

The Developments of Brazil's "Operation Car Wash" and Business Opportunities in connection with Petrobras' New Investment Plan

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History

- **Before the Media Attention**

- The investigation began in 2009, focusing on money laundering conducted by illegal money brokers using gas stations – hence the name “Car Wash”.

- **1st phase – March 17, 2014**

- Federal Police uncovered a BRL 10 billion embezzlement and money laundering scheme led by money changers – specifically, Alberto Youssef.
- 130 judicial warrants issued.



History

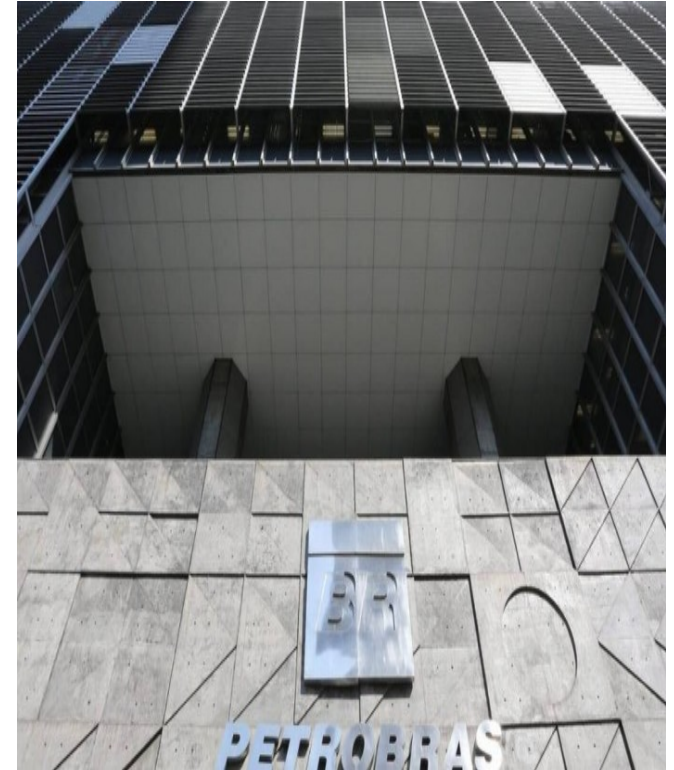
- **2nd phase – *Bidone* – March 20, 2014**

- Youssef is preventively arrested.
- Investigations uncovered that Paulo Roberto da Costa, former Supply Officer of Petrobras, received a Land Rover car from Youssef as a gift.
- Costa is also preventively arrested as a suspect of participation in the criminal scheme and for destruction of evidence connecting him to Youssef.



History

- 3rd phase – *Dolce Vita* – April 11, 2014
 - BRL 70,000 in cash and several documents seized at different sites, including Petrobras headquarters.
 - 16 search warrants and 4 arrest orders were executed to obtain more information regarding Costa's connection to Youssef and a company called Ecoglobal Ambiental.
 - Spreadsheet seized by the Feds in the house of Paulo Roberto Costa raises the suspicion that the former director oversaw contractor transfers to politicians.



History

- **4th phase – *Casablanca* – June 11, 2014**

- Costa is arrested again after USD 23 million was located and blocked in bank accounts abroad.
- USD 5 million in accounts in the name of relatives of Costa and Youssef were also blocked.



History

- **5th phase – Bidone 2 – July 1, 2014**

- Two straw men of Youssef are preventively arrested (João Procópio Junqueira Pacheco de Almeida Prado and Iara Galdino da Silva). Both managed Youssef's bank accounts abroad.
- This phase also targeted Labogen, a company controlled by Youssef that was about to enter into a major contract with the Health Ministry.



History

- **6th phase – *Bidone 3* – August 22, 2014**

- Federal Police executed 11 search warrants and 1 arrest order at companies connected to Costa and his relatives.
- Paulo Roberto Costa accepted to enter into a plea bargain in order to leave prison.



History

- **7th phase – *Doomsday* – November 14, 2014**
 - Renato Duque, former Chief Services Officer of Petrobras, and 17 high-level executives of major EPC companies are preventatively arrested.



History

- **8th phase – January 14, 2015**

- Nestor Cerveró, former International Department Officer of Petrobras, is preventively arrested.
 - Cerveró was accused of participating in crimes such as corruption against the national financial system and money laundering between 2006 and 2012.



