

Brazil's "Operation Car Wash": Conducting Investigations in a New Brazil

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Structure of the Presentation

1. Operation Car Wash: Overview
2. The Odebrecht/Braskem Settlement Negotiations
3. The Ongoing Legal and Political Fall Out
4. Beyond Car Wash: Other Brazilian Enforcement Operations
5. Multijurisdictional Enforcement: The New Normal
6. Implications for Compliance Programs
7. Implications for Internal Investigations

Operation Car Wash

- Corruption scheme centered on Petrobras
 - Brazilian construction companies
 - Other Petrobras counter-parties
 - Politicians at state and federal levels
- Long-running investigation
 - Federal prosecutors aggressively leveraged new prosecutorial tools
 - Plea bargaining led to fundamental shift in enforcement culture
- Dramatic, ongoing impact on Brazilian politics, economy and legal system

Odebrecht / Braskem

- Odebrecht's leniency agreement has not been disclosed yet;
- Odebrecht released a statement as per the terms of the leniency agreement:

12/01/2016

Odebrecht Apologizes for its Mistakes

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Odebrecht acknowledges its participation in illicit actions in its business activities.

It does not matter that we gave in to external pressure. Nor is it relevant that there are behaviors that the private and public sectors must resist and correct in their relationships.

What matters is that we acknowledge our involvement. We were complicit and did not fight these practices, as we should have.

This was a grave error. We violated our own principles and transgressed against the values of honesty and ethics.

We will not let this happen again.

Odebrecht apologizes, particularly for its failure not to have acted sooner.

Odebrecht's ability to manage and execute that is recognized by our clients, the competency and commitment of our professionals, and the quality of our products and services should have been the basis for avoiding these mistakes.

Odebrecht has learned from these mistakes and is evolving.

We are committed, with great conviction, to reform.

COMMITMENT TO THE FUTURE

We have implemented the Odebrecht Commitment to Act with Ethics, Integrity and Transparency. All Odebrecht businesses, without exception, will practice this commitment, with conviction and responsibility.

We will not be complacent.

Odebrecht / Braskem

- Braskem filed a notice of material fact reporting:
 - “it is in an advanced stage of negotiation with the competent authorities in Brazil and in the United States and expects to execute, with these authorities, a resolution comprising the facts that involved the Company in connection with the Operation Car Wash.”
- Reported values range from US\$ 1.8-2.5 billion
 - Divided between Brazil, US and Switzerland
- No debarment from public bidding
- 70 plea agreements with executives
- Depositions reportedly started

Legal and Political Fall Out

- Removal of the Speaker of the Senate
 - Refusal to comply
 - Clashes between Executive, Legislative and Judiciary branches
- Car Wash Taskforce threat to resign
- Freezing of political reforms
- 10 measures v. Abuse of power
- Is Car Wash the new (Brazilian) normal?

Beyond Car Wash

Operation “Zelotes”

- Corruption of members of the Administrative Council of Tax Appeals – CARF to obtain favorable decisions in tax matters
- Corruption of Congressmen and clerks to approve and influence the approval of Provisional Measures and obtain further legal advantage
- Negligent contracts with consultancy companies that turned out to be involved in corrupt practices to benefit their clients
- Criminal judicial and investigative proceedings against Brazilian and multinational companies allegedly involved in the scheme
- Several companies and financial institutions implicated

Beyond Car Wash

- **Operation “*Acrônimo*”**: Corruption to obtain funding from the Brazilian National Development Bank (BNDES) and other tax and commercial benefits implicating the former Minister of Development, Industry and Foreign Trade and current Governor of Minas Gerais
- **Operation “*Boca Livre*”**: Embezzlement of otherwise due taxes through fraudulent use of the Cultural Encouragement Law
- **Operation “*Greenfield*”**: Embezzlement of pension funds’ investments in private companies and businesses

Beyond Car Wash

State Level:

- **Operation “*Calicute*”**: Criminal organization led by former Governor of Rio de Janeiro to collect bribes from construction companies in exchange for public contracts
- **Operation “*Alba Branca*”**: Corruption to obtain overpriced contracts for the provision of school meals to the Secretary of Education of São Paulo
- **Operation “*Caixa de Pandora*”**: Alleged corruption in public contracts between the Federal District Government and computer companies

