION No. 1532, OF 11/24/2017

**CLOSED SUPPLEMENTARY SOCIAL SECURITY..... 20**

- 1) AMENDMENTS TO DECREE 4942 UNDER DISCUSSION

**HEALTH..... 20**

- 1) INCIDENTAL PROCEEDING FOR RESOLUTION OF SIMILAR ACTIONS WAS ADMITTED BY THE COURT OF JUSTICE OF SÃO PAULO ON THE VALIDITY OF ADJUSTMENT DUE TO AGE GROUP CHANGE IN GROUP CONTRACTS

- 2) LIST OF THE NATIONAL SUPPLEMENTARY HEALTH AGENCY - ANS UPDATED - NORMATIVE RESOLUTION 428, OF 11/7/2017
- 3) FEDERAL MEDICINE COUNCIL - CFM RESOLUTION No. 2168, OF 9/21/2017
- 4) SUPERIOR COURT OF JUSTICE AMENDS NEW PRECEDENT ON WAITING PERIOD OF HEALTH PLANS
- 5) PRESIDENTIAL DECREE No. 9194, OF 11/7/2017

**TAX** ..... 23

- 1) Federal Revenue Office - RFB NORMATIVE INSTRUCTION No. 1755, OF 10/31/2017
- 2) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1756, OF OCTOBER 31, 2017
- 3) INSTRUÇÃO NORMATIVA RFB Nº 1757, DE 10.11.2017
- 4) RFB NORMATIVE INSTRUCTION No. 1758, OF 11/10/2017
- 5) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1761, OF 11/20/2017
- 6) RFB NORMATIVE INSTRUCTION No. 1762, OF 11/21/2017
- 7) EXECUTIVE DECLARATORY ACT No. 72, OF 11/16/2017
- 8) ACT OF THE CHAIR OF BOARD OF THE BRAZILIAN CONGRESS No. 61, OF 11/21/2017
- 9) DECLARATORY ACT No. 71, OF 11/14/2017

10) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1764, OF 11/21/2017

11) VETOED PARTS OF SUPPLEMENTARY LAW No. 160, OF 8/7/2017, ARE PUBLISHED

12) RFB INTERPRETATIVE DECLARATORY ACT No. 006, OF 11/24/2017

13) FEDERAL REVENUE OFFICE DETERMINES THAT PIS AND COFINS WILL NOT BE LEVIED ON INSURANCE INDEMNITY

14) E-Social Steering Committee CDeS RESOLUTION No. 003, OF 11/29/2017

**PARTNERS OF THE FIRM AND RESPECTIVE AREAS..... 28**

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# INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

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## 1) Private Insurance Superintendence - SUSEP ADMINISTRATIVE RULE No. 7018, OF 10/24/2017

SUSEP set up a Work Group to discuss the issues related to the activities of associations, entities and cooperatives that illegally offer insurance coverage and products with insurance characteristics.

The work group is composed of SUSEP representatives, through its coordination offices for Conduct Monitoring and Inspection; the Economic Policy Department (SPE) of the Ministry of Finance; the National Confederation of

Insurers (CNseg); the National Federation of General Insurance (FenSeg); the National Federation of Private Social Security and Life Insurance (FenaPrevi); the National Federation of Insurance Brokers (Fenacor); the Brazilian School of Insurance; and the Brazilian Cooperative Organization (OCB).

The deadline for the group to complete the work is 90 days from the publication of the rule.

This is another initiative to fight the illegal and criminal offer of insurance by entities not authorized by SUSEP to operate.

## 2) BILL 3139/2015

The Special Private Insurance Commission held on November 9 the second public hearing to discuss Bill 3139/15 proposed by representative Lucas Vergílio (SD political party-State of Goiás), which provides for the National Private Insurance System.

Representatives of the insurance market and the Consumer Protection Department attended the hearing of

November 9 and stated their position against the sale of the so-called “vehicle protection” by organizations that do not operate in the insurance field. They also questioned whether the cooperatives and associations have the experience and cash necessary to pay coverage for car losses. João Francisco Borges da Costa, president of the National Federation of General Insurance (FenSeg), also noted that the insurance activity “has to be regulated because it affects the popular economy, the resources of the population, and precisely for this reason, it has been increasingly supervised worldwide to protect the consumer and not the insurers.”

According to the bill, only corporations or cooperatives may operate in the field of private insurance and provided that authorized by the entity that supervises the insurance market.

The bill also prohibits associations, cooperatives, benefits clubs, individuals and entities from executing insurance contracts or selling products providing coverage, reimbursement and indemnity for any purposes, including those similar to damage or personal insurance.

