

# INFORMATION REPORT

FEBRUARY 2019

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

1) CALL FOR PUBLIC INQUIRY No. 1/2019

## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS..... 1

1) LAW No. 13805, OF 1/10/2019

2) LAW No. 13806, OF 1/10/2019

3) General Counsel to the Federal Government - AGU JOINT ADMINISTRATIVE RULE No. 001, OF 1/22/2019

4) National Monetary Council - CMN RESOLUTION No. 4709, OF 1/31/2019

5) CMN RESOLUTION No. 4710, OF 1/31/2019

6) Central Bank of Brazil - BACEN CIRCULAR No. 3926, OF 1/31/2019

7) Federal Medicine Council - CFM RESOLUTION No. 2227/2018

8) Superior Court of Justice - STJ SECOND SECTION ESTABLISHES THREE NEW THESES ON BANKING LAW

9) CIRCULAR No. 3930, FEBRUARY 14, 2019

10) BACEN CIRCULAR No. 3928, OF 2/13/2019

11) BACEN CIRCULAR No. 3929, OF 2/13/2019

12) Brazilian Securities Commission - CVM INSTRUCTION No. 605, OF 1/25/2019

13) CVM STATEMENT No. 809, OF 2/19/2019

14) LAW No. 13809, OF 2/21/2019

15) PROVISIONAL MEASURE No. 873/2019

**CLOSED SUPPLEMENTARY SOCIAL SECURITY..... 10**

1) Supplementary Social Security Superintendence - PREVIC ADMINISTRATIVE RULE No. 86, OF 2/1/2019

**HEALTH..... 11**

1) National Agency of Supplementary Health - ANS - PUBLIC INQUIRY No. 72

2) ANS NORMATIVE RESOLUTION No. 443, OF 1/25/2019

**TAX ..... 12**

1) Tax Coordination Office - COSIT ANSWER TO INQUIRY No. 37, OF 1/23/2019

2) ANSWER TO INQUIRY No. 4001, OF 1/9/2019

3) Brazilian Federal Revenue RFB NORMATIVE INSTRUCTION No. 1867, of 1/25/2019

4) RFB NORMATIVE INSTRUCTION No. 1868, of 1/25/2019

5) RFB NORMATIVE INSTRUCTION No. 1869, of 1/25/2019

6) RFB NORMATIVE INSTRUCTION No. 1871, of 2/20/2019

***PARTNERS OF THE FIRM AND RESPECTIVE AREAS ..... 15***

---

## INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

---

### 1) CALL FOR PUBLIC INQUIRY No. 1/2019

The Superintendent of the Private Insurance Superintendence (SUSEP) extended the term of SUSEP Public Inquiry no. 8/2018 about the draft of the Circular providing for specific internal controls to prevent and fight crimes of money laundering or concealment of assets, rights, and amounts and related crimes, monitoring of transactions, and proposed transactions with politically exposed persons as well as to prevent and fight terrorism financing.

The period to send comments and suggestions will end on March 18, 2019.

---

## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

---

### 1) LAW No. 13805, OF 1/10/2019

[Law no.13805/2019](#), published in the Federal Official Journal (DOU), amends Laws no. 9012/1995 and 8036/1990.

Law no. 9012/1995 prohibits the official credit institutions from granting credit, financing, and other benefits to legal entities in debt with the Unemployment Savings Fund (FGTS). Article 1 of the Law no. 9012/1995 was amended and now reads as follows:

*"Art. 1 The credit institutions are prohibited from granting financing to legal entities in debt with the FGTS or from waiving their payment of interest, fine, inflation adjustment or any other benefit*

*backed by the taxpayer's money or derived from the FGTS.*

*Par. 1 The FGTS deposits will be proved by a certificate issued by the Federal Savings Bank (CEF)."*

Par. 2 of that article, which provided that the payment in installments of debts by the official credit institutions could be authorized upon the proof mentioned in par. 1, was revoked.

On the other side, par. 3 was added establishing that the prohibition provided in the head provision of the article does not apply to credit to settle FGTS debts.

In turn, article 27, item b, of Law 8036/1990 on the FGTS and other matters was amended and now it reads as follows:

*"Art. 27. The FGTS Compliance Certificate issued by the Federal Savings Bank (CEF) is required in the following situations:*

*(...)*

*b) where the Federal, State or Municipal Governments or entities of the Federal, State or Municipal Government, whether direct or indirect entities or foundations, or the Federal, State or*

*Municipal Governments indirectly intend to be granted a loan or financing backed by the taxpayer's money or funds derived from the FGTS by any credit institution."*

## 2) LAW No. 13806, OF 1/10/2019

This [law](#) amends Law no. 5764/1971, which defines the National Cooperative Policy and institutes the legal system of the cooperative corporations under which the cooperatives may act as procedural substitutes of their members.