Beyond Car Wash

- **Renan Calheiros, President of the Senate:** Ordered to stand down as president of the Senate by the Supreme Court following the acceptance of a criminal complaint unrelated to Car Wash
- **Michel Temer, President of Brazil:** Facing yet another political crisis due to claims that he requested that a former Minister attended a personal request made by another Minister



Corruption in Brazil: Multijurisdictional Enforcement

- Examples:

EXAME.COM

Cooperação internacional foi importante para Lava Jato, diz Janot

O trabalho investigativo em conjunto com outros países possibilitou, por exemplo, a descoberta das contas na Suíça relativas a Cunha

Por **Estadão Conteúdo**
© 11 nov 2016, 19h46

GIR

Embraer pays US\$205 million in first joint foreign bribery settlement with US and Brazilian authorities

 **REUTERS**

Brazil's Odebrecht signs \$2 billion leniency deal in graft case: sources

Under terms of the agreement, the company will pay the hefty fine over 20 years. The money will be divided between authorities in the United States, Switzerland and Brazil, which would be the main beneficiary.

Corruption in Brazil: Multijurisdictional Enforcement

JUSTICE NEWS



THE UNITED STATES
DEPARTMENT OF JUSTICE

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Monday, October 24, 2016

Embraer Agrees to Pay More than \$107 Million to Resolve Foreign Corrupt Practices Act Charges

Parallel Resolutions with the Securities and Exchange Commission and Brazilian Authorities Equaling \$97 Million in Disgorgement Also Announced Today

Brazilian aircraft manufacturer Embraer S.A. (Embraer) entered into a resolution to resolve criminal charges and agreed to pay a penalty of more than \$107 million in connection with schemes involving the bribery of government officials in the Dominican Republic, Saudi Arabia and Mozambique, and to pay millions more in falsely recorded payments in India via a sham agency agreement.

“Embraer paid millions of dollars in bribes to win government aircraft contracts in three different continents,” said Assistant Attorney General Caldwell. “But this prosecution shows that the Criminal Division will hold accountable those who treat corruption as a mere cost of doing business. Between U.S., Brazilian and Saudi authorities, bribe payers and bribe takers alike have been brought to justice for their wrongdoing.”

In related matters, Embraer reached settlements with both the SEC and Brazilian authorities. Embraer reached a settlement with the SEC, under which it agreed to pay \$83.8 million in disgorgement and \$14.4 million in prejudgment interest. The SEC has agreed to credit the disgorgement that Embraer pays to Brazilian authorities. Embraer also reached a settlement with Brazilian authorities under which it agreed to pay \$20 million in disgorgement. With the cooperation of U.S. authorities, Brazilian authorities have charged 11 individuals for their alleged involvement in Embraer’s misconduct in the Dominican Republic. Saudi Arabian authorities have charged two individuals for their alleged involvement in Embraer’s misconduct in Saudi Arabia.

Corruption in Brazil: Multijurisdictional Enforcement



Enforcement in Brazil: The Future

- On corruption issues, Brazil is now a high-enforcement jurisdiction
 - Expanded law enforcement resources (e.g., Andrade Gutierrez leniency agreement)
 - New expectation of corporate cooperation
 - Business need to implement corporate compliance policies
 - Greatly increased chance of detection
- But there are still some issues to be solved:
 - Limited case law
 - Turf wars between agencies charged with corporate “criminal” enforcement



What is expected from companies in a high enforcement scenario?

- Governance
- Ethical behavior
- Cooperation
- Monitoring
- Adequate records
- Integrity of information and data
- Transparency
- Consolidation of internal rules and policies

What is expected from companies in a high enforcement scenario?



Compliance Programs in Brazil

- Risk assessment
- Organizational leadership and culture
- Standards and controls
- Training and education
- Monitoring, auditing and evaluating programs
- Oversight and remediation

Managing Internal Investigations in Brazil

- Willingness to conduct independent investigations
- Need to preserve and maintain records and documents
- Risks to the attorney-client privilege
- Obstacles to confidentiality
- Commitment to following facts, even to difficult conclusions

OBJECTIVE:

Understand the facts to ensure that corporate decision-makers are fully informed when deciding whether to cooperate or to defend potential charges

Cooperation in Brazil

- Domestic regulators
 - Overlapping regulators
 - Plea Bargains and Leniency Agreements

- Foreign regulators
 - DOJ/SEC
 - Office of the Attorney General of Switzerland
 - U.K. Serious Fraud Office
 - Dutch Public Prosecution Service

Thank You

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