The public hearings are held to allow those interested to state opinion on the Bill so that the representatives will be able to make a decision.

It is important to note that the offer of insurance by entities not authorized by SUSEP to operate is a crime and a new law would not be necessary to affirm this. This fact has already been recognized in court decisions.

Anyway, this is another initiative to fight the illegal and criminal offer of insurance by entities not authorized by SUSEP to operate.

To read the text of the bill, please click [here](#).

### 3) Ministry of Finance - MF ADMINISTRATIVE RULE No. 494, OF 11/13/2017

This rule adjusts the monetary value of the Inspection Fee of the insurance and reinsurance, capitalization and open supplementary retirement plan markets.



## 4) CALL FOR SUSEP PUBLIC INQUIRY No. 14, OF 11/10/2017

SUSEP Superintendent submitted for public inquiry the draft of SUSEP Circular that amends Resolution no. 321 issued by the National Council of Private Insurance on July 15, 2015; this resolution provides for technical provisions, assets to reduce the need for coverage for the technical provisions, risk capital based on subscription, credit, operational and market risks, adjusted net worth, minimum capital required, plans to legitimize solvency, withholding limits, criteria for investments, accounting standards, independent accounting and actuarial audits, and Audit Committee related to insurers, open supplementary social security entities, capitalization companies, and reinsurers.

The main changes proposed refer to the subscription of local reinsurers' risk capital; definition and implementation of the liquidity regularization plan (PRL); amendments to annexes I, II, III, which deal with Subscription Risk Capital in insurance transactions, especially Issuance Risk/Pricing; risk related to provision for losses in transactions and

correlation matrices related to Issuance Risk/Pricing; amendments to annexes XIV and XV, which deal with Risk Capital based on credit risk, portion 1 and 2, respectively.

The period for suggestions ended on November 25, 2017.

## 5) CALL FOR SUSEP PUBLIC INQUIRY No. 15, OF 11/16/2017

SUSEP Superintendent submitted for public inquiry the draft of a Circular that provides for the limit for reinsurance cession and the assessment of the rate established in art. 16 of CNSP Resolution no. 168, of December 17, 2007. The period for suggestions ended on 11/27/2017.

Basically, the rule includes among the lines that cannot not be computed in the calculation of the limit set in art. 16 of CNSP Resolution no. 168/2007 Operational and Indicated Risks; Aviation (body); Optional Civil Liability for Aircraft (RCF); and Oil Risks.

It is interesting to note that, according to the draft, the values related to the reinsurance and retrocession

commission will not be deducted from the ceded reinsurance/retrocession premiums, a path opposed to that of the general rule on premium consolidated as the net proceeds from the payment of reinsurance and retrocession premiums and the receipt of reinsurance and retrocession premiums.

To access the draft of the rule, please click [here](#).

## 6) CALL FOR SUSEP PUBLIC INQUIRY No. 16, OF 11/16/2017

SUSEP Superintendent submitted for public inquiry the draft of SUSEP Circular that amends and consolidates the supplementary rules and criteria for survival coverage offered in open supplementary social security plans and makes other provisions.

Some of the proposed innovations are change to minimum limits for reversion of financial results for agreed income above 4.5% p.a.; Open Supplementary Social Security Entities (EAPCs) may invest in units of Specially Constituted

Funds (FIEs), subject to the CVM criteria and change to the administrative charge. The period for suggestions ended on November 27, 2017.

To access the draft of the rule, please click [here](#).

## 7) CALL FOR SUSEP PUBLIC INQUIRY No. 17, OF 11/16/2017

SUSEP Superintendent submitted for public inquiry the draft of SUSEP Circular that amends and consolidates the supplementary rules and criteria for survival coverage offered in personal insurance plans and makes other provisions.

Some of the proposed changes are VDR insurance (Life with Referenced Performance) and Scheduled VGBL insurance (Scheduled Private Pension Free Benefit Life); increased list of information that will be made available to the insureds, and inclusion of elements that must be contained in the Policy and the Individual Certificate.

To access the draft of the rule, please click [here](#).

## 8) Foundation for Support of the Accounting Pronouncement Committee - FACPC HOLDS A TECHNICAL MEETING TO DISCUSS IFRS 17

The International Accounting Standards Board (IASB), in partnership with the Accounting Pronouncement Committee (CPC) and FACPC will hold a meeting to discuss the IFRS 17 – Insurance Contract. The meeting will be mediated by Darrel Scott, IASB member, and will be held on December 6, at Fipecafi.

The IFRS 17 have been extensively discussed due to their impacts on the activities of insurers, open supplementary pension entities and capitalization companies, especially because SUSEP will have to define how the IFRS will be implemented in Brazil and set the limits for their implementation.