It adds item XI to article 21 of that law and includes a new article (art. 88-A):

*"Art. 21. The cooperative bylaws, in addition to fulfilling the provisions in article 4, will indicate:*

*(...)*

*XI - if the cooperative has power to act as a procedural substitute of its members, under art. 88-A of this Law." (New Wording)*

*(...)*

*Art. 88-A. The cooperative may have concurrent independent extraordinary legitimacy to act as*

*procedural substitute to defend the collective interests of its members where the cause of action refers to acts of direct interest of its members related to market transactions of the cooperative, provided that established in its bylaws and expressly and individually authorized by the member or at a general meeting to resolve on the filing of the judicial measure.”*

### 3) General Counsel to the Federal Government - AGU JOINT ADMINISTRATIVE RULE No. 001, OF 1/22/2019

Regulates the criteria and procedures for the Federal Prosecution Office in the capacity of representative of the National Transport Infrastructure Department (DNIT) to file regressive actions.

According to the Administrative Rule, “**Art. 2** *Regressive action to the effect of this joint administrative rule is an action to reimburse DNIT for expenses with compensation for damages caused to third parties in case of contractor’s fault or intent when performing the contract.”*

In addition, “**Art. 3** *Reimbursable expenses are expenses related to payments made by DNIT, by virtue of unappealable judgment, for damages related to traffic accidents caused by poor maintenance of roads where the Entity failed to maintain, preserve and inspect the road.*

The trend is that the number and total value of regressive actions filed by DNIT against contractors and concessionaires increase over time, increasing, as consequence, the claims ratio of civil liability and surety insurance policies.

### 4) National Monetary Council - CMN RESOLUTION No. 4709, OF 1/31/2019

Establishes additional requirements for investments of Mandatory Funds and Rural Savings in rural credit in the period from February 1 to June 30, 2019, sets conditions to use the funds raised through issuance of Agribusiness Credit Bills (Rural Credit Manual - MCR 6-7) to fund rural credit transactions and changes the weighed factors applicable to transactions backed by

Mandatory Funds (MCR 6-2) within the National Program to Strengthen the Family Agriculture (Pronaf) as from July 1, 2019.

## 5) CMN RESOLUTION No. 4710, OF 1/31/2019

Amends Resolution no. 4707, of December 19, 2018, which sets conditions and procedures for the financial institutions to carry out credit transactions linked to receivables derived from payment agreements and provides that the resolution will take effect only on April 8, 2018.

## 6) Central Bank of Brazil - BACEN CIRCULAR No. 3926, OF 1/31/2019

Amends Circular no. 3924, of December 19, 2018, which provides for the use of receivables derived from payment agreements to secure credit transactions

and establishes that the circular will take effect only on April 8, 2018.

## 7) Federal Medicine Council - CFM RESOLUTION No. 2227/2018

This resolution defines and regulates telemedicine as a form of medical services supplied with the use of technologies for the purposes of assistance, education, research, prevention of diseases and injuries, and health promotion.

It is expected that the remote assistance will be useful to provide assistance at the places that attract only a few professionals.

Concerning the safety of the information, the patients' data, and images will travel on the internet with an infrastructure that will ensure the safekeeping, handling, integrity, reliability, confidentiality, privacy, and professional secrecy of the information.

The assistance sessions will be recorded and safeguarded and a report will be sent to the patients; the patients' express agreement and authorization in

regard to the transmission or recording of the images and data will be a requirement.

This resolution will take effect 90 days after its publication.

## 8) Superior Court of Justice - STJ SECOND SECTION ESTABLISHES THREE NEW THESES ON BANKING LAW

The STJ Second Section, when trying Special Appeal - REsp 1.639.320 and REsp 1.639.259 under the ordinary procedure, established three new theses:

**Pre-encumbrance:** *“unconscionability of the clause that provides that the consumer must reimburse expenses with the registration of pre-encumbrance in contracts executed as from 2/25/2011, the date CMN Resolution 3954/2011 took effect, therefore the clause agreed before the date this resolution took effect is valid, subject to control of excessive burden.”*

**Financial protection insurance:** *“in banking contracts in general, the consumer cannot be forced to take out insurance with the financial institution or the insurer recommended by the financial institution.”*

**Accessory charges:** *“unconscionability of accessory charges of the contract does not eliminate the default.”*

The discussion was limited to banking contracts executed in regard to a consumer relationship with financial institutions or similar institutions even if through a banking correspondent, as from 4/30/2008, the date Resolution 3518/2007 of the National Monetary Council – CMN took effect.

