

# INFORMATION REPORT

MARCH 2019

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# INSURANCE AND OPEN SUPPLEMENTARY SOCIAL SECURITY

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## 1) MINISTRY OF ECONOMY - DECREE, OF 3/28/2019, AND ADMINISTRATIVE RULE No. 119, OF 3/26/2019

The three remaining Directors of the Private Insurance Superintendence - SUSEP were removed: CARLOS ALBERTO DE PAULA - Conduct Supervision Director, MARCELO AUGUSTO CAMACHO ROCHA - Private Insurance System Organization Director, PAULO DOS SANTOS - SUSEP Management Director.

Also on 3/29/2019, ÍCARO DEMARCHI ARAÚJO LEITE, appointed by SUSEP, was removed from the position of substitute member of the Committee for the Evaluation and Selection of Members (CAS) of the Appeals Board of the Brazilian Private Insurance, Open Private Social Security and Capitalization System (CRSNSP),

It should be noted that ÍCARO DEMARCHI ARAÚJO LEITE had already been removed from the position of SUSEP Solvency Supervision Director on February 11, 2019; the related decree was published in the Federal Official Journal of 2/27/2019.

Probably the new SUSEP Directors will be appointed in alignment with the new SUSEP Superintendent Solange Vieira.

## 2) SUSEP STATEMENT No. 219, OF 2/26/2019

Published in the Federal Official Journal of 3/1/2019, SUSEP Statement no. 219 implements the IT and Communications Governance Policy (PGTIC) of SUSEP.

The PGTIC is intended to reiterate the principles and guidelines for IT and Communications governance within the ambit of SUSEP and define the roles and responsibilities of those involved in the decision-making process as well as the structures related to IT and Communications governance, the transparency mechanisms and accounting of investments, and the interfaces between IT and Communications governance and management functions.

Check the full text of the [Statement](#).

## 3) SUSEP CIRCULAR No. 585, OF 3/19/2019

Published in the Federal Official Journal of 3/20/2019, SUSEP Circular no. 585 amends SUSEP Circulars no. [563](#) and [564](#), of December 24, 2017.

Specific points were amended and, among them, we highlight the following:

- a distinct Investment Fund Especially Constituted (FIE) for qualified and non-qualified participants to protect all participants;
- reversion of the provision balance originated from the settlor's contributions exclusively to the participants existing on the date the plan is extinguished (and not to beneficiaries that no longer have a connection with the plan settlor);

- determination of a maximum term instead of a fixed term for the valuation of the FIE quota for redemption and portability, expediting the transfers of funds;
- possibility of an initial grace period before redemptions allocated to programmed financial payments;
- maintenance of funds in the Mathematical Provision for Benefits to be Granted (PMBaC) after the end of the deferral period until the participant takes a position or the qualification of beneficiaries only regarding plans structured according to the financial capitalization regime since this rule is technically applicable to plans structured according to the actuarial capitalization regime;
- prohibition preventing insurers and Open Supplementary Social Security Entities (EAPC) from signing any instrument that may affect the independence of the management

of the FIEs due to a potential conflict of interests;

- requirement for express provision in the plan regulation on the possibility of replacement of the FIE on the EAPC's initiative, with change of Corporate Taxpayer ID (CNPJ) and denomination, where the investment policy is maintained, the maximum management rate and/or the maximum performance rate is not raised and provided that no charge is imposed on the participants.

Check the full text of the [Circular](#).

#### 4) SUSEP CIRCULAR No. 586, OF 3/19/2019

SUSEP Circular no. 586, published in the Federal Official Journal of 3/20/2019, amends items 13.1 and 13.1.1 of the Standard Contractual Conditions of the



Optional Civil Liability Insurance for Land Transportation Companies covering Cargo Disappearance (RCF-DC) established by [SUSEP Circular no. 422](#), of April 1, 2011; now the items read as follows:

"13.1. The Insured is liable to the Insurer for recording at the margin of the police the entries related to the covered shipments, before the exit of the vehicle and based on the bills of lading issued in rigorous numeral sequence via electronic transmission of the file of the Electronic Bill of Lading (CT-e), according to the standard established in the legislation, or via transmission of an equivalent tax document.

13.11. After the entry is recorded at the margin of the insurance policy, in the cases the issuance of the Electronic Statement of Tax Documents (MDF-e) is compulsory, the Insured will deliver, via electronic transmission, the full file of the document, according to the standard established in the legislation, also in

rigorous numeral sequence and before the trip."  
(New Wording)

The purpose of the circular is to adjust item 13.1 of the RCF-DC to the new names and documents resulting from version 3.0 of Electronic Statement of Tax Documents (MDF-e)/Electronic Bill of Lading (CT-e), which took effect on 10/2/2017.