To obtain other information and subscribe to the event, please click [here](#).

## 9) SUSEP STATEMENT No. 199, OF 11/8/2017

Amends SUSEP Regulation plan for 2017.

The main topics of the plan are: Revision of SUSEP Circular 205/2002 on collection of the Inspection Fee concerning the states; implementation of methods for the revision of DPVAT (Insurance for Personal Damage Caused by Automobiles) amounts (Appellate Decision TCU 2609); establishment of the premium of DPVAT for 2018; regulation of a market niche related to “big risks;” adoption of CPA 002, which provides for independent actuarial audit, and CPA 007, which provides for materiality within the ambit of independent actuarial audit.

The regulation plan is available [here](#).

## 10) NORMATIVE RESOLUTION No. 429, OF 11/10/2017

Amends Normative Resolution no. 425, of July 19, 2017, which regulates Non-Tax Debts Good Standing Program [*Programa de Regularização de Débitos não Tributários - PRD*] within the National Agency of Supplementary Health (ANS).

According to the amendment, debts of individuals or entities, definitely constituted or not, with maturity date until October 27, 2017, which are not registered as overdue, including debts whose payment was divided into installments according to a program that was terminated or remains effective and debts that are being disputed in a judicial or administrative proceeding, may be settled as provided in the PRD.

By joining the PRD, the debtors may pay in installments debts related to the Single Health System [*Sistema Único de Saúde - SUS*], fines and other non-tax debts due to the ANS.

## 11) International Insurance Law Association - AIDA and National Insurance and Social Security Academy - ANSP held the I Seminário Manuel Póvoas

The event was held on November 8. The Seminar held in partnership by the entities discussed the legal and technical aspects of the insurance contract. The event was divided into five sessions: the first discussed Bill 3.555; the second addressed “Insurtechs: perspectives and regulation”; the third debated DO Civil Liability and SUSEP Circular no. 553/2017; the fourth addressed “Challenges for the future: social security, health and personal insurance;” and, finally, the fifth was dedicated to “Sustainability: impacts on the companies.”

Our law firm’s partner João Marcelo dos Santos opened the Seminar as President of ANSP and our law firm’s lawyer Ana Paula Costa coordinated the first session and delivered a lecture.



## 12) International Air Transport – Federal Supreme Court determines that the liability limitation provided in international treaty prevails over the Consumer Protection Code

The case was considered a “leading case” and the decision — although it is not a formal precedent under the Brazilian Civil Law —, is a recommendation to the lower courts.

The decision was recorded under no. 210 and states as follows: "In accordance with art. 178 of the Constitution, the rules and international treaties that limit the liability of passenger air transport companies, especially Warsaw and Montreal Conventions, prevail over the Consumer Protection Code.

To access the Extraordinary Appeal, please click [here](#).

## 13) NEW SUSEP DIRECTOR APPOINTED

On November 21, Icaro Demarchi Araujo Leite was appointed SUSEP Director by a Presidential Order.

The new Director is a lawyer with experience in insurance and dissolution of insurers and will replace Cássio Cabral Kelly, a career employee of SUSEP; the appointment was not well received by SUSEP employees.

## 14) INSURANCE IS THE SUBJECT OF A MEETING BETWEEN CORIOLANO AND TEMER

CNseg President, Marcio Serôa de Araujo Coriolano, met the Brazilian President Michel Temer at Palácio do Planalto and emphasized the relevance of structural reforms for the development of the insurance market.

The report is available [here](#).

## 15) CIRCULAR SUSEP No. 560/2017

Sets rules and criteria for insurance covering Loss of Profits and makes other provisions.

Basically, the rule establishes that loss of profit insurance must comprise at least one of the following basic coverages: loss of gross revenue, loss of gross profit, loss of net profit, and fixed expense, however, these coverages may be combined.

It is possible to include additional coverages in the plan, provided that directed connected to the line of loss of profit insurance. In such cases, the additional coverages may be subject to the same limit of the basic coverage.

The circular is available [here](#).

## 16) REINSURANCE COMPANY IRB CREATES IT OWN ASSET MANAGEMENT COMPANY

IRB-Brasil Resseguros, in a communication of relevant fact to the Brazilian Securities Commission (CVM), informed that the banks that form the control block of the Company (Bradesco, Itaú Unibanco, and Banco do Brasil) sent it the Brazilian Central Bank's approval for the organization of a whole-owned subsidiary of IRB Brasil Resseguros dedicated to asset management, to be named IRB Asset Management.