History

- **9th phase – *My Way* – February 5, 2015**

- Targeted the Services Department and BR Distribuidora (Petrobras' subsidiary).
- Search warrants executed at 26 front companies and 4 individuals are preventively arrested.
 - 500 luxury watches seized at a company called Arxo.
 - João Vaccari, PT's treasurer, was taken for deposition.
- After this phase, the Brazilian Supreme Court authorizes the investigation of 47 politicians.

History

Criminal investigations and lawsuits are judged by the 2nd Panel of the Court Composition changed recently:



Teori Zavascki

Appointed by Dilma
Roussef
President of the Panel
Reporter of the Case



Celso de Mello

Appointed by José
Sarney



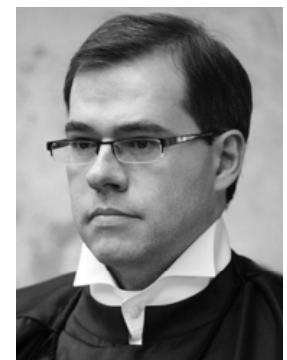
Gilmar Mendes

Appointed by
Fernando Henrique
Cardoso



Carmen Lucia

Appointed by Lula
Vice-President of
Supreme Court



Dias Toffoli

Appointed by Lula
Future President of
the Panel

NEW MEMBER

History

- 10th phase – *What country is this?* – March 16, 2015
 - Duque again preventively arrested.
 - Federal Public Prosecutors found EUR 20 million hidden in Swiss accounts which were transferred to Monaco after the commencement of the investigations.
 - 113 works of art were seized at his house and 5 other individual were also preventively arrested.



History

- **11th phase – *The Origin* – April 10, 2015**

- Operation starts targeting the Health Ministry and Caixa Econômica Federal (state-controlled federal bank).
- Federal Congressmen André Vargas, Luiz Argôlo and Pedro Corrêa are preventatively arrested and other 4 individuals are temporarily detained.



History

- **12th phase – April 15, 2015**

- Vaccari Neto is preventively arrested after suspicious payments were made to accounts of his wife and his sister-in-law.



History

- **13th phase – May 21, 2015**
 - Milton Pascowitch, one of the scheme's operators according to Pedro Barusco, is preventatively arrested.
 - A payment of BRL 1.45 million from him to a company of José Dirceu, former Minister of State, was also discovered.



History

- **14th phase – June 19, 2015**

- Focused on Odebrecht and Andrade Gutierrez.
- 12 arrest orders issued for high-level executives, including Marcelo Odebrecht (CEO).



History

- **15th phase – July 2, 2015**

- Jorge Zelada, former International Department Officer of Petrobras, is arrested in connection with potential irregularities concerning drilling contracts. He had already been investigated by Monaco authorities.



History

- **16th phase – Radioactivity – July 28, 2015**

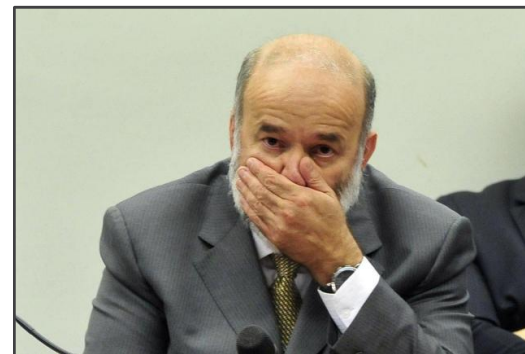
- Admiral Othon Luiz Pinheiro da Silva (licensed Eletronuclear President) is arrested in connection with Dalton Avancini's (Camargo Corrêa former CEO) plea bargain.
- 30 judicial warrants are executed, 23 for search and seizure, 2 for temporary prison and 5 detentions for questioning.



