

# INFORMATION REPORT

AUGUST 2018

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## INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

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### 1) Provisional Presidential Decree - MP No. 846, OF 7/31/2018

Amends MP no. 841, of June 11, 2018.

Among other provisions, this [MP](#) establishes that the expenses with life and personal accident insurance that the domestic sports management entities are required to contract will be funded, according to the event, by the proceeds of the lottery allocated to the Brazilian Olympic Committee (COB), Brazilian Paralympic Committee (CPB), Brazilian Clubs Committee (CBC), Brazilian School Sports Confederation (CBDE), and Brazilian University Sports Confederation (CBDU).

### 2) Private Insurance Superintendence - SUSEP CIRCULAR No. 573, OF 8/7/2018

Amends SUSEP Circular no. 435/2012, which, among other matters, provides for the conditions for the formation, organization, operation, and dissolution of self-regulating entities.

This new [rule](#) amends article 6 of the original Circular by eliminating the requirement for publication of the organizational documents approved by SUSEP and filed with the Civil Registry of Legal Entities in the official journals and widely circulated newspapers.

### 3) SUSEP ADMINISTRATIVE RULE No. 6964, OF 7/25/2017

This [Administrative Rule](#) sets up the Special Innovation and Insurtech Commission to be formed by representatives of the following bodies/institutions:

- a. Private Insurance Superintendence - SUSEP:  
Conduct Monitoring Coordination Office -

CGCOM, Prudential Monitoring Coordination Office - CGMOP, Authorization and Settlement Coordination Office - CGRAL, IT Coordination Office - CGTI, General Department - SEGER and Office of the Counsel for SUSEP;

- b. National Confederation of the General Insurance, Private Social Security, Life Insurance, Supplementary Health and Capitalization Companies - CNSeg;
- c. National General Insurance Federation - FenSeg;
- d. National Private Social Security and Life Insurance Federation - FenaPrevi;
- e. National Capitalization Federation - FenaCap;
- f. National Federation of Reinsurance Companies - Fenaber;
- g. National Federation of Private Insurance and Reinsurance, Capitalization, Private Social Security Brokers of the Insurance and Reinsurance Broker Companies - Fenacor;
- h. National Insurance School - Funenseg; and
- i. National Insurance and Social Security Academy - ANSP.

According to this Administrative Rule, SUSEP representatives will be responsible for the coordination of the works and will report to the Conduct Supervision Board (DICON) and the SUSEP Superintendent.

The Commission has already held four meetings, whose minutes may be checked [here](#), and set up important discussions about the remote sales of insurance (that generated amendments to Resolution no. 294/2013 issued by the National Council of Private Insurance) and the possibility of SUSEP creating a sandbox.

Our partner João Marcelo dos Santos, in the capacity of Chair of ANSP, is a member of the Commission and recently published an article addressing the sandboxes; the article is available [here](#).

## 4) SUSEP ELECTRONIC CIRCULAR LETTER No. 001, OF 8/15/2018

On 8/16/2018, SUSEP published this Circular Letter that deals with the insertion of a private clause in the Contractual Conditions of Performance Bonds providing for the non-coverage of losses deriving from corruption practices.

According to the [Circular](#), the supervised entities must observe the following:

a) in the events the borrower fails to perform the master agreement and the insured has not committed any wrong under the contract, the insurer will be required to pay the indemnity.

b) in the events the borrower violates the anti-corruption rules, without the knowledge or complicity of the insured, whether in regard to the insurance contract or any other contract, if the first contract was not performed, the insurer will have the duty to indemnify.

c) the clause may only provide that any wrongs committed by the insureds or their legal representative or by the borrowers or their legal representative in violation of the anti-corruption rules will not be covered.

The insurers whose products contain a clause conflicting with the understanding above will have a term of 30 days from the publication of the Letter to change their products and adjust them to those instructions.

## 5) Court of Justice of São Paulo - TJSP - PERFORMANCE BOND DOES NOT STAY COLLECTION OF FINE APPLIED BY THE Consumer Protection Office – PROCON

The 9th Public Law Chamber of the TJSP unanimously granted the Procon/SP appeal and reversed the decision that stayed the enforceability of fine if a performance bond was given as guarantee.

The court en banc found that the performance bond does not fit any of the events listed in the Brazilian Tax Code (CTN) that allow the stay of the fine enforceability.

The court held that the concept of administrative fine, although it is a non-tax liability, is quite similar to that of a tax. For this reason, art. 151 of the CNT related to the stay of tax liabilities was applied.

Irrespective of the specificities of the concrete case, it seems to us that the grounds of the decision are not adequate. As the fine is not a tax, it is subject to the general legal regime which expressly permits an offer of performance bond as a guarantee. Added to this,



art. 151 of the CNT should be interpreted in light of the new rules that provide for the performance bond.

## 6) CALL FOR SUSEP PUBLIC INQUIRY No. 4/2018

SUSEP submitted to a public inquiry the [draft](#) of this Circular that sets a period for insurance, reinsurance, capitalization, open supplementary social security and brokerage documents to be kept and stored.

This rule corrects the legislation that, since 2003 when the Civil Code took effect, was not in alignment with the new rules on the statute of limitations laid down in the Code.

The preliminary draft, however, contains relevant inconsistencies as to the need to keep the original documents and the impacts of the digitalization and microfilming of documents.

