

AUDIT AT EFPCS: CHANGES DERIVING FROM CNPC RESOLUTION NO. 27

The National Council for Supplementary Social Security (CNPC) issued yesterday (April 3) four Resolutions on matters of great relevance to the segment. In this article, we will analyze the most relevant rulings of the Resolution no. 27, which provides for audit procedures for closed supplementary social security entities - EFPCs.

Audit Committee

Art. 8 of the recently published Resolution prescribes that “The EFPCs defined by Previc based on objective criteria taking into consideration size and relevance must set up an Audit Committee.”

In its paragraphs, the article establishes that December 31, 2018 is the deadline for the entities to create the Committees — except entities oriented to public servants, which may apply for Previc’s authorization to create them within a longer term — and provides that those EFPCs not required to do so, but that voluntarily decide to establish Audit Committees, must fulfill the provisions of the Resolution.

We go on to present, in three steps, the procedures that the EFPCs may follow to comply with the provisions of the Resolution no. 27.

1st step: confirm whether the entity is required to create the Audit Committee

Although the Resolution does not adopt the expression “Systematically Important Entities” (also known by the initials ESI) to define those entities that are required to set up the Committees, while Previc does not publish a new ruling on this matter, ESIs, currently defined in Previc Administrative Rule no. 580/2017, are those entities that are required to create such structures.

Currently, the list of ESIs is composed, in its majority, of entities whose equity corresponds to more than 1% of the total funds of the Brazilian closed supplementary social security system. That is, it was established a cut-off point a little above R\$ 8 billion of coverage equity for an EFPC to be classified as systematically important. This criterion applies to 14 of the 17 ESIs; the others are the three largest supplementary social security entities oriented to public servants (Funpresp-Exe, Funpresp-Jud, and SP-Prevcom).

At the same time that they must be alert to a change to Previc’s list of the entities required to create the Committees, the 14 ESIs not oriented to public servants should, as soon as possible, take measures to create their Audit Committees.

In contrast, the three public servants' foundations classified as systematically important should decide if they will create the Committees in 2018, meeting the standard period established in the rule, or if they will request to Previc, upon justification (considering the operation date and their financial capacity to bear the resulting expenses) a term extension. This should be carried out as expeditiously as possible because, should Previc deny the request, the entity will not have time to form the Committee within the stipulated term.

All other entities are not required to create Audit Committees. However, should they do so, they must obey the rules laid down in Resolution no. 27, except, obviously, in regard to the deadline of 12/31/2018, as the creation will be an act of liberality. This decision is up to the Decision-Making Board.

2nd step: preparation and approval of the internal regulation of the Audit Committee

The organizational document of the Audit Committee will be its bylaws— or, as defined by art. 9 of the Resolution, its regulation. It will establish all the rules for the creation and operation of the Committee, and the quality and carefulness of the preparation will be of utmost importance to the effectiveness of the body, including to eliminate conflict with the assignments of the Audit Board of the entity.

The regulation must respect the bylaws of the Entity — it is convenient to confirm their compatibility and, if need be, to amend the bylaws — as well as the governing law, especially Resolution no. 27 itself, which establishes, for example, the number of members of the Committees (three to five), their term of office (three years), and the minimum assignments of the Committee, listed in art. 11 of the Resolution.

Once the internal regulation is prepared, it must be approved by the Decision-Making Board of the Entity.

3rd step: appointment of the members of the Audit Committee

The internal regulation will determine the number of members of the Committee and whether there will be alternate members. The Resolution does not establish a procedure to choose the members of the Committee nor a procedure to appoint the chair, but both procedures must be provided in the internal regulation. The choice must obey principles in harmony with the purpose of the Committee, in particular, the independence and technical capacity of its members.

At least one of the members of the Committed must have in-depth knowledge of the accounting and accounting audit areas of the EFPC (art. 9, par. 2). To date, there is no requirement for certification or qualification of the members of the Committee,

but the entities should take notice of this since the natural tendency is for such requirement to be established in the future.

Once the members are chosen, they must take office officially, according to the internal regulation of the Committee and going through the specific formalities of an act of such nature.

The legal period for the formation of the Committee will be satisfied if the members take office until 12/31/2018, determining the beginning of the operations of the body. The frequency of the meetings will be established in the regulation.

Director responsible for accounting

Another innovation introduced by the Resolution is that all entities (and not the ESIs only) must inform Previc who is the director responsible for accounting (DRC - Diretor Responsável pela Contabilidade). Currently, the EFPCs are required to indicate, among the members of their executive board, who is the technically qualified manager under the bylaws (AETQ - administrador estatutário tecnicamente qualificado) and the manager responsible for the benefits plan (ARPB - administrador responsável pelo plano de benefícios) Now, in the same way, they must inform who is the DRC that will be responsible before Previc for the monitoring, supervision and compliance with the accounting rules and procedures provided in the regulation.

As this is an innovation, evidently the bylaws and internal regulation of the entities do not establish how the DRC will be chosen. However, although such documents can be adjusted, we recommend the entities to appoint the DRC following the same procedures for the appointment of their AETQ and ARPB. Note that the legislation does not bar the appointment of the same director for two or more positions mentioned above.

It is inferred that the intent of the regulatory agency relates to the individualization of administrative sanctions in the event of violations, in order for managers that had different responsibilities in regard to certain obligations not to be imposed the same punishment.

Independent Audit

In this regard, the new ruling consolidated some rules already existing, such as the need for alternation of audit teams every five years, and brought some innovations.

It makes clear that independent auditors — whose hiring or replacement will be recommended by the Audit Committee, if existing — must have a certification qualifying them to conduct the audit (art. 15) and that the opinion must be issued

on the consolidated position of the entity and, also, the benefits plan and the PGA — which was already mentioned, although in other words, in item 29 of Annex C to CNPC Resolution no. 8/2011.

All EFPCs are now required to send Previc the report of the independent auditor, accompanied by the accounting statements, as well as the detailed report on the deficiencies identified in the course of audit, however the term for the last one to be sent is 60 days after the date the accounting statements were sent.

The EFPCs defined by Previc based on objective criteria considering their size and relevance (currently, the ESIs) are required, in addition to all mentioned in the preceding paragraph, to send, within 60 days after the filing of the accounting statements, the audit report for specific purpose which must evaluate the adequacy of the internal controls to the supported risks, as well the governance of the EFPC.

The Resolution also establishes that the contract with the independent auditor must contain a clause authorizing Previc to access the work papers of the independent auditor and any other documents used as base or evidence for the issuance of the reports. Thus, such determination gives rise to the need to revise the contracts with auditors before the end of this fiscal year.

Communications to Previc

Clearly the obligation of the entities defined by Previc to create Audit Committees is in line with the self-regulation, and its background is that it is not possible for the State to supervise, exhaustively, all EFPCs.

However the Audit Committee, the independent auditor, the DRC, and the other directors (these last ones through an independent auditor or the Audit Committees) have the obligation of formally informing Previc — individually or jointly, within ten days from knowledge of the fact — on: i) any failure to meet rules that would put at risk the continuity of the EFPCs; ii) any fraud involving any amount committed by the management of the EFPCs; iii) any relevant fraud committed by employees of the EFPCs or third parties; and iv) mistakes resulting in relevant inaccuracies in the accounting statements of the EFPCs.

Previc will, then, use the information received to carry out its inspection activities and, where applicable, to punish, with the purpose of preventing failures in the entity's management or even criminal conducts harmful to the right of the participants and the beneficiaries.