The organization of the IRB Asset, according to the communication, *“will make the management of the financial assets of the company more effective, improve the talent retention practices and open an opportunity to obtain new sources of funds deriving from the management of funds of third parties, especially funds derived from our subsidiaries in Brazil, as well as from partner insurers and retrocessionaries of the company.”*

The organization of IRB Asset is contingent on the approval of the Brazilian Securities Commission, under CVM Instruction no. 558/15.

## 17) PUBLIC INQUIRY - CPA 014 AND CPAO 014

The Brazilian Actuarial Institute (IBA), based on IBA Resolution no. 04/13 that instituted the Actuarial Pronouncement Committee (CPA) disclosed to the public the drafts of CPA 014 and CPAO 014.

CPA 014 and CPAO 014 make available to all actuaries the principles and methods usually used in the initial actuarial valuations and in each balance sheet for the Social Security Regimes of the Federal Government, the Federal District, the States and the Municipalities, in connection with the amortization plan for the analysis of actuarial deficits.

The period to send comments and suggestions ended on 12/29/2017.

The public inquiry is available [here](#).

## 18) PUBLIC HEARING – CPC 49 – ACCOUNTING AND REPORTING BY RETIREMENT BENEFIT PLANS

CPC 49 – Accounting and Reporting by Retirement Benefit Plans (corresponding to IAS 26 – Accounting and Reporting by Retirement Benefit Plans) was submitted for a public hearing for 60 days jointly with the Accounting Pronouncement Committee.

The document sets the principles applying to accounting statements of retirement benefit plans. The retirement benefit plans are also as referred to as “social security benefit plans,” “pension plans,” or “retirement plans.” The pronouncement considers that a retirement benefit plan is an entity that reports separately from employers/settlers of plan participants. All other pronouncements of CPC not replaced by this pronouncement apply to the accounting statements of retirement benefit plans.

The new pronouncement will be effective for fiscal years beginning from January 1, 2019.

Suggestions and comments related to this draft may be sent until January 24, 2018 to the Accounting Pronouncement Committee and the Federal Accounting Council via [ap.nbc@cfc.org.br](mailto:ap.nbc@cfc.org.br),

To check the pronouncement, please click [here](#).

## 19) National Supplementary Social Security Superintendence - PREVIC ADMINISTRATIVE RULE No. 1001, OF 10/19/2017

Establishes that forwarding of the statistic population and benefit data addressed in SPC Instruction no. 24, of June 5, 2008 will be resumed.

According to the rule, the files must be sent separately per six-month periods, via the File Transfer System (STA) available at <https://sta.previc.gov.br>.

The files related to the Statistic Statement (DE) for all periods not sent to Previc because their forwarding was suspended must now be forwarded until December 15, 2017.

The closed supplementary social security entities (EFPCs) that did not send the file related to the second half of 2014, must do so via STA.

The data related to the Gender and Age Statement (DSI) from the second half of 2014 must be sent until December 30, 2017, as established in the rule.

The files related to the DE and DSI may be generated using the "desktop" application available on Previc website.

## 20) PREVIC ADMINISTRATIVE RULE No. 1002, OF 10/19/2017

Provides for the implementation of the pilot project for registration of external users in the Information Electronic System (SEI), within the ambit of the process for



qualification of managers of Closed Supplementary Social Security Entities (EFPCs).

The pilot project aims at qualifying only the highest managers of EFPCs classified as Systematically Important Entity (ESI) and their legal substitutes.

The highest managers of EFPCs and their legal substitutes may access the application in the SEI system and monitor the development of the process upon prior registration. After the registration approval, the external users may electronically file and sign the application for qualification of EFPC managers.

Among others, the administrative rule establishes that the highest managers of EFPCs classified as ESI and their substitutes must ask for access to the SEI until December 30, 2017.

Previc may, at any time, allow the registration of managers of the others EFPCs.

## 21) PREVIC ADMINISTRATIVE RULE No. 1003, OF 10/8/2017

On November 8, 2017, Previc published on its website the List of Qualified Managers of the Closed Supplementary Social Security Entities (EFPCs) of October 2017.

To check the list, please click [here](#).

## 22) AMENDMENTS TO DECREE No. 4942/2003 ARE UNDER DISCUSSION

Previc will attend a meeting with the Strategy and Integration Committee (CEI) to discuss the proposed amendments to Decree no. 4942/2003, which regulates the EFPCs.

The CEI is composed of the President and Vice President of the Executive Board and Decision-Making Board of Abrapp, the President and Vice President of Sindapp (National

Association of EFPCs), the President and Vice President of UniAbrapp, and the President of ICSS.

Sindapp presented the views of its entity members conveyed in an inquiry conducted in October and November. Among them are maintenance of the provision according to which the manager corrects improprieties in due time where no loss is caused to the entity; penalty amounts; definitions of types; qualification and re-qualification, prohibition of reversals to the prejudice, extended possibility of penalty conversion.