The matters judged by the court were registered under number 972 in the repeated appeals system.

## 9) CIRCULAR No. 3930, FEBRUARY 14, 2019

This [circular](#) expands the scope of the Pillar 3 Report and sets a pattern for the financial institutions' dissemination of qualitative and quantitative



information on of capital calculation, compliance with prudent limits, and risk management.

For easier and unrestricted access to that information, it must be published in an open standard format to allow the automated capture of data.

In alignment with the segmentation and regulatory proportionality provided on BC+ Agenda, the requirements will be applied proportionally, according to the classification of each institution in the segments S1, S2, S3, and S4, considering their size and systemic relevance.

The dissemination requirements set in Pillar 3 Report are organized in tables with a fixed format for quantitative information and in tables with a flexible format for qualitative information. To allow the comparison between Brazilian institutions and between foreign Institutions, the layout of the fixed-format table must be that one defined by the regulation of the Central Bank.

The new rules come into effect in 2020.

## 10) BACEN CIRCULAR No. 3928, OF 2/13/2019

Amends Circular no. 3924/2018, which provides for the use of receivables derived from payment agreements to secure credit transactions

The main changes relate to item II of article 2 of Circular no. 3924/2018, according to which the accrediting institutions must make available the agenda of receivables from their end recipient users to (a) the financial institutions with which the users carry out credit transactions secured by receivables deriving from payment agreements, during their effectiveness, or (b) any financial institution, provided that expressly requested by these users.

The agenda of receivables addressed in the article, exclusively for purposes of grant of limit of credit not subject to cancellation, unconditionally, and unilaterally by the financial institution will be made available if expressly requested by the end recipient users (Par. 1).

The rule also adds articles 2-A, 2-B, 2-C, and 2-D to the previous Circular. Under article 2-D, the exchange

of information will be carried out in such a way that (i) the information will be equally available to the interested participants; (ii) the continuity of the services and the protection of the processed data will be ensured; and (iii) the legal secrecy of the information will be kept, as required by law.

## 11) BACEN CIRCULAR No. 3929, OF 2/13/2019

Amends and consolidates the rules on the assessment of the calculation base and the collection of the contributions of the institutions associated with the Credit Guarantee Fund (FGC).

According to the [circular](#), the institutions associated with the FGC must collect the regular, special and additional contributions at a financial institution accredited by the FGC until the first business day of the month subsequent to the month the information about the total payable contribution amount assessed by the FGC is received.

Any delay in the collection of the payable contributions will subject the institution associated with the FGC

responsible for the contribution to a fine of two percent (2%) of the respective amount with adjustment by the Selic interest rate accrued.

## 12) Brazilian Securities Commission - CVM INSTRUCTION No. 605, OF 1/25/2019

According to this [rule](#), CVM Instruction no. 476/2009 – which provides for restricted-effort public offerings of securities and trading of these securities in the regulated markets – applies to public offerings of real estate and agribusiness receivables issued by securitization companies registered with CVM as publicly held companies.

In addition, for the purposes of par. 3 of art. 11 of Law no. 6385/1976, a violation of the rules contained in articles 10, 15, 19, 20, 22, 25, 28, 29, 31, and 32 of CMV Instruction no. 521/2012 on the credit risk rating activity in the securities market, is considered a gross violation

Finally, CVM Instruction no. 555/2014, which provides for the organization, management, operations of investment funds, and dissemination of information on them, establishes that, to the effect of art. 11, par. 3, of Law no. 6385/1976, the administrator or manager's failure to comply with articles 82, 89, 91, and 92 of that rule, is considered a gross violation.

The changes are specific and intended to (i) limit the restricted-effort offerings of Real Estate Receivables Certificates (CRIs) and Agribusiness Receivables Certificate (CRAs) issued by securitization companies registered as publicly held companies, and ii) include new events of gross violation in the instruction that addresses investment funds and the instruction that addresses the credit risk rating activity.

### 13) CVM STATEMENT No. 809, OF 2/19/2019

This resolution revokes the prohibition on granting of registrations within 16 days before the publication of companies' financial information that creates the so-called "market windows" and prevents offerings during

64 days of the year. This measure is valid for all securities offered according to CVM Instruction 400.