Those interested may send, within 15 consecutive days from the publication of the call (8/20/2018), comments and suggestions via e-mail to [cqcom.rj@susep.gov.br](mailto:cqcom.rj@susep.gov.br) or [coset.rj@susep.gov.br](mailto:coset.rj@susep.gov.br), using the standard table available on SUSEP Internet [page](#).

## 7) CALL FOR SUSEP PUBLIC INQUIRY No. 005, OF 8/23/2018

On 8/23/2018, SUSEP submitted to a public inquiry the [draft](#) of this Circular that, among others, provides for the use of a specific biometric table to structure plans of personal insurance and supplementary social security with risk coverage.

It represents a great advancement in the expansion and sophistication of the different structures of products offered by the Brazilian insurers.

In practice, the new proposed rule brings to the risk products the sophisticated solution already allowed for cumulation products, that is, the possibility of updating the biometric table throughout the life of the products, even after they have been sold.

Those interested may send, within 15 consecutive days from the publication of the call, comments and suggestions via e-mail to [copep.rj@susep.gov.br](mailto:copep.rj@susep.gov.br), using the standard table available on SUSEP Internet [page](#).

## 8) International Financial Reporting Standard - IFRS 17

After two decades of discussions about the rule, the International Accounting Standards Board (IASB), an organization responsible for setting the international accounting standards, determined that from 2021 the insurance contracts must obey the IFRS 17 (International Financial Reporting Standard 17).

The purpose is to make the processes of the sector uniform given that different procedures are followed worldwide.

However, the IASB has no regulatory or supervision authority to impose rules on the jurisdictions.

In this context, SUSEP issued cautious comments on the new rule, and for this reason, it is assumed that the period for adaptation (until January 2012) may not be sufficient for the Brazilian companies. According to the Federal Accounting Board, a SUSEP spokesman admits that *“the insurers and the regulatory body are not prepared to make the changes required by the IRFS17 until 2021.”* *“We are evaluating when this rule may be adopted but as yet we do not have a final answer to this question.”*

## 9) Private Insurance Superintendence/Conduct Supervision Board/Conduct Monitoring Coordination Office - SUSEP/DICON ELECTRONIC CIRCULAR LETTER No. 001, OF 8/20/2018

The Letter informs those responsible for the enforcement of the legislation on the prevention of money laundering about two announcements, published by the Financial Action Task Force - GAFI/FATF on June 29, 2018, identifying the jurisdictions with strategic deficiencies in their systems for Prevention of Money Laundering and Fight against Terrorism Financing (PLD/CFT).

In this regard, SUSEP recommends the supervised companies to take measures related to internal control procedures to assess risks regarding underwriting, contracts with third parties or other related parties, development of products, private negotiations, and transactions involving assets, and, in particular, paragraphs 2 and 3 of Article 8 of SUSEP Circular no. 445/2012.

The GAFI/FATF announcements were translated into Portuguese by the Council for Financial Activities Control (COAF) and are available at

<http://fazenda.gov.br/assuntos/prevencao-lavagem-dinheiro/alertas-pld-ft/comunicado-do-gafi-29-de-junho-de-2018>

<http://fazenda.gov.br/assuntos/prevencao-lavagem-dinheiro/alertas-pld-ft/aprimorando-a-observancia-global-ald-cft-processo-em-curso-2013-29-de-junho-de-2018>

The original versions, in English, are available at

<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2018.html>

<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2018.html>

## 10) SUSEP STATEMENT No. 208, OF 8/17/2018

On 8/21/2018, SUSEP published [SUSEP Statement no. 208/2018](#) whereby it approves the DPVAT Charging Methodology Manual (DPVAT is the Compulsory Insurance against Personal Injury caused by Land Vehicles); the manual is available [here](#).

This is the result of important discussions held between the market and SUSEP, during which some quite inadequate solutions were proposed for problems detected in the DPVAT Consortium, such as the end of the Consortium and other structural changes to the DPVAT.

The enactment of the rule, which is actually an advancement in the tools used to monitor and regulate the DPVAT, signals that, at least at this moment, such solutions were rejected.

## 11) Brazilian Actuarial Institute - IBA PUBLIC INQUIRY ON THE PRONOUNCEMENT OF THE ACTUARIAL COMMITTEE - CPA 002 (REVISION 2018)

The IBA made available for Public Inquiry until September 10, the [update](#) of CPA 002, introducing some novelties in its text and adding Annex II which refers to the database.

Those interested may propose changes via e-mail to [cpa@atuarios.org.br](mailto:cpa@atuarios.org.br), using the CPA table.

This Technical Pronouncement deals with specific procedures for the independent actuarial audit that must be followed by the actuaries that work for the entities supervised by SUSEP.

The CPA also contains mechanisms for the technicians and those responsible for the management and governance of the companies to clarify issues related to the audits and their scope.

The purpose is to set the minimum procedures that the independent actuaries and actuaries who are technically responsible for the audit companies must

follow in order for the form and content of the reports and opinions issued as a result of the audits to comply with the rules and guidelines of the regulatory bodies and the IBA pronouncements.

## 12) SUSEP CIRCULAR No. 574, OF 8/17/2018

Provides for the nature and essential characteristics of expenses that will be funded by the revenues from the DPVAT insurance.

Among others, the [Circular](#) determines that the Lead Insurer, the insurance manager, must submit until 30 September for the approval of the SUSEP Managing Board an estimate detailing all expenses for the following fiscal year.