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## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

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### 1) LAW No. 13502, OF 11/1/2017

Establishes the basic organization of agencies of the Brazilian Presidency and the Ministries; amends Law no. 13334, of September 13, 2016; and revokes Law no. 10683, of May 28, 2003, and Provisional Presidential Decree no. 768, of February 2, 2017, in Brazil and in regard to Brazilian capital abroad.

To read the law, please click [here](#).

## 2) Brazilian Securities Commission - CVM INSTRUCTION

Amends CVM Instruction no. 308, of May 14, 1999, which deals with the registration and the activity of independent audit within the ambit of the securities market and defines the duties and responsibilities of managers of entities audited by independent auditors.

The Instruction also addresses the Technical Qualification Test, the Continued Education Program, the auditors' turnover and the internal and external quality controls (revision by peers) and shows examples of activities that involve conflict of interest where performed simultaneously with provision of services of independent audit to a same client.

To access the instruction, please click [here](#).

## 3) CVM's AUTHORITY TO REGULATE THE ACTIVITY OF INDEPENDENT AUDITORS HAS REPERCUSSIONS

The Federal Supreme Court will discuss the limit of the Brazilian Securities Commission's authority to regulate the professional activity of independent auditors and provide for violations and penalties. The matter is addressed in Extraordinary Appeal 902261, which had general repercussion recognized in a decision of the court sitting en bank.

To check the development of the Extraordinary Appeal, please click [here](#).

## 4) DECREE No. 9194, OF 11/7/2017

Provides for the remittance of credits held by federal autonomous government agencies and federal public

foundations to the Federal Prosecution Office. The rule establishes a series of measures to consolidate and expedite the process, including the creation of a centralized technical solution to rationalize the management of collections and payments.

To access the text of the Decree, please click [here](#).

## 5) Provisional Presidential Decree - MP No. 808, OF 11/14/2017

Brazilian President Michel Temer enacted on November 14 the MP no. 808/2017, which modifies some topics of the labor reform that took effect on November 11. The MP changes the rules related to pregnant employees, autonomous workers, intermittent work, the 12x36 work regime, and compensation for pain and suffering.

This matter has already been addressed in a previous Information Report; to check it, please click [here](#). To read the text of the Decree, please click [here](#).

## 6) DECREE No. 9188, OF NOVEMBER 1, 2017

Establishes rules on governance, transparency, and market good practices for the special divestiture of assets by federal government-controlled companies.

To read the text of the Decree, please click [here](#).

## 7) Financial Activities Control Commission - COAF ADMINISTRATIVE RULE No. 010, OF 11/3/2017

Provides for the implementation and operations of the Electronic Information Electronic System (SEI) within the ambit of COAF.

## 8) CVM INSTRUCTION No. 591

Amends CVM Instruction no. 308, of May 14, 1999, which deals with the registration and the activity of independent audit within the ambit of the securities market and defines the duties and responsibilities of managers of entities audited by independent auditors.

The Instruction also addresses the Technical Qualification Test, the Continued Education Program, the auditors' turnover and the internal and external quality controls (revision by peers) and shows examples of activities that involve conflict of interest where performed simultaneously with provision of services of independent audit to a same client.

The instruction is available [here](#).

## 9) BACEN CIRCULAR No. 3857, OF 11/14/2017

Provides for the administrative sanction procedure, imposition of penalties, instrument of commitment, preventive measures, punitive fine, and administrative settlement in the supervision process established in Law no. 13506, of November 13, 2017.

The circular is available [here](#).

## 10) BACEN CIRCULAR No. 3,858, OF 11/14/2017

Regulates the parameters for imposition of the administrative penalties established in Law no. 9613, of March 3, 1998.

The circular is available [here](#).



## 11) BACEN COMMUNICATION No. 31379, OF 11/16/2017

Warns about the risks involved in transactions for custody and negotiation of the so-called digital currencies.

The communication is available [here](#).

## 12) INITIAL COIN OFFERINGS (ICOs)

The Brazilian Securities Commission (CVM) issued a note explaining that it has been monitoring transactions known as Initial Coin Offerings (ICOs) to learn and understand the risks and advantages involved, whether through internal forums, such as the Committee for Risk Management (CGR) and the Fintech Hub, or discussions on an international level, such as works developed by IOSCO. In line with the skills defined in Law 6385/76 and considering its legal duty to incentive capital formation, CVM strives to introduce new technological innovations in the securities

market, always aiming at a safe environment for investors and the market.

The note is available [here](#).