The rule also provides for the possibility of a reserved analysis of private information on the business activity contained in the applications for registration of public offerings of shares and issuers of securities admitted to trading. Currently, the applications for registration are public.

This is a tool to avoid the negative exposure of companies, especially on the occasions that the market is not favorable and the company is forced to give up going public. It may also prevent oscillations unfavorable to the companies whose shares are already traded in the organized securities markets.

The request for reservation is an option of the company and its assistants and comprises issuance of shares only.

Aiming at guiding the market participants as to the procedures to be adopted in accordance with CVM Statement 809, the Company Relations Superintendence (SEP) and the Securities Registration Superintendence (SRE) issued the Official Circulars titled [CVM/SEP\\_02/2019](#) and [CVM/SRE\\_01/2019](#).

## 14) LAW No. 13809, OF 2/21/2019

Reopens until March 29, 2019, the period to opt for the supplementary social security regime addressed in par. 7 of art. 3 of Law no. 12.618/2012.

## 15) PROVISIONAL MEASURE No. 873/2019

Provisional Measure No. 873/2019 was published on 3/01/2019, amending the wording in Articles 578 et seq. of the Consolidated Labor Laws (CLT), making it clear that there is no obligation to withhold union dues (for the company and/or employees).

In a nutshell, this provisional measure expressly states that any and all dues, regardless of their nomenclature, even if stipulated in a collective bargaining agreement, now require the express prior consent of the employee and/or company.

As a reminder, in short, with the advent of Labor Reform (on 11/13/2017), union dues became voluntary, and the interested party, whether the

employer or employee, must now expressly consent to having labor dues withheld to be paid to their respective union. This represents a new paradigm for the way in which the Brazilian labor union system will finance itself, which could have a major impact on the union structure as a whole.

As such, it amounts to yet another important step toward settling this matter; in addition, of course, to the law now being fully in force, until and unless a future court decision to the contrary is handed down.

item III, art. 2, of Previc/DC Instruction no. 10, of September 27, 2017.

---

## CLOSED SUPPLEMENTARY SOCIAL SECURITY

---

### 1) Supplementary Social Security Superintendence - PREVIC ADMINISTRATIVE RULE No. 86, OF 2/1/2019

Provides for the period for information to be sent for the duration of liabilities and pricing adjustment to be assessed as referred to in National Council of Private Social Security - CNPC Resolution no. 30, of October 10, 2018, and Previc/DC Instruction no. 10, of November 30, 2018, in regard to the results for the previous year and the actuarial assessment deriving from a relevant fact.

According to this [rule](#), the closed supplementary social security entity (EFPC) must use the Venturo System, published on Previc page, for the assessment, and send Previc the information until the deadlines set in

---

## HEALTH

---

### 1) National Agency of Supplementary Health - ANS - PUBLIC INQUIRY No. 72

This [Public Inquiry](#) is intended to discuss the draft of the Normative Resolution on the regulatory process within the ANS.

The [draft](#) consolidates in a single instrument the acts, phases, stages, and procedures for the regulatory agency to adopt measures and contemplates the Regulatory Impact Analysis (AIR), defined as “*the systematic analysis process based on evidence to assess, considering the definition of a regulatory issue, the possible impact of the alternatives of actions available to achieve the intended goals, aiming at guiding and basing decisions.*”

The suggestions may be sent using the electronic form that will be available on ANS [page](#) until March 19.

### 2) ANS NORMATIVE RESOLUTION No. 443, OF 1/25/2019

[Provides](#) for the adoption of minimum governance practices with emphasis on internal controls and risk management for the purposes of solvency of health care plan companies.

The rule establishes that the companies must implement internal control systems for their activities and financial information systems to ensure (I) the reliability of the information, data, and reports of the company; (ii) the efficient use of funds and an effective execution; and (iii) the compliance with the legislation and the internal rules applicable to the company.

The companies' risk management must be intended to (i) unify the managers' knowledge of the main risks of the activities, in particular, risks related to underwriting, credit, market, and legal and operating risks; (ii) base decisions able to treat and monitor the risks and, consequently, improve the organizational processes and internal controls of the company; and (iii) guarantee the achievement of the company's mission, its continuity and sustainability in alignment with its goals.