In addition, the Lead Insurer must conduct studies to assess, following a specific procedure and using an adequate methodology, the effectiveness of its reconciliation and contracting policy and the savings it generates, and all such studies must be audited by an independent audit firm.

Likewise the Statement commented above, this is the result of important discussions held between the

market and SUSEP, during which some quite inadequate solutions were proposed for problems detected in the DPVAT Consortium, such as the end of the Consortium and other structural changes to the DPVAT.

The enactment of the rule, which is a real advancement in the tools used to monitor and regulate the DPVAT, signals that, at least at this moment, such solutions were rejected.

### 13) SUSEP CIRCULAR No. 575, OF 8/17/2018

Amends a series of provisions of SUSEP Circular no. 517/2015, which, among others, addresses technical provisions; test of liabilities adequacy; reducing assets, underwriting, credit, operation, and market risk capital; creation of database for operational losses; insolvency regularization plan; registration, custody and transfer of assets, bonds and securities that secure the technical provisions; Periodical Information Form (FIP/SUSEP); Accounting Standards and independent accounting audit of insurers, open supplementary social security entities, capitalization and reinsurance companies; test of certification and continued professional education of

independent accounting auditors and the Technical Pronouncements prepared by the Brazilian Actuarial Institute (IBA).

### 14) SUSEP CIRCULAR No. 576, OF 8/28/2018

Amends SUSEP Circular no. 569/2018 and sets rules for the preparation, transaction, and advertisement of capitalization bonds, among other matters.

After 150 days from the date of effectiveness of the [Circular](#), the capitalization companies will be only able to sell capitalization bonds according to the provisions of the Circular. Similarly, the plans already registered with SUSEP must be replaced with new plans, adapted to the new rule, within that same period.

Exceptionally, the period for the adaptation of the Traditional Modality will be 240 days.

The plans registered with SUSEP, with opening date prior to the date of the effectiveness of the Circular, which are in conformity with the Circular provisions, may keep the same number of administrative

proceeding upon submission of express communication and instrument of commitment. If no communication is submitted, the plan will be automatically closed and shelved.

## 15) SUSEP STATEMENT No. 209, OF 8/30/2018

The Statement addresses the changes to the SUSEP Regulation Plan for 2018, previously approved by SUSEP Statement no. 206, of April 12, 2018.

According to the new [rule](#), the actions in Regulation Plan for 2017 that are pending execution are already included in the 2018 Plan.

SUSEP made available an instructional document in which it indicates the subjects and proposals not provided in the original [Plan](#), and, among them, we highlight the issues related to the administrative investigation and the Calculation of the Underwriting Risk Capital (damages) as well as the proposed draft of a Statement regulating the application for Special Regime.

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# FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

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## 1) National Monetary Council - CMN RESOLUTION No. 4676, OF 7/31/2018

Provides for the components of the Brazilian Savings and Loan System (SBPE), the Housing Finance System (SFH), and the Real Estate Financing System (SFI), the general conditions and criteria for the financial institutions and other institutions authorized to operate by the Brazilian Central Bank to execute real estate financing contracts.

The [Resolution](#) regulates the allocation of the funds in savings deposits establishing that they must be used at the rates set in the Resolution.

The new rules also establish that the financial institutions and other institutions authorized to

operate by the Brazilian Central Bank, as to the loans for purchase of real property, must apply to the amount transferred to the seller a yield equivalent to that of the savings deposits.

## 2) CMN RESOLUTION No. 4677, OF 7/31/2018

Sets the maximum limits of exposure per client and the maximum limit of concentrated exposures.

According to the [Resolution](#), the institutions of a prudential conglomerate must observe the limits permanently and in a consolidated way, pursuant to the Accounting Plan of the Institutions of the National Financial System (Cosif).

In the event the maximum limits are exceeded (i) new transactions resulting in the expansion of the limits will be prohibited, (ii) the event must be immediately communicated to the Brazilian Central Bank, as defined by such Bank, in regard to the institutions classified in the S1, S2, S3 or S4 (iii) the institutions classified in the S1, S2 or S3 will be required to prepare a plan to reduce the excess, and (iv) the institutions classified in the S4 or S5, where the

Brazilian Central Bank deems necessary, will be required to prepare a plan to reduce the excess

The Resolution takes effect on January 1, 2019 or January 1, 2020, depending on the Segment (S) of the institution provided in CMN Resolution no. 4553/2017.

## 3) CMN RESOLUTION No. 4679, OF 7/31/2018

[Regulates](#) the use of the amounts in the funds addressed by Law no. 7827, of September 27, 1989, art. 10 of Law no. 7998, of January 11, 1990, and Law no. 8036, of May 11, 1990 to constitute the Reference Equity (PR) until June 30, 2018 and amends the provisions on the assessment of the Level II of the PR, addressed in Resolution no. 4192, of March 1, 2013.

#### 4) CMN RESOLUTION No. 4680, OF 7/31/2018

Provides for the Main Capital of the Reference Equity addressed by Resolution no. 4192, of March 1, 2013.

According to the resolution, the financial institutions and the institutions authorized to operate by the Brazilian Central Bank may not deduct from the Main Capital the tax liabilities related to tax losses resulting from a short position in foreign currency aiming at hedging their interest in investments abroad.

These [rules](#) apply only to tax liabilities recognized in the period between January 1, 2018 and December 31, 2019, and at least 50% of the tax liabilities must be deducted from the Main Capital until June 30, 2010 and 100% must be deducted until December 31, 2010.