History

- **17th phase – “Pixuleco” (slang for bribe) – August 3, 2015**

- Former Minister of Institutional Relations José Dirceu (Lula administration) investigated for creating the corruption scheme in Petrobras and soliciting bribes – Dirceu appointed Petrobras officers.
- 40 judicial warrants issued:
 - 26 for search and seizure - including for JD Consultoria e Assessoria, José Dirceu consulting company allegedly utilized by the former minister to receive unlawful payments in the corruption scheme
 - 3 for preventive arrest - including for José Dirceu
 - 5 for temporary arrest
 - 6 detentions for questioning



João Vaccari Neto, PT treasurer who used the expression “Pixuleco” to refer to the bribes in the context of Operation Car Wash

Current Status in Brazil

- Investigations and criminal proceedings being conducted at the Supreme Federal Court against sitting members of Congress and Ministers of State.
- Investigations and criminal proceedings being conducted at the Federal Court in Curitiba against other individuals.
- Proceedings against Companies for cartel violations at CADE – Brazilian Antitrust Authority.
- Proceedings against Companies for corruption before the CGU – 29 proceedings.
- Improbity lawsuits against individuals and companies.
- Congressional Investigations Committee – CPI Petro.

CPI - PETRO

- Congressional Investigations Committee started on February 5, 2015 after request of Congressman Carlos Sampaio (PSDB-SP).
- Chaired by Congressman Hugo Motta (PMDB-PB).
- Created to investigate unlawful actions within Petrobras from 2005 to 2015 in connection with:
 - Overpricing and reckless management within the construction of refineries in Brazil;
 - Creation of subsidiaries and Special Purpose Companies with the purpose of committing unlawful conducts;
 - Overpricing and reckless management within the construction and chartering of transport vessels, platforms and drilling rigs;
 - Irregularities in the operation of Sete Brasil; and
 - Irregularities in the sale of Petrobras' assets in Africa.
- Extended at least to the end of August 2015.

International Cooperation: Expect This to Become the New Norm

[W]e increasingly find ourselves shoulder-to-shoulder with law enforcement and regulatory authorities in other countries. Every day, more countries join in the battle against transnational bribery. And this includes not just our long-time partners, but countries in all corners of the globe.

-- Assistant Attorney General Leslie R. Caldwell (Nov. 19, 2014)

Global Enforcement: Some Recent Examples

- In 2014, it was reported that DOJ & SEC had opened up investigations into Petrobras.
- In 2015, Switzerland's Attorney General went to Brazil to talk with Brazil's General Prosecutor, and later Switzerland froze \$400 million in Swiss banks.
- Press reports that more than 300 Swiss bank accounts have been used to illegally funnel money for payments.
- Dutch-based company paid \$240 million in November 2014 to resolve investigation in the Netherlands.
- UK's Serious Fraud Office investigating companies for Petrobras related activities.

United States and United Kingdom Enforcement

Provision	FCPA	Bribery Act
Who is being bribed	Bribes (“anything of value”) paid or offered to a “Foreign Official” are prohibited.	Prohibits bribes paid to <i>any person</i> to induce them to act “improperly” (not limited to foreign officials).
Nature of advantage obtained	Payment made to “obtain or retain” government business or other benefit.	Focus is on “improper” benefit rather than on business purpose.
Active vs. Passive offense	Prohibits the act, attempt, or solicitation of payment (passive offenses—i.e. acceptance of payment—are covered by other statutes).	Prohibits both the act of payment (active offense) and the act of receipt (passive office) of the bribe.
Corporate strict liability	Applies strict liability under accounting provisions (failure to maintain adequate controls/book and records violations).	Creates strict liability offense for “failure to prevent” bribery by commercial organization (subject to defenses based upon “adequate procedures”).
Jurisdiction	U.S. companies and citizens, foreign companies listed or traded on U.S. exchanges, or any Person acting or creating substantial impacts inside the United States.	U.K. nationals or ordinary U.K. residents, and companies that are established in the U.K. or that conduct some part of their business in the U.K.
Business promotion expenditures	Affirmative defense for reasonable and bona fide expenditure directly related to the business promotion or contract performance.	No express affirmative defense (but bona fide business expenditure are not “improper” and therefore are not violations).
Permitted under local law	Affirmative defense if payment is lawful under written laws/regulations of foreign country.	No violation if payment is expressly permitted under written local laws.
Facilitating payments	Limited exception for payments to expedite or secure the performance of routine, non-discretionary governmental action.	No exception for facilitation payments but guidance suggests that prosecutions for payments of small amounts are unlikely.
Criminal/civil enforcement	Criminal enforcement by the DOJ and Civil enforcement by the SEC.	Criminal enforcement and fines imposed by the SFO.
Potential Penalties	For individuals: Up to five years’ imprisonment and fines up to \$250,000. For entities: fines up to \$2 million, disgorgement, and/or up to <i>twice</i> any ill-gotten benefit.	For individuals: up to 10 years in prison. For individuals and entities: No limit on size of potential fines.