## 13) CVM RESOLUTION No. 783, OF 11/17/2017

Approves tests for broker-dealers to demonstrate technical qualification in order to obtain CVM's authorization to work.

The resolution is available [here](#).

## 14) CVM INSTRUCTION No. 592, OF 11/17/2017

CVM enacted a new Instruction that provides for the activity of securities brokerage. Among the innovations, the Instruction defines the scope of work for the securities brokerage activity, to determine the reach of the rule.

The Instruction is available [here](#).

## 15) CVM INSTRUCTION No. 593, OF 11/17/2017

Amends the provisions of CVM Instructions no. 497, of June 3, 2011, no. 539, of November 13, 2013, and no. 558, of March 26, 2015, which provide for, respectively, the activity of independent investment agent, the duty to verify whether products, services and transactions meet the client's needs, and the professional activity of management of securities portfolios.

The Instruction is available [here](#).

## 16) LAW No. 13.509, OF 11.22..2017

Provides for adoption and amends Law no. 8069, of July 13, 1990 (Child and Adolescent Statute), the Consolidation of Labor Laws [*Consolidação das Leis do Trabalho - CLT*],

approved by Decree-Law no. 5452, of May 1, 1943, and Law no. 10406, of January 10, 2002 (Civil Code).

The law is available [here](#).

## 17) NATIONAL LAND TRANSPORTATION AGENCY - ANTT RESOLUTION No. 5577, OF 11/22/2017

Amends Resolutions no. 4770, of June 25, 2015, and no. 4777, of July 6, 2015, that regulate interstate and international passenger road transportation services, under the authorization regime and chartering regime, respectively.

The resolution is available [here](#).

## 18) NATIONAL LAND TRANSPORTATION AGENCY - ANTT RESOLUTION No. 5,581, OF 11/22/2017

Amends ANTT Resolution no. 5232, of 2016, which approves the Additional Instructions on the Regulation of Land Transportation of Hazardous Products, and the annex thereto. The resolution is available [here](#).

## 19) CVM RELEASES STUDY ON GREENSHOE OPTION AND PRICE STABILIZATION PRACTICES

The Advisement Office for Economic Analysis and Risk Management [*Assessoria de Análise Econômica e Gestão de Riscos - ASA*] released on 11/22/2017 a study on greenshoe option and price stabilization practices within the ambit of “restricted-effort offerings” [*ofertas com*

*esforços restritos*] ([CVM Instruction 476](#)). In addition to ASA, the study was also carried out by the Superintendence of Market Development [*Superintendência de Desenvolvimento de Mercado - SDM*] and the Superintendence of Relationship with the Market and Intermediaries [*Superintendência de Relações com o Mercado e Intermediários - SMI*].

The entire study is available [here](#).

## 20) BRAZILIAN ACCOUNTING RULE OF 11/24/2017

On November 24, 2017, the Federal Accounting Council [*Conselho Federal de Contabilidade - CFC*] approved the General Technical Interpretation [*Interpretação Técnica Geral - ITG*] 2004 - Cooperative Entity, which establishes specific criteria and procedures to register equity and structural variations in the financial statements, assessment and minor information to be added to explanatory notes for the cooperative entity. The new



Brazilian accounting rule puts an end to the discussion about the accounting classification of cooperative members' shares as equity instruments. Such discussion began when the Accounting Pronouncement Committee [*Comitê de Pronunciamentos Contábeis* - CPC] approved and published, on November 5, 2011, Technical Interpretation ICPC 14 – Members' Shares in Cooperative Entities and Similar Instruments [*Cotas de Cooperados em Entidades Cooperativas e Instrumentos Similares*], based on IFRIC 2 – Members' Shares in Co-operative Entities and Similar Instruments, issued by the IASB - International Accounting Standards Board.

As such ICPC 14 is based on international accounting standards, it found that cooperatives had to classify its members' shares as liability and no longer as net assets. However, the CFC and the Brazilian Cooperatives System did not agree with that classification, as it does not fit the Brazilian accounting scenario, where shares must be accounted for as net assets.

Therefore, the CFC has submitted for public hearing the drafts of revised ITG 2004 - Cooperative Entity and ITG 14 – Members' Shares in Cooperative Entities and Similar

Instruments. The wording defended by the CFC and the cooperatives has prevailed: members' shares must be accounted for as net assets of the cooperatives, as opposed to the international understanding that they must be accounted for as liability.

## 21) Federal Accounting Council - CFC RESOLUTION No. 1532, OF 11/24/2017

CFC approved on 11/24/2017 a risk management plan to guide the CFC's Organizational Units through the procedures to be adopted for risk management, associate risk management with the CFC's organizational and strategic planning, optimize the planning and execution of programs, projects and processes of the CFC, and contribute to CFC's institutional governance.