#### 5) CMN RESOLUTION No. 4681, OF 7/31/2018

Amends pars. 2 and 3 of article 4 of the Regulation of the Guarantee Fund of the Credit Cooperative (FGCoop), addressed in Annex I to Resolution no. 4284/2013, establishing that the assistance or financial support transactions mentioned in that article cannot be performed where the ratio of the net worth of FGCoop — shown in the monthly balance sheet or the annual balance sheet — and the balances of the accounts used to record the financial tools that were guaranteed as provided in art. 2 of the Regulation, considering the set of singular cooperatives and cooperative banks that are part of the National Cooperative Credit System (SNCC), is less than 0.60%.

The [Resolution](#) also set some requirements for the transactions to be carried out.



## 6) Brazilian Securities Commission - CVM INSTRUCTION No. 600, OF 8/1/2018

Among other matters, the [Instruction](#) provides for the regime of the Certificates of Agribusiness Receivables in public distribution offerings.

- registration on the Coaf website;
- identification and information record of clients, which must be kept for at least five years (from the date of the transaction consummation);
- record of all transactions with information such as identification of the client, athlete, artist and others involved, description of the transaction, specifying amounts, dates, method of payment; and
- communication of transactions involving payment or receipt in cash of an amount equivalent to or higher than R\$ 30 thousand (or an equivalent amount in another currency) and other transactions that may be defined by Coaf.

## 7) Council for Financial Activities Control - COAF RESOLUTION No. 30, OF MAY 4, 2018

This [Resolution](#) sets the duties of the sports and art sectors to fight the crimes of money laundering or concealment of assets, rights, and values and to prevent terrorism financing.

All individuals or legal entities that promote, intermediate, sell, or negotiate transfer rights of athletes and artists are part of this segment.

Among the obligations established by the new rule are:

Those required to adopt procedures to prevent and fight money laundering and terrorism financing must keep an updated record at the respective regulatory or inspection entity.

Otherwise, they will be subject to fines imposed through a punitive administrative proceeding.

## 8) DECREE No. 9468, OF 8/13/2018

Provides for the Public Transparency and Corruption Fight Board (CTPCC), whose purpose is to debate and suggest measures to improve and promote policies and strategies, within the ambit of the federal government, for (i) the fight against corruption and impunity; (ii) transparency and access to public information; (iii) measures for an open government; (iv) integrity and ethics in the public and private sectors; and (v) social control of the monitoring and inspection of the use of the taxpayer money.

The CTPCC will be formed by members of the Federal Government – Federal Controller Office (CGU), Office of the President’s Chief of Staff, Ministry of Justice, Ministry of Finance, Ministry of Planning, Office of the General Counsel for the Federal Government (AGU), and Public Ethics Commission of the Presidency (CEP), and members of the civil society – institutions selected through a public invitation, according to the different areas of operation, to promote the policies mentioned in the Decree.

Representatives of the National Council of Justice (CNJ), National Council of the Ministry of Justice (CNMP), and Accounting Court (TCU) may also

serve on the board as permanent guests, without voting right.

## 9) Brazilian Central Bank - BACEN CIRCULAR LETTER No. 3897, OF 8/9/2018

Publishes models of documents to support the proceedings addressed in Circular no. 3885, of March 26, 2018, related to authorization for the operation, change in control, corporate restructuring, cancellation of the operation authorization, election of managers of payment institutions, and payment services rendered by financial institutions and other institutions authorized to operate by the Brazilian Central Bank.

## 10) DECREE No. 9475, OF 8/16/2018

Amends article 70 of Decree no. 2521/1998, which provides for the exploitation, upon permission and

authorization, of interstate and international passenger road transportation services and determines that the weight and dimension limits of any type of luggage, set in the head provision of that article, do not apply to wheelchairs and other technological assistance equipment of passengers with special needs or reduced mobility.

## 11) Brazilian Antitrust Authority/Brazilian Securities Commission - CADE/CVM JOINT ADMINISTRATIVE RULE No. 005, OF 8/14/2018

Institutes the Work Group to promote the institutional relations between CVM and CADE in regard to exchange of information of their interest on issuers of securities under CVM's jurisdiction and on the investment fund sector; as well as the exchange of information and knowledge related to CADE's Lenience Program and Manual and the works developed by CVM concerning administrative settlements in supervision processes.

The Work Group will be formed by six members, 3 from each institution, and will be coordinated by the General Superintendences of CADE and CVM; experts of the sector may be invited to participate in the work and support the decision-making process.

The term for the work completion is 180 days from the date of the first meeting and may be extended if needed.

## 12) LAW No. 13709, OF 8/14/2018

Published on 8/15/2018, this Law provides for the data protection and amends Law 12965/2014, known as the Brazilian Civil Rights Framework for the Internet.

It is a change to the paradigm for the companies to obtain, keep and use personal data, in alignment and in conformity with, and even as a consequence of, the European *General Data Protection Regulation* that adapted the previous rules to the Internet environment, the big data, and other innovations that made it easier to obtain, transfer, and use the personal data.

In Brazil, this change was even bigger to the extent that we did not have rules systematically addressing this subject.

The new [rule](#) ensures greater control, on the part of the citizens, over their personal information and requires an express consent for the collection and use of the data and as well as that the user be given options to view, correct, and exclude the data.

