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Petrobras Reaches \$1.78 billion FCPA Resolution

On September 27, the DOJ and SEC and Petróleo Brasileiro S.A. (“Petrobras”), Brazil’s state-owned energy company, reached the largest settlement in the history of U.S. enforcement of the Foreign Corrupt Practices Act (“FCPA”). As part of its groundbreaking settlement