---

# TAX

---

1) Tax Coordination Office - COSIT  
ANSWER TO INQUIRY No. 37, OF  
1/23/2019

**SUBJECT: SOCIAL SECURITY CONTRIBUTIONS**

**SYNOPSIS: HEALTH CARE PLAN COMPANY  
WITHHOLDING SOCIAL SECURITY  
CONTRIBUTION ASSIGNMENT OF LABOR  
ARTICLE 31 OF LAW 8212/91.**

If the requirements for the characterization of assignment of labor for services provided by medical and dental companies engaged by a health care plan company are not met, the legal obligation to withhold and pay 11% of the amounts of invoices, bills or receipts for services referred to in article 31 of Law no. 8212, of July 24, 1991, does not apply.

Legal provisions: Law no. 8212, of 1991, art. 31; Decree no. 3048, of 1999, art. 219; and Brazilian

Federal Revenue - RFB Normative Instruction no. 971, of 2009, arts. 112, 115, 116, 118, and 119.

2) ANSWER TO INQUIRY No.  
4001, OF 1/9/2019

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

**HEALTH CARE PLANS PRE-PAYMENT MODALITY  
WITHHOLDING NOT REQUIRED**

Payments to health care plan cooperatives arising from private health plan contracts providing for pre-established amounts (contracts with fixed amounts irrespective of the use of the services) are not subject to the Withholding Income Tax.

The amounts paid or credited to the medical services cooperatives are subject to the Withholding Income Tax at a 1.5% rate under art. 719 of the Income Tax Regulation approved by Decree no. 9580, of 2018.

ANSWER TO INQUIRY LINKED TO COSIT INQUIRY  
No. 59, OF DECEMBER 30, 2013

Legal provisions: Law no. 9656, of 1998, art. 1 I; Decree no. 2018, arts. 719, head provision, and par. 1, and 714; Tax System Coordination Office - CST Normative Opinion no. 08, of 1986, items 15, 16, and 22 to 26; COSIT Answer to Inquiry no. 59, of 2013; RFB Normative Instruction no. 1396, of 2013, art. 22.

### 3) Brazilian Federal Revenue RFB NORMATIVE INSTRUCTION No. 1867, of 1/25/2019

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 and funds administered by the Federal Revenue Office.

### 4) RFB NORMATIVE INSTRUCTION No. 1868, of 1/25/2019

Amends article 3 of RFB Normative Instruction no. 1332/2013 – which sets the rules for Contributions to the Public Servants' Social Security Plan (CPSS) –, excluding from the base for the calculation of the Contribution the following amounts paid to active public servants, in addition to the amounts previously excluded: (i) Temporary Bonus of the Information and IT Resources Management System (GSISP); (ii) Temporary Bonus of Activity in a Government School (GAEG); (iii) Specific Bonus of Radioisotope and Radiopharmaceuticals Production (GEPR); (iv) the portion related to the Efficiency and Productivity Bonus in the Tax and Customs Activity paid to career tax and customs public servants of the Brazilian Federal Revenue Office; and (v) the portion related to Efficiency and Productivity Bonus in the Labor Tax Audit Activity paid to career labor tax audit civil servants.

This rule also amends par. 2 of that article and determines that for the purpose of calculation of the benefit to be granted in accordance with art. 40 of the



Federal Constitution and art. 2 of Constitutional Amendment no. 41/2003, servants approved in a civil-service examination or holding a life position may opt for the inclusion of the Bonuses in the base for the CPSS calculation.

## 5) RFB NORMATIVE INSTRUCTION No. 1869, of 1/25/2019

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

## 6) RFB NORMATIVE INSTRUCTION No. 1871, of 2/20/2019

Provides for the Rectification of the Individual Income Tax Return for 2019, calendar year of 2018, reported by individuals resident in Brazil.

## PARTNERS OF THE FIRM AND RESPECTIVE AREAS



**Daniela Matos**

Insurance and Reinsurance  
(55 11) 5643-1065  
dmatos@santosbevilaqua.com.br



**João Marcelo dos Santos**

Insurance and Reinsurance  
(55 11) 5643-1066  
jsantos@santosbevilaqua.com.br



**Juliano Nicolau de Castro**

Labour Law  
(55 11) 5643-1061  
jcastro@santosbevilaqua.com.br



**Keila Manangão**

Litigation and Arbitration  
(55 21) 2103-7638  
kmanangao@santosbevilaqua.com.br



**Marco Antônio Bevilaqua**

Insurance, Reinsurance, Supplementary  
Pension and Supplementary Health  
(55 11) 5643-1063  
mbevilaqua@santosbevilaqua.com.br



**Roberto F. S. Malta Filho**

Corporate, Contracts, Mergers and  
Acquisitions, Arbitrations and Judicial  
Reorganization/Restructuring  
(55 11) 5643-1064  
rmalta@santosbevilaqua.com.br