The Law also establishes a series of sanctions applicable to the data treatment agents that infringe the rules set in the Brazilian Civil Rights Framework for the Internet. Among such sanctions, the most relevant is that provided in article 52, II, that establishes a fine corresponding to up to 2% of the gross sales for the last fiscal year of the legal entity governed by private law, group or conglomerate operating in Brazil, exclusive of taxes, limited, in the aggregate, to R\$ 50,000,000.00 per violation.

According to the Law, when calculating the fine, the Brazilian authority may take into account the total gross sales of the company or group of companies if the gross sales in the field of operation of the business in which the violation was committed is not defined by the Brazilian authority or if the amount submitted is incomplete or is not clearly and unequivocally demonstrated.

However, the Brazilian President vetoed the creation of that authority because of a defect of origin as it should have been proposed by the Executive Branch (and not by the Congress, as supposedly happened). The President stated that the authority will be created by a rule to be legally proposed and enacted.

The text approved by the President will be also applicable to companies based abroad where the data are treated in the domestic territory and will take effect within one and a half year.

## 13) CVM INSTRUCTION No. 601, OF 8/23/2018

Amends and adds provisions to CVM Instruction no. 400/2003 and 476/2009 aiming at improving the restricted-effort public offerings and regulate the use of supplementary lots in those offerings and the registered public offerings.

The three major changes introduced by this new [rule](#) are:

- no need for 90-day lock-up for bonds arising from the performance of firm commitment contracts in the restrict-effort public offerings.
- specific improvements to the restrict-effort public offerings of securities, such as: (i) establishment of a maximum term for the offerings; (ii) changes in the duties of the lead intermediary; (iii) revision of the information to be given by non-register issuers; and

(iv) prohibition against changes to the essential characteristics of the offering after it has begun.

- green shoe in restrict-effort public offerings, linking it to the price stabilization service.

## 14) BACEN CIRCULAR No. 3910, of 8/17/2018

Amends Circular no. 3857/2017, with provides for the administrative sanction procedure, imposition of penalties, instrument of commitment, cautionary measures, punitive fine, and administrative settlement in supervisions under Law no. 13506/2017, which deals with the sanction administrative procedure within the authority of the Brazilian Central Bank and the Brazilian Securities Commission.

## 15) BACEN CIRCULAR No. 3909, of 8/16/2018

Provides for the cybernetic security policy and the requirements for agreements on data processing and storage, and cloud computing that the payment institutions authorized by the Brazilian Central Bank to operate must meet.

Among other factors, the cybernetic security policy must contemplate (i) cybernetic security goals of the payment institution, (ii) the procedures and controls adopted to reduce the payment institutions' vulnerability to incidents and to attain the other cybernetic security goals, (iii) the specific controls, including those related to the information tracking to ensure the safety of sensitive information, (iv) the recording, analysis of the reason and impact, and the control of the effects of incidents relevant to the activities of the payment institutions, and (v) the mechanisms to disseminate the cybernetic security culture in the payment institutions.

## 16) LAW No. 13711, OF 8/24/2018

Amends Law no. 13103/2015, exempting from the tolls charged on suspended axles of empty trucks traveling on the federal, state, district, and municipal roads.

According to this rule, the technical and operating measures to make the exemption viable will be implemented by the Federal Government and by the States, the Federal District, and the Municipalities, and until they are implemented, the freight trucks passing through toll plazas with one or more suspended axles will be considered empty – the monitoring of such condition will be carried out by the authority with jurisdiction over the road or the agent designated according to the Brazilian Traffic Code.

The Law also determines that a toll increase to compensate for the exemption will be adopted only after all measures to reestablish the economic and financial balance of the contracts have been exhausted.

## 17) BACEN ADMINISTRATIVE RULE No. 99362, OF 8/22/2018

Establishes the procedures to classify the information produced by or under the custody of the Brazilian Central Bank, in compliance with the Law on the Information Access and its regulation.

The confidential level of the information will be established according to the public interest and the criterion to be employed will be the least restrictive possible, considering the severity of the risk or the damage to the security of the society and the State and the maximum term for restricted access or the event that defines the end of the restriction.

The information that is subject to access restriction and will not be included in the confidential level classification is (i) personal information, that is, information related to the intimacy, privacy, honor, and image of a person; (ii) information protected by legal confidentiality or subject to some legal event of access restriction.

The events of restricted access include the information related the business activities of individuals and legal entities governed by private law obtained by the Brazilian Central Bank when exercising the control, regulation, and supervision of

economic activities whose dissemination may be a competitive advantage for other economic agents, under par. 2, of art. 5 of Decree no. 724, of 2012.

Only the President of the Brazilian Central Bank has authority to classify information as secret or top secret.

## 18) BACEN CIRCULAR LETTER No. 3903, OF 8/24/2018

Publishes an annex with the list of types of accounts in the Special Settlement and Custody System (SELIC).

## 19) Brazilian Securities Commission/Institutional Investor Relationship Superintendence - CVM/SIN OFFICIAL CIRCULAR LETTER No. 9/2018

The Institutional Investor Relationship Superintendence (SIN) of CVM published, on 8/28/2018, [CVM/SIN Official Circular Letter no. 9/2018](#).

The document is intended to explain the migration from the accreditation regime of portfolio managers to the cooperation model kept with the Brazilian Financial and Capital Market Entities' Association (ANBIMA). according to article 7-A of CVM Instruction 558.