The resolution is available [here](#).

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## CLOSED SUPPLEMENTARY SOCIAL SECURITY

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### 1) AMENDMENTS TO DECREE 4942 UNDER DISCUSSION

Decree 4942 regulates the administrative proceeding of Closed Supplementary Social Security Entities (EFPCs) and investigations into irregularities, and establishes the imposition of administrative penalties on the entities' managers.

Sindapp presented its member entities' claims on the matter, which they submitted during an inquiry conducted in October and November. Among them are maintenance of the provision according to which the manager corrects improprieties in due time where no loss is caused to the entity; penalty amounts; definitions of types; qualification and re-qualification, prohibition of reversals to the prejudice, extended possibility of penalty conversion.

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## HEALTH

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### 1) INCIDENTAL PROCEEDING FOR RESOLUTION OF SIMILAR ACTIONS WAS ADMITTED BY THE COURT OF JUSTICE OF SÃO PAULO ON THE VALIDITY OF ADJUSTMENT DUE TO AGE GROUP CHANGE IN GROUP CONTRACTS

The Court of Justice of São Paulo will stay all actions within its territorial jurisdiction on the validity of the adjustment applied to 59-year-old insureds due to age group change in group contracts (corporate and adhesion).

The Court of Justice admitted that an incidental proceeding for resolution of similar actions [*Incidente de Resolução de Demandas Repetitivas - IRDR*] be filed in view of the wide

divergence among the precedents set by the Chambers of the 1st Subsection of Private Law and, at times, set by a same Chamber, which jeopardizes equal protection and legal certainty.

Repetitive Appeal 1.568.244/RJ, tried by the Superior Court of Justice, does not apply to group plans, as it only pertains to the validity of adjustments due to age group change in individual contracts.

The appellate decision is available [here](#).

## 2) LIST OF THE NATIONAL SUPPLEMENTARY HEALTH AGENCY - ANS UPDATED - NORMATIVE RESOLUTION 428, OF 11/7/2017

A Normative Resolution that updates the List of Health Procedures and Events was issued. This list is the basic reference for minimum mandatory coverage of private health plans taken out as of January 1, 1999, and adjusted pursuant to Law no. 9656, of June 3, 1998.

The Normative Resolution will take effect on January 2, 2018 and is available [here](#).

## 3) FEDERAL MEDICINE COUNCIL - CFM RESOLUTION No. 2168, OF 9/21/2017

The CFM updated the rules on assisted reproduction techniques in Brazil. Through CFM Resolution no. 2168/2017, the council enacted rules on matters such as disposal of embryos, reciprocal IVF, and surrogacy. One of the highlights is that the medical evaluation for Assisted Reproduction will now take social issues into account.

The resolution is available [here](#).

#### 4) SUPERIOR COURT OF JUSTICE AMENDS NEW PRECEDENT ON WAITING PERIOD OF HEALTH PLANS

The private law division of the Superior Court of Justice approved a new Precedent finding that any health plans with a waiting period exceeding 24 hours for emergency situations are abusive. Such precedent is a summary of the judicial decisions on this matter, and will be guidance to all legal professionals on the precedents of the Superior Court.

According to the new Precedent “any contractual clause of a health plan that establishes a waiting period for emergency medical care of more than 24 hours after the date the plan is taken out is abusive.”

The Precedent is available [here](#).

#### 5) PRESIDENTIAL DECREE No. 9194, OF 11/7/2017

Establishes a methodology and provisions on the collection of amounts payable to federal autonomous government agencies and federal public foundations. The rule establishes a series of measures to consolidate and expedite the process, including the creation of a centralized technical solution to rationalize the management of collections and payments. According to estimates, R\$ 100 billion is currently payable to the 159 autonomous government agencies and federal public foundations, and almost half of such amount is owed to three entities only: National Agency of Telecommunications [*Agência Nacional de Telecomunicações - Anatel*], Brazilian Institute for the Environment and Renewable Natural Resources [*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis - Ibama*], and National Supplementary Health Agency [*Agência Nacional de Saúde Suplementar – [ANS]*].



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## TAX

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### 1) Federal Revenue Office - RFB NORMATIVE INSTRUCTION No. 1755, OF 10/31/2017

Amends RFB Normative Instruction no. 971, of November 13, 2009, which provides for general rules on social security taxation and collection of social contributions to the Social Security and to other entities or funds administered by the Federal Revenue Office [*Secretaria da Receita Federal do Brasil* - RFB].

The Instruction is available [here](#).

### 2) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1756, OF OCTOBER 31, 2017

Amends RFB Normative Instruction no. 1500, of October 29, 2014, which provides for general taxation rules related to Individual Income Tax.