This version was implemented by the National Integrated System of Economic and Tax Information (SINIEF) no. 21/2010 to meet National Agency of Land Transportation - ANTT Resolution no. 4799/2015 that determined that the land carriers are required to issue CT-e and MDF-e since these documents combined contain the information necessary for the verification of the entries in the RCTR-C and RCF-C insurance policies.

This Circular takes effect forty-five (45) days after the date of publication, that is, on 5/6/2016.

Check the full text of the [Circular](#).

## 5) Inter-Ministry Management Committee of the Rural Insurance - CGSR RESOLUTION No. 065, OF 3/11/2019

Published in the Federal Official Journal of 3/14/2019, this CGSR Resolution deals with the allocation of budget funds of the Subsidy Program for the Rural Insurance Premium (PSR).

The resolution defines that the proposal for the allocation of the budget funds of the Subsidy Program for the Rural Insurance Premium to be sent by the Executive Department of CGSR must be in accordance with the values approved under the Annual Budget Law (LOA), the values established in the Three-Year Rural Insurance Plan (PTSR) in

force, and the limits on the availability of appropriation and payment by the Ministry of Agriculture, Cattle Raising and Supply (MAPA).

The proposal addressed in the head provision, if approved by the CGSR, will be disseminated through a Resolution.

The mentioned funds will be allocated per productivity activity/group of activities and/or location and will be made available in lots; the attribution of values or quotas to insurers is prohibited.

Concerning the forwarding of the files with proposals submitted to the Subsidy System for the Rural Insurance Premium (SISSER), the insurers must follow the chronological order of the protocols of receipt.

This resolution came into effect on the date of its publication.



See the full text of the [Resolution](#).

## 6) Federal Prosecution Office - MPF BRINGS A PUBLIC-INTEREST CIVIL ACTION AGAINST SUSEP SEEKING AMENDMENT TO CIRCULAR No. 302/2015

The MPF filed the action with the Superior Court of Justice - STJ to ensure the unilateral renewal of life insurance policies taken out by persons above 60 years (or who keeps the contract valid for more 10 years) without any increase in the premium.

The MPF also requires that SUSEP's new regulation be issued considering the precedents set by the STJ; according to the MPF, the precedents prohibit the discontinuance of the contracts as well as a drastic change in the insurance premium.

The MPF alleges that, according to the precedents of STJ itself, *“the non-renewal of the insurance violates the principles of objective good faith, cooperation, trust, and loyalty that must guide the interpretation of contracts that regulate consumer transactions.”*

However, the imposition of the obligation to renew policies irrespective of the definite term of the contract and without the understanding of the covered risk nature is a clear demonstration that the MPF is not acquainted with the insurance dynamics.

The pure and simple impossibility of increasing the premiums will make those persons close to 60 years of age ineligible for this type of insurance. Added to this, especially in regard to death coverage, usually, the beneficiaries are descendants of the insureds, and the protection to the elderly would not apply to them.

This is another error, such as that committed against the individual health care plans, that arises from the false idea that mistaken rules and limitation of the freedom to contract do not cause collateral effects.

Proceeding no. 2018.00.00.000269-7.

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## FINANCIAL MARKET, CAPITAL MARKET AND OTHERS

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### 1) LAW No. 13810, OF 3/8/2019

Law no. 13810, published on March 8, 2019, provides for the satisfaction of penalties imposed by the Resolutions of United Nations Security Council and specially designated nationals under investigation or charged with terrorism, terrorism financing, or terrorism acts; the purpose of the law is to expedite the asset freezing and the identification of individuals and legal entities associated with the terrorism and the distribution of weapons of mass destruction, in relation to the law previously in effect ([Law no. 13170/15](#)).

Upon the enactment of this new Law, the regulatory and inspection bodies, among them, SUSEP, will be responsible for setting rules for the compliance with the Law; they will also supervise and enforce the measures to freeze assets of individuals and legal entities, as provided in art. 9 of [Law no. 9613](#), of March 3, 1998, and will apply the applicable administrative penalties.

According to this Law, the assets will be frozen in compliance with the Resolutions of the United States Security Council or through designations of its sanctions committees or at the request of the foreign central authority, provided that in accordance with the applicable legal principles and based on objective grounds to meet the designation criteria set in the Resolutions of the United Nations Security Council or resolutions of its sanctions committees.

Likewise Law no. 13810 and the efforts of the United Nations Council and its sanctions committees, the

international sanctions are actions aimed at a social, political or commercial purpose at the international level, and the countries and organizations may impose fines on their members, if they fail to satisfy the international sanction.