Jurisdictional Basis for US and UK Enforcement

United States

- The FCPA covers the conduct of all U.S. nationals and domestic concerns, wherever their conduct occurs.
- The FCPA also applies to issuers of any security registered with the SEC or that are otherwise required to file reports with the SEC.
 - All publicly traded companies with stock, bonds, or depository receipts that are listed or traded on a U.S. securities exchange, regardless of whether the company is headquartered outside of the United States.
- The FCPA also applies to any foreign national or entity (whether or not they are issuers) that commit any act inside the territory of the United States in furtherance of a prohibited payment.

United Kingdom

- An offense of bribing, being bribed and bribing a foreign public official may be committed if any part of the offense takes place in the UK.
- Persons with “close connections” to the UK (includes British nationals, those ordinarily resident in the UK and companies/partnerships incorporated /formed in the UK) may commit an offense of bribing, being bribed and bribing a foreign public official even if the offense takes place entirely outside the UK.
- An offense of a commercial organization failing to prevent bribery may be committed even if the bribery takes place wholly outside the UK.

Some Considerations Related to United States Involvement in the Investigation

- To date, they want to encourage other countries to become active so they are letting the Brazilian authorities take the lead.
- However, Brazil does not have the same level of experience investigating complex money tracing investigations, which is generally necessary in significant anti-corruption matters.
- United States can bring additional resources to the investigation that Brazil enforcement does not have.
- United States has a history of being the most aggressive enforcement agency on anti-corruption matters world-wide.

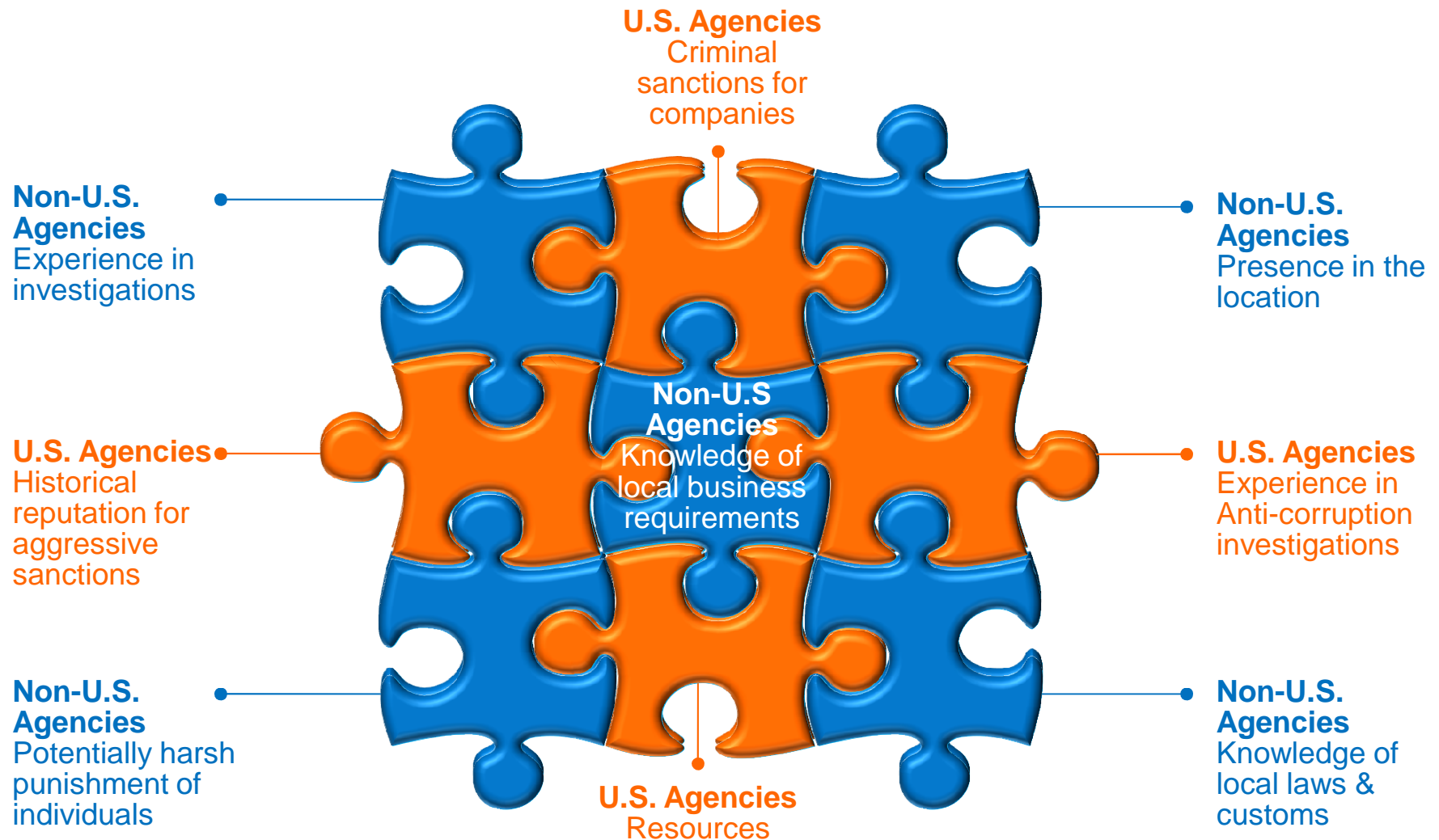
Some Considerations Related to United States Involvement in the Investigation