From 9/3/2018, the application for authorization to manage portfolios of securities must be sent through the Market Supervision System (SSM) of ANBIMA, available at <https://ssm.anbima.com.br>.

The procedure was changed because of the technical cooperation agreement entered into between CVM and ANBIMA, which provides that ANBIMA will give support to the analysis of the applications for accreditation of managers of securities portfolios.

SIN recommends the applicants to access the manuals on the SSM system for [legal entities](#) and [individuals](#).

## 21) BACEN ADMINISTRATIVE RULE No. 99433, OF 8/29/2018

This [Administrative Rule](#) informs on a series of specific changes made to the Internal Regulation of the Brazilian Central Bank.

## 20) CVM - REPORT ON SANCTION ACTIVITY

The CVM published, on 8/29/2018, the Report on Sanction Activity for the 2nd quarter of 2018. The document consolidates the information on CVM's sanction activities, seeking to present the results of such activities in a clear and objective way.

The document has statistic information on the supervision carried out by CVM, investigation and sanction procedures, and decisions related to such procedures; the documents may be accessed here.



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## CLOSED SUPPLEMENTARY SOCIAL SECURITY

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### 1) Superior Court of Justice - STJ, Special Appeal REsp no. 1312736/RS-STATE OF RIO GRANDE DO SUL

On August 8, 2018, the Second Section of the STJ rendered decision, according to the repetitive appeals system, on REsp 1312736/RG reported by Judge Antonio Carlos Ferreira, whereby the following was be defined:

a) "The underlying assumption for the supplementary social security benefit to be granted is the previous formation of a mathematical reserve to prevent the actuarial unbalance of the plans. In such circumstances, when the benefit that supplements the pension has already been granted by a closed social security entity, it is not possible to compute

the effects of compensation amounts (overtime) recognized by the Labor Courts to calculate the initial monthly income of benefits that supplement the pension."

b) "Losses caused to the participant or the beneficiary who did not contribute to the fund at the proper time, given to a wrong committed by the employer, may be repaired through a lawsuit filed against the former employer company with the Labor Courts."

c) "Prospective effects of the decision (art. 927, par. 3, of the Code of Civil Procedure (CPC) of 2005): concerning the actions brought to the courts of general jurisdiction until the date of this trial — if still beneficial for the participant or the beneficiary — the inclusion of the effects of compensation amounts (overtime) recognized by the Labor Courts in the calculation of the initial monthly income of the benefits that supplement the pension is admitted contingent upon the regulatory provision (express or implicit) and the prior and full rearrangement of the mathematical reserves through a contribution of an amount to be assessed by a technical actuarial study conducted for each case.

d) "In respect of labor lawsuits in which the ex-employer is required to rearrange the mathematical reserve and it is not possible to revise the initial monthly income of the supplementary pension, the amounts related to the rearrangement must be paid

to the participant or the beneficiary on account of repair, also to prevent the unjust enrichment of the closed supplementary social security entity.”

The appellate decision was published in the Electronic Court Journal (DJe) on 8/16/2018.

## 2) Social Security Department - SPREV ADMINISTRATIVE RULE No. 031, OF 8/24/2018

Through this [Administrative Rule](#), the Social Security Department (SPREV) of the Ministry of Finance call a public hearing to discuss and obtain suggestions for the models of the social security plans that are offered, contracted and managed by the Closed Supplementary Social Security Entities (EFPCs) aiming at supporting studies and the preparation of public policies to develop and improve the Supplementary Social Security Regime (RPC) of the closed segment.

The hearing will be held on September 28, 2018, at 9 AM, at the head office of the Social Security Department, main auditorium, Block F, ground floor,

and those interested in attending it must subscribe in the period from 3 to 21 September via the e-mail <http://www.previdencia.gov.br/>

After having subscribed, those interested may submit proposals related to the subject via the e-mail [coeti.sppc@previdencia.gov.br](mailto:coeti.sppc@previdencia.gov.br) until September 25, 2018; each proposal must be submitted in a separate digital with the respective justification and the expected result.

After the hearing, SPREV will publish a report with the summary of the suggestions at <http://www.previdencia.gov.br.>

## 3) Supplementary Social Security Superintendence - PREVIC ADMINISTRATIVE RULE No. 733, OF 3/7/2018

Under its Administrative Rule no. 733, of 7/11/2018, PREVIC qualified 57 managers of Closed Supplementary Social Security Entities in June.

The instruction may be checked [here](#).

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## HEALTH

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### 1) National Agency of Supplementary Health ANS NORMATIVE RESOLUTION No. 433/2018 WAS REVOKED

The ANS's collective board revoked on 7/30/2018 the Normative Resolution no. 433/2018, which updated the characteristics of the plans with deductible and co-participation that had been suspended by a preliminary injunction issued by the Supreme Court Justice Carmen Lúcia.

The Resolution set time limits and a maximum rate of 40% for the consumers' co-participation in the payment of medical and hospital expenses, ensuring provisioning and less wastefulness, and listed 250 procedures that would be entirely paid by the health plan companies.

In addition, the technical document prepared by the ANS estimating the impact of the measures demonstrated that the monthly contributions to the

plans with deductible and co-participation would be reduced by 20% to 30% on average, favoring the informed use of the funds and causing a direct impact on the drop in the contributions to and price adjustment of the plans.

It is worthwhile to point out that the new rules would not apply to the plans in effect but would give the consumer a new contractual option according to which a greater co-participation/deductible would be compensated for a smaller contribution.