The text of Law no. 13810 makes it clear that a law, as it is the case in question, or a clause on sanctions may incorporate elements contained in the rules on the International Law. This possibility, in turn, evidences that the understanding that the Brazilian Law does not admit, in thesis and irrespective of any other element, clauses on sanctions whose reference are sanctions imposed by countries on other countries is erroneous. The recognition of this possibility is especially important when we consider business groups with local presence and global operations, which will be inevitably subject to the satisfaction of such sanctions.

Check the full text of [Law no. 13810/2019](#).

## 2) LAW No. 13812, OF MARCH 16, 2019.

Published in the Federal Official Journal of 3/18/2019, this Law institutes the National Policy for Search of Missing Persons, creates the National Register of Missing Persons, and amends [Law no. 8069](#), of July 13, 1990 (Child and Adolescent Statute).

Check the full text of [Law no. 13812/2019](#).

## 3) General Counsel to the Federal Government - AGU ADMINISTRATIVE RULE No. 180, OF 3/7/2019

Published in the Federal Official Journal of 3/11/2019, this Administrative Rule provides for the

creation of a Task Force within the ambit of AGU to help with the lawsuits involving Proposed Constitutional Amendment PEC no. 06/2019, which modifies the social security system.

The Administrative Rule institutes a national specialized team to act strategically in the monitoring and defense of the lawsuits involving the provisions of PEC no. 06/2019; the team was named "Task Force to Defend the New Social Security - PEC 6/2019", and its jurisdiction will comprise the following activities:

- I - systematization and availability of inputs, studies, opinions, and technical notes aiming at expeditious and effective actions;
- II - organization of theses to ground statements and court defenses;
- III - monitoring of all lawsuits filed and the correspondent legal measures, irrespective of service of process, summons, or notification.



IV - coordination and supervision of the execution bodies as to the monitoring of the lawsuits.

V - consolidation of data for judicial proceedings.

The team will be formed by representatives of the Office of the General Counsel to the Federal Government and the bodies responsible for legal consultancy and assistance to, and the defense of, the Federal Government, autonomous government agencies, and foundations; all will act within the scope of their assignments and jurisdictions as follows:

I - Office of the General Counsel to the Federal Government: 1 member;

II - General Consultancy Office of the Federal Government: 2 members;

III - Office of the General Counsel for the National Treasury: 2 members;

IV - Office of the Attorney General: 5 members;

V - Federal Prosecution Office: 5 members; and

VI - General Litigation Office: 5 members.

The Task Force will be coordinated by the representative of the Office of the General Counsel to the Federal Government, which will report the actions of the team, hold periodical meetings, and prepare reports on the activities developed.

Check the full text of the [Administrative Rule](#).

## 4) DECREE No. 9723, OF 3/11/2019

Published in the Federal Official Journal of 3/12/2019, Decree no. 9723 amends [Decree no. 9094](#), of July 17, 2017, [Decree no. 8936](#), of December 19, 2016, and [Decree no. 9492](#), of September 5, 2018, establishing that the Individual Taxpayer ID (CPF) is a sufficient identification that replaces all other documents that the citizens were required to produce to perform their obligations and exercise their rights or to obtain benefits; the Decree



also regulates the provisions of [Law no. 13460](#), of June 26, 2017.

The Decree also establishes that the CPF is the single document required to access government information.

In addition to the provision on the CPF, the Decree regulates the provisions of Law no. 13460 and ratifies that the certification of signature and the authentication of documents will no longer be required by the government bodies.

The Decree also ratifies the Letter of Services to the User, whose purpose is to inform about the services provided by the body or entity of the federal executive branch, the forms of access to services, the commitments and quality standards of the assistance to the public, and the services published on the Services Portal of the federal government.

The bodies and entities of the federal government will have

- three months as from the publication date of the Decree to adjust the systems and procedures for assistance to the citizens; and
- twelve months as from the publication date of the Decree to consolidate the registers and databases considering the number of the Individual Taxpayer ID (CPF).

This a commendable measure that will help reduce the bureaucracy.

See the full text of the [Decree](#).

## 5) DECREE No. 9731, OF 3/16/2019

Published in the Federal Official Journal of 3/18/2019, this Decree establishes, unilaterally, that the citizens of Australia, Canada, United States, and Japan are no longer required to obtain the visitor visa to enter Brazil; it also amends [Decree no. 9199, of November 20, 2017](#), which regulates [Law no. 13445, of May 24, 2017](#) (Migration Law).

See the full text of the [Decree](#).

## 6) DECREE No. 64130, OF 3/8/2019

The Government of the State of São Paulo, through Decree no. 64130, instituted the automotive regime

for new investments in the State of São Paulo – *IncentivAuto*.

Manufacturers of automotive vehicles classified in chapter 87 of the Mercosur Common Nomenclature - NCM and established in the State of São Paulo may benefit from this regime.