The Instruction is available [here](#).

### 3) INSTRUÇÃO NORMATIVA RFB Nº 1757, DE 10.11.2017

Provides for the Withholding Income Tax Return [*Declaração do Imposto sobre a Renda Retido na Fonte - Dirf*] for the calendar year of 2017, special situations in 2018 (Dirf 2018), and the Dirf 2018 Generator Program (PGD Dirf 2018).

The Instruction is available [here](#).

#### 4) RFB NORMATIVE INSTRUCTION No. 1758, OF 11/10/2017

Amends RFB Normative Instruction no. 985, of December 22, 2009, that introduces the Medical Services Declaration [*Declaração de Serviços Médicos - Dmed*].

The Instruction is available [here](#).

#### 5) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1761, OF 11/20/2017

Establishes the requirement to provide to the RFB information on transactions paid in a lump sum.

The Instruction is available [here](#).

#### 6) RFB NORMATIVE INSTRUCTION No. 1762, OF 11/21/2017

Amends RFB Normative Instruction no. 1711, of June 16, 2017, which regulates the Special Program for Tax Good Standing [*Programa Especial de Regularização Tributária - Pert*] within the ambit of the Federal Revenue Office, introduced by Law no. 13496, of October 24, 2017.

The Instruction is available [here](#).

#### 7) EXECUTIVE DECLARATORY ACT No. 72, OF 11/16/2017

Provides for the layout of the Withholding Income Tax Return Generator Program (PGD Dirf 2018).

The declaratory act and the Annex with the new layout are available [here](#).

## 8) ACT OF THE CHAIR OF BOARD OF THE BRAZILIAN CONGRESS No. 61, OF 11/21/2017

Extends Provisional Presidential Decree no. 803, of September 29, 2017, which institutes the Program for Rural Tax Good Standing of the Federal Revenue Office and the Office of the General Counsel for the National Treasury, for a period of 60 days.

The act is available [here](#).

## 9) DECLARATORY ACT No. 71, OF 11/14/2017

Provides for the layout of the Medical and Health Services Declaration Generator Program (PGD Dmed 2018).

The declaratory act and the Annex with the new layout are available [here](#).

## 10) FEDERAL REVENUE OFFICE - RFB NORMATIVE INSTRUCTION No. 1764, OF 11/21/2017

Amends RFB Normative Instruction no. 1571, of July 2, 2015, which provides for the requirement to provide information on financial transactions of the Federal Revenue Office's interest, and RFB Normative Instruction no. 1680, of December 28, 2016, which provides for the identification of financial accounts in compliance with the Common Reporting Standard - CRS.

The instruction is available [here](#).

## 11) VETOED PARTS OF SUPPLEMENTARY LAW No. 160, OF 8/7/2017, ARE PUBLISHED

The parts of the bill vetoed by the Brazilian President and rejected by the National Congress that became Supplementary Law no. 160, of August 7, 2017, were published. Such law “provides for the agreement that allows the States and the Federal District to resolve on the remission of tax liabilities, assessed or not, resulting from tax or tax-financial exemption, incentives and benefits introduced in violation of subitem “g,” item XII, par. 2, art. 155 of the Federal Constitution, and refund of the respective tax or tax-financial exempted amounts, incentives and benefits; and amends Law no. 12973, of May 13, 2014.

The veto is available [here](#).

## 12) RFB INTERPRETATIVE DECLARATORY ACT No. 006, OF 11/24/2017

Provides for the supplementary social security contribution established in par. 1 of art. 911-A of the Consolidation of Labor Laws (CLT), approved by Decree Law no. 5452, of May 1, 1943.

The declaratory act is available [here](#).

## 13) FEDERAL REVENUE OFFICE DETERMINES THAT PIS AND COFINS WILL NOT BE LEVIED ON INSURANCE INDEMNITY

Companies that have recently terminated agreements due to lack of payment and that are entitled to indemnity of the insurance that covers such losses no longer have to worry about taxes levied on such indemnity. The Federal



Revenue Office published a General Taxation Coordination - Cosit Answer to Inquiry establishing that no Corporate Income Tax (IRPJ), CSLL, PIS and Cofins will be levied on any indemnity that does not exceed the loss caused to the company in the non-cumulative regime.

This issue has been disputed on some occasions since there is no express rule on this matter.

The answer to the inquiry is available [here](#).

## 14) E-Social Steering Committee CDeS RESOLUTION No. 003, OF 11/29/2017

Amends CDeS Resolution no. 2, of August 30 2016, establishing the progressive implementation of the Digital Bookkeeping of Tax, Social Security, and Liabilities (eSocial).

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