- United States has the ability to hold companies criminally liable and therefore can achieve huge penalties.
- Corporations face criminal liability if:
 - Each essential element of the crime was committed by one or more of the company's agents;
 - In committing those acts, the agent(s) intended, at least in part, to benefit the company, and
 - The act was within the scope of employment of the agent who committed it.
- The fact that the act was illegal, contrary to employer's instructions, or in contravention of company policies will not relieve the company of liability.

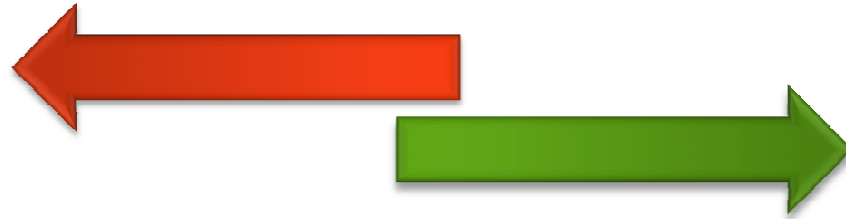
Practical Impact for Companies When There Are Investigations by Multiple Enforcement Agencies

- Increased resources for the enforcement agencies.
- Anything provided or stated to one agency will be shared and likely admissible in other jurisdictions.
- Have to know the implications of how actions will be viewed under different laws and standards.
- Outside pressures will be different in other jurisdictions (e.g. Brazilian congressional committees subpoenas).
- Different agency expectations (e.g. DOJ expects companies to fully investigate and take remedial action while SFO is concerned that companies will “churn up” the crime scene).

Cooperative Efforts Between Various Countries Enforcement Agencies



Main Business Implications – A Buyer's Market?



Companies involved are under financial constraints or even under judicial reorganization.

Smaller suppliers are facing cash flow problems, mostly because of payment delays by Petrobras.

Distrust among foreign investors.

Implications to Petrobras' shareholders.

"Operation Car Wash" brought attention to Petrobras' debts.

Current oil price.

Management shift and another perspective.

Petrobras' divestment plan, meaning interesting assets on sale.

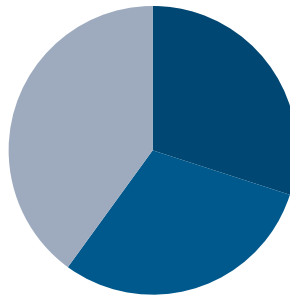
Companies involved in the "Operation Car Wash" are also selling assets.

13th Bid Round likely to have reduced participation from Petrobras = opportunities for new players.

Possibility of change in the pre-salt regulation.