The regime is intended to fund investments of manufacturers of automotive vehicles established in the State of São Paulo to expand their industrial plants, implement new plants or develop products, subject to certain criteria.

See the full text of the [Decree](#).

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## CLOSED SUPPLEMENTARY SOCIAL SECURITY

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## HEALTH

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# TAX

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## 1) ANSWER TO INQUIRY No. 047, OF 2/18/2019

According to General Coordination of Taxation - COSIT answer to inquiry no. 47, the Contribution to the Social Integration Program/Public Servant Fund - Import (PIS/Pasep-Importação) is levied on the payment of the premium of the professional liability insurance contracted with insurers based abroad.

The base for the calculation of PIS/Pasep-Importação is 15% of the amount paid, credited, delivered, employed, or remitted abroad (premium).

The answer to the inquiry may be checked [here](#).

## 2) ANSWER TO INQUIRY No. 052, OF 2/25/2019

According to COSIT answer to inquiry no. 52, the legal entities that assess the Corporate Income Tax (IRPJ) based on presumptive profit, regarding facts generating PIS/Pasep that occurred as from January 1, 2013:

- a) are not required to deliver the Statement of Assessment of Social Contributions (Dacon);
- b) must transmit the Digital Tax Bookkeeping - Contributions (EFD-Contribuições), as provided in Federal Revenue - RFB Normative Instruction no. 1252, of 2012.

The Digital Accounting Bookkeeping was optional for legal entities that assess the IRPJ based on presumptive profit in regard to accounting facts occurred until January 31, 2013.

Concerning accounting facts occurred as from January 1, 2014, the ECD is mandatory for legal entities taxed based on presumptive profit that distribute, without the levy of the Withholding Income Tax (IRRF), a portion of their profits or dividends above the value of the calculation base of the Tax, deducted from all applicable taxes and contributions.

Concerning accounting facts occurred as from January 1, 2016, the ECD is mandatory for all legal entities taxed based on presumptive profit that does not use the prerogative set in the sole paragraph of art. 45 of Law no. 8981, of 1995 (cash book).

Cosit Answer to Inquiry no. 91 was, therefore, amended.

The answer to the inquiry may be checked [here](#).

### 3) ANSWER TO INQUIRY No. 79, OF 3/20/2019

According to this answer, in regard to the assessment of IRPF, the amounts of contributions paid exclusively by the beneficiary in the period from January 1, 1989 to December 31, 1995 may be deducted from the amounts paid by the supplementary social security entities on account of supplementary pension, redemption, or proration of property in the event the supplementary social security entity is dissolved as provided in RFB Normative Instruction no. 1343, of April 5, 2013.

The amounts paid by the supplementary social security entity, which may be deducted from the contributions exclusively paid by the beneficiary in the period from January 1, 1989 to December 31, 1995, are those originated from the calculation of the contributions paid in that period, therefore, they



cannot be deducted, when the Income Tax is assessed (on the occasion the tax is levied at source or on the occasion of the annual adjustment), from the amounts paid by the entity (supplementary pension, redemption or proration of property) deriving only from the contributions paid as from January 1, 1996.

The answer to the inquiry may be checked [here](#).

#### 4) ANSWER TO INQUIRY No. 91, OF 3/21/2019

According to this answer, international treaties and conventions revoke or modify the internal tax legislation and will be observed by a future legislation.

The payments made by a closed supplementary social security entity—established in Brazil and created by a government company that develops

economic activities strictly speaking— to an individual resident of Portugal by virtue of a benefit plan are not subject to the IRRF, because they are taxed only in the country of residence of beneficiary.

The inquiry is ineffective as it does not make reference to the interpretation of the tax legislation and fails to indicate the legal and normative provisions that caused the inquiry.

The answer to the inquiry may be checked [here](#).

#### 5) ANSWER TO INQUIRY No. 100, OF 3/25/2019

According to this answer, the party that contracts a private health care plan in the modality “Corporative Group” (“Coletivo Empresarial”) (source that pays the earnings) must provide information about the individuals benefiting from the plan in the

Withholding Income Tax Return (Dirf) jointly with information related to earnings and is not required to submit the Medical Services Statement (Dmed).

The private health care plan companies are required to provide in the Dmed information related to the "Individual or Family" health care plans and the "Group by Adhesion" health care plans (only the amounts payable by the individual) and are not required to provide information related to the individuals benefiting from the "Corporative Group" plan because such information must be reported in the Dirf 2017 or Dirf 2018, to be submitted by the source that pay the earnings.

The benefit managing company is liable for submitting the Dirf, giving information on the health care plans in the event of group plan by adhesion, contracted with the participation or intermediation of the benefit managing company.

The answer to the inquiry may be checked [here](#).

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