Certainly, the revocation of that resolution hampers the development of the sector and removes from the consumer the power to choose a health care plan that could be more viable in such an uncertain economic scenario as that of Brazil at this time.

### 2) PUBLIC INQUIRY 69/2018

The ANS extended for 30 days the Public Inquiry no. 69/2018 on the update of the List of Health Procedures and Events.

The Inquiry is aimed at supporting a normative resolution to regulate the administrative procedure to update the list of procedures that the health plan is required to cover to ensure the prevention, diagnosis,

treatment, recovery and rehabilitation of all diseases included in the International Statistical Classification of Diseases and Related Health Problems (ICD) of the World Health Organization (WHO).

Suggestions may be sent until 9/15/2018 upon completion of an online form available at ANS [portal](#).

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## TAX

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### 1) Federal Revenue Office - RFB NORMATIVE INSTRUCTION No. 1822, OF 8/2/2018

[Provides](#) for the provision of the information necessary to consolidate social security debts in the Special Program for Tax Compliance (Pert), instituted by Law no. 13496/2017.

### 2) ANSWER TO INQUIRY TO TAX COORDINATION OFFICE - COSIT No. 091, OF 8/2/2018

After the National Federation of Reinsurance Companies (FENABER) has given explanations about how the admitted reinsurers effectively operate

in Brazil – a work that involved the Ministry of Finance, the Brazilian Federal Revenue, and SUSEP and in which we participated assisting FENABER –, COSIT published the Answer to Inquiry no. 91/2018 amending the Answer to Inquiry no. 62/2017, which addressed general issues of the tax law of the reinsurance market's interest.

The new [rule](#) distinguishes representative offices of admitted reinsurers that exercise all powers conferred on such reinsurers and those that do not exercise them, but perform accessory activities only.

The former are, in fact, defined as private insurance agents and subject to their legal regime. The latter must be considered services providers, and the treatment applied to the occasional reinsurer is applicable to the admitted reinsurer abroad.

Our Firm assisted FENABER with this matter.

This revision meets the market's expectations, bringing the desired legal certainty; we prepared a special alert regarding this matter that may be checked [here](#).

### 3) RFB NORMATIVE INSTRUCTION No. 1824, of 8/10/2018

[Amends](#) RFB Normative Instruction no. 1711, of June 16, 2017, which regulates the Special Tax Compliance Program [*Programa Especial de Regularização Tributária - PERT*], instituted by Law no. 13496, of October 24, 2017, within the ambit of the RFB.

### 4) ANSWER TO INQUIRY No. 7,009, OF 7/11/2018

***SUBJECT: Withholding Income Tax [Imposto sobre a Renda Retido na Fonte - IRRF]***

***SYNOPSIS: TAXATION REGIME.  
SUPPLEMENTARY SOCIAL SECURITY  
EARNINGS.***

*The benefits received from supplementary social security entities and the amounts corresponding to the redemption of contributions, subject to the exemptions listed in art. 39, items XXXVIII and XLIV, of Decree no. 3000, of March 26, 1999 - Income Tax*

*Regulation (RIR/99), will be taxed: I) at source, as advance and subject to the annual adjustment in the Individual Income Tax Return (IRPF); or II) at the taxpayer participant's option, at decreasing rates according to the cumulation period, exclusively at the source. The amount paid in a lump sum by reason of the participant's death or permanent disability, corresponding to the reversion of the contributions to the plan, with financial earnings accrued or not, is not payment of reserve (insurance), therefore, it is taxable at source, as advance on the tax due in the Annual Adjustment Statement (DAA) of an individual or exclusive taxation at source in the cases of option for the decreasing rate regime by virtue of the cumulation period - Law no. 11053, of December 29, 2004, art. 1. Insurance received from a supplementary social security entity arising from the participant's death or permanent disability is exempted from income tax. The term "insurance" used in art. 6, item VII, of Law no. 7713, of December 22, 1988, means reserve paid in a lump sum. Reserve is understood as the benefit paid in a lump sum by a supplementary social security entity in case of the participant's death or permanent disability, understood as a risk benefit with the characteristic of insurance, expressly provided in the benefit plan contracted.*

**ANSWER TO INQUIRY LINKED TO ANSWER TO COSIT INQUIRY No. 373, OF DECEMBER 18, 2014,**

**(FEDERAL OFFICIAL JOURNAL - DOU OF JANUARY 12, 2015)**

**LEGAL PROVISIONS:** Law no. 7713, of 1988, art. 6, VII, VIII, and XIII, Law no. 9250, of 1995, art. 8, II, "e", Law no. 11053, of 2004, art. 1; Decree no. 3000, of 1999 - Income Tax Regulation (RIR/99), art. 39, XXXVIII, and XLIV, art. 43, XIV, arts. 74, 83, II, and 633, head provision; SRF Normative Instruction no.588, of 2005, arts. 6, 7, 11 to 15; and RFB Normative Instruction no. 1500, of 2014.

