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ADVOGADOS

CNPC RESOLUTION NO. 28: HOW WILL THE SO-CALLED "PGA PER ENTITY" WORK OUT?

Last week, the National Council of Private Social Security - CNPC published four Resolutions, among them the expected rule for the so-called Administrative Management Plan - PGA per Entity.

This was an old demand from the system, and the purpose was its promotion, since, according to the rule till then in effect, all administrative funds of the closed supplementary social security entities (EFPCs) belonged to one of its benefit plans, so if an EFPC, aiming at diluting its operating costs, wished to prospect for new sponsors, it would certainly have to do it with funds "borrowed" from other benefits plans.

This loan, however, was subject to a strict regulation. The existing permission, based on item 28.2 of Annex C to CNPC Resolution no. 8/2011, required a deferral of the expenses with the implementation of new benefit plans in an EFPC, as shown below:

"*The expenses to institute a new benefit plan may be entered in the Deferred Charges and amortized within at least sixty (60) months from the date of the plan approval by PREVIC.*"

However, this provision applies only to the cases the implementation of the plan is a certainty, based on the assumption that the pre-operating expenses will be supported by the administrative funds of other plans already existing in order for, after the five-year period after Previc's approval, the new plan to return the funds to the plan that assigned them.

Nevertheless, when an EFPC take measures to prospect for sponsors not always the practical result will be the implementation of a new plan. In these circumstances, the expenses incurred with the process cannot be returned by the new plan, simply because it will not exist. And this was a hindrance to the entities wishing to implement such actions.

The CNPC Resolution no. 28 was published exactly to remedy this ruling deficiency. Nine topics were inserted in item 27 of Annex C to Resolution no. 08/2011 — item 28 remained unchanged —, making it possible the creation of a specific fund, within the PGA, designed to cover expenses to prospect for sponsors and to implement and develop benefit plans, comprising:

i) market study;

ii) negotiation with potentially interested parties;

iii) activity planning;

iv) outlining the plan regulation;

v) implementation;

vi) preparation of the EFPC infrastructure;

vii) approval of the regulation;

viii) dissemination; and

ix) prospection for participants.

This specific fund makes it possible to meet the current demand for the so-called PGA per Entity. However, we prefer to call it “prospection fund”, because, in fact, all funds of the PGA already belong to the EFPC, although in the accounting they are tied up in its benefit plans. This fund may pay the pre-operating and operating expenses for a maximum period of 60 months from the beginning of the plan operation.

Although both the unchanged item 28 and the reformulated item 27 of the Annex to Resolution no. 8/2011 set a 60-month period, there are marked differences between them:

- item 28 deals with an accounting deferral of the expenses, that is, it assumes a return to be made by the new plan to those from which the funds derived, whereas item 27 does not require the return of the used amounts derived from the prospection fund; and

- the initial date of the 60-month period addressed in item 28 is the date the plan is approved by Previc whereas, under item 27, it is the initial date of the plan operation, so there is a time gap of some months between them.

Although one could assume that this change would produce immediate effects, a careful reading of the subitems inserted in item 27 of Annex C to the Resolution indicates that, in practice, the deriving modifications will be effective only in the medium/long term.

This is so because the prospection fund, for the entities that decide to set it up, will be implemented from scratch, as the funds already existing in the PGA cannot be allocated for such purpose.

Thus, to set up this fund, the EFPC will have basically two options: The first is to increase the funding of its administrative cost (by increasing the loading and/or administrative charge) to obtain funds to be allocated to the prospection fund. The second supposes that the entity, if the administrative funding is kept the same, will improve its administrative efficiency to have funds to be allocated to the fund.

Once this is done, the EFPC will gradually form the prospection fund. It is known that the implementation of the measures mentioned in the preceding paragraph is not an easy task, so in all likelihood, the formation of the fund will take a long time and a significant quantity of funds will be available only within some years.

The Decision-Making Board is responsible for the decision on the fund creation as well as on how it will receive funds. If the entity manages benefit plans governed by Supplementary Law no. 108, the prior express consent of the government sponsors affected by the measure will be required.

Other changes in addition to the prospection fund

The creation of the prospection fund is an option that probably will be exercised by a small part of the EFPCs, notably those that have multiple sponsors and do not manage plans of a sole business group. So, the question is: what are the changes for the other entities?

Although the so-called PGA per Entity is the most celebrated change, CNPC Resolution no. 28 brought other innovations, described in the head provision and subitems of item 27 of Annex C, which provides as follows:

"27. The Administrative Management Plan - PGA will have its own regulation approved by the EFPC's Decision-Making Board and which, among others, will provide for the source of funding and the establishment and allocation/use of the Administrative Fund recorded in the PGA, for the following cases:

I - to cover the costs of improvement projects for the management and restructuring processes of the EFPC, not implying an increase in the fixed costs of the PGA;

II - to cover administrative expenses where it is evidenced that the administrative costs of the EFPC exceed the source of funding of the PGA;"

This provision causes the EFPCs to revise its PGA regulations to find out whether new requirements will be met. Whereas, according to our expectations, the exercise of the option to create a prospection fund will affect a few entities, the allocation of the administrative fund to special projects and to cover budget deficits is very usual and a great number of entities does so.

Several pension funds, notably those that are more mature, have a flow of administrative revenues that does not cover their expenses, and currently, they have to use funds of the administrative fund (either the earnings or the principal). This, which is a routine in the EFPCs, must be established in the PGA regulation, as well as the possibility of using such funds in projects for management improvement.

The new CNPC regulation, in addition to its incentive aspect, is in line with the need for a closer look at the flow of the revenues and administrative expenses, replacing the short-term budge view for prospective analyses taking into account future changes in the inflow and outflow of administrative funds arising from the natural dynamics of the benefit plan. All in all, the administrative as well as the pension fund flows occur in a very long-term and any small mistake will result in a huge lack or surplus of funds in the future, and both scenarios are equally undesired.