Petrobras Divestment Plan

- A **US\$ 15.1 billion** divestment plan will be implemented until 2016, readjusting Petrobras' priorities, including:
 - **E&P (30%)**
 - **Downstream (30%)**
 - **Gas and Power (40%)**



Source: Petrobras – Governança e Conformidade

- US\$ 5 billion in assets already available to potential buyers.
- Petrobras aims at achieving a total of US\$ 42.7 billion with the divestments until 2018 (E&P, distribution, transportation and logistics).
- Favorable environment to foreign investors due to high USD rates.

E&P

- Upstream assets already announced:
 - **Pre-Salt (sale of stake):** BM-C-33 (Pão de Açúcar), BM-S-24 (Jupiter), BM-S-50 (Sagitário), BM-S-51 (Lebre), BM-S-8 (Carcará)
 - **Non Pre-Salt (100%):** BM-C-36 (Tartaruga Verde), BM-ES-5 (Camarupim and Camarupim Norte)
 - All mature fields are potentially available for sale
 - **Onshore Areas**

Downstream

- Downstream assets already announced:
 - **Pipelines:** TAG
 - **Gaspetro and Local Gas Distribution Companies**
 - **Retail Network:** Participation in BR Distribuidora / Potential IPO
 - **Biodiesel Plants**
 - **Braskem Ethanol e Petroquímica Suape**
 - **Transpetro**

Gas and Power

- **Thermoelectric Power Plants**
 - The sale of a minimum 49% stake in these plants is expected
- **Liquigás**

Other Companies Involved

- Consequences arising from Petrobras' "Blacklist":
 - Contracts were terminated
 - Many companies affected
 - Search for new contractors (ongoing work and new projects)
 - Possibility or actual bankruptcy – sale of assets is really important in the short term

1) Alumini (ex-Alusa)	9) Galvão Engenharia	17) Promon
2) Andrade Gutierrez	10) GDK	18) Queiroz Galvão
3) Camargo Corrêa	11) IESA	19) Setal
4) Carioca Engenharia	12) Jaraguá Equipamentos	20) Skanska
5) Construcap	13) Mendes Junior	21) TECHINT
6) Egesa	14) MPE	22) Tomé Engenharia
7) Engevix	15) OAS	23) UTC
8) Fidens	16) Odebrecht	

* Under Judicial Restructuring

* OOG requested to be left out of Blacklist

Source: Petrobras – Fatos e Dados – 30/12/2014

Other Companies Involved

Potential business opportunities

(some of these are not confirmed)



- Holder of 24.4% of Invepar, owner of assets in Guarulhos Airport in São Paulo
 - Investors are already claiming “right of best bid”
- Other important assets available: football arenas, subsidiaries, Port 2016, real estate, Enseada shipyard, OAS Defesa



- Holder of CAB ambiental
- BR-153/GO
- Participation in the Fertilizer Plant in Tres Lagoas (UFN-III)



- Holder of 23% of Viracopos Airport in São Paulo
- Participation in the São Paulo Subway (Line 6), Enseada shipyard, real estate properties

Other Companies Involved



- Rio Grande Shipyard (ERG)
 - Offering the sale of such asset to foreign companies.



- Currently studying the sale of its assets



- Integra Consortium (Mendes Junior/OSX)
 - COOEC has been assigned with contracts for Platforms P-67 and P-70
 - Other assets/contracts might be negotiable



- Decided to request judicial restructuring in order to sell assets and focus on the Oil & Gas sector

What to Expect

- Possibility of new rules applicable to the Libra Field
 - Bill of Law #131/2015 – José Serra (Petrobras would no longer be obliged to hold 30% of the participating interest or be the Operator in Production Sharing Agreements).
- Big change expected for the entire industry
 - New opportunities in Brazil and other countries (investments made by Petrobras in foreign countries).
 - Fast transactions – Petrobras needs to follow its divestment plan and other companies want to avoid possibility of bankruptcy/ improve efficiency in the operations.
 - New players to rise as a consequence of the crisis
 - Sale of several interesting assets currently owned by Petrobras
 - Opportunities for foreign investors and private-equity funds
 - More efficiency to compensate the gaps in the industry left by “Blacklisted” companies.
 - Credibility shift – more transparency with investors and the market.
 - Attention to compliance and risk assessment analysis (insurance companies and banks will be more demanding when accepting certain risks).

Thank You

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