## 5) ANSWER TO INQUIRY No. 7011, OF 7/13/2018

**SUBJECT: Individual Income Tax [Imposto sobre a Renda de Pessoa Física - IRPF]**

**SYNOPSIS: SERIOUS DISEASE EXEMPTION. BLINDNESS**

*By operation of article 19, item II, of Law no. 10522, of July 19, 2002, coupled with Declaratory Act no. 3, issued by the Office of the General Counsel for the National Treasury (PGNF) on March 30, 2016, the exemption provided in article 6, items XIV and XXI, of Law no. 7713, of December 22, 1988, applies to all*

*amounts received on account of retirement, pension, or military retirement, where the beneficiary has binocular or monocular visual loss, medically evidenced by an expert report issued by a medical service of the Federal Government, Federal District, States or Municipalities.*

**BENEFIT. SUPPLEMENTARY SOCIAL SECURITY. SUPPLEMENTING THE RETIREMENT PENSION TAXABLE INCOME**

*The supplementary retirement pension received by a bearer of a serious disease listed in the law on exemptions will be tax-exempt only from the month the pension is granted by the governmental social security, subject to the conditions set in the tax legislation.*

**ANSWER TO INQUIRY LINKED TO ANSWERS TO COSIT INQUIRY No. 632, OF DECEMBER 26, 2017, AND No. 356. OF DECEMBER 17, 2014**

**LEGAL PROVISIONS:** *Law no. 7713, of December 22, 1988, article 6, items XIV and XXI; Law no. 9250, of December 26, 1995, article 30, par. 1; Law no. 10522, of July 19, 2002, article 19, item II; Decree no. 3000, of March 26, 1999 - Income Tax Regulation (RIR/1999), article 39; items XXXI and XXXIII; RFB Normative Instruction no. 1500, of October 29, 2014, article 6, items II and III; PGFN/CRJ Opinion no. 29, of January 11, 2016; PGFN Declaratory Act no. 3, of March 30, 2016.*

**SUBJECT: Withholding Income Tax [Imposto sobre a Renda Retido na Fonte - IRRF]**

**SYNOPSIS: EXEMPTION. BENEFIT. SUPPLEMENTARY SOCIAL SECURITY. SERIOUS DISEASE REACH. SUPPLEMENTING THE RETIREMENT PENSION**

*The exemption addressed in item XIV of article 6 of Law no. 7713, of December 22, 1988, applies to amounts paid by a supplementary social security entity to supplement the retirement pension if the beneficiary is paid retirement pension by the governmental social security and proves that he/she has one the serious diseases listed in that Law through an expert report issued by a medical service of the Federal Government, Federal District, States or Municipalities and if all other requirements related to the evidence are met.*

**ANSWER TO INQUIRY LINKED TO ANSWER TO COSIT INQUIRY No. 356, OF DECEMBER 17, 2014**

**LEGAL PROVISIONS:** *Law no. 7713, of December 22, 1988, article 6, item XIV; Law no. 9250, of December 26, 1995, article 30, par. 1; Income Tax Regulation (RIR/99) - Decree no. 3000, of March 26, 1999, article 39, item XXXIII; RFB Normative Instruction no. 1500, of October 29, 2014, article 6, item II.*

**SUBJECT: Tax Administrative Proceeding**

**SYNOPSIS: TAX INQUIRY INEFFECTIVENESS.**

*An inquiry that is not intended to obtain the interpretation of a provision of the tax legislation but legal assistance of the Federal Revenue Office (RFB) does not produce effects.*

*LEGAL PROVISIONS: RFB Normative Instruction no. 1396, of 2013, articles 1, 3, and 18; Decree no. 7574, of 2011, articles 88 and 94.*

## 6) ANSWER TO INQUIRY No. 7017, OF 7/26/2018

**SUBJECT: Subject: Withholding Income Tax [Imposto sobre a Renda Retido na Fonte - IRRF]**

**SYNOPSIS: INCOME RECEIVED CUMULATIVELY TAXATION REGIME.**

*A closed supplementary social security entity that pays or credits, from March 11, 2015, income subject to the income tax based on the progressive table, where it corresponds to calendar years preceding*

*that of the receipt, will levy the tax only at the source in the month it was received, or its credit was recorded, separately from the any other income received in such month. The calculation base will be applied to the amount of the income paid or credited, according to the progressive table resulting from the multiplication of the number of months related to the income by the amounts in the monthly progressive table corresponding to the month or receipt or credit. The beneficiary will indicate in the Annual Adjustment Statement, using the Taxable Income Card of the Legal Entity Received Cumulatively by the Holder/Dependent, the taxation method adopted at the entity's option, according to the applicable legislation (Annual Adjustment or Taxation at Source Only)*

*ANSWER TO INQUIRY LINKED TO ANSWER TO COSIT INQUIRY No. 146, OF SEPTEMBER 29, 2016*

*LEGAL PROVISIONS: Law no. 7713, of 1988, art. 12-A; RFB Normative Instruction no. 1500, arts. 36-51.*

**SUBJECT: Tax Administrative Proceeding**

**SYNOPSIS: PARTIAL INEFFECTIVENESS OF THE INQUIRY An inquiry about a fact regulated in a normative act published in the Official Press**



***before the inquiry has been submitted and/or an inquiry aiming at legal or tax/accounting assistance by the RFB does not produce effects.***

*LEGAL PROVISIONS: RFB Normative Instruction no. 1396, of 2013, art. 18, items VII and XIV c/w RFB Normative Instruction no. 672, of 2006, and RFB Normative Instruction no. 736, of 2007.*

## 7) DECREE No. 9482, OF 8/27/2018

Enacts the Amendment to the Treaty between the Federative Republic of Brazil and the Republic of Argentina to Avoid Double Taxation and Prevent Tax Evasion, signed in Mendoza, on July 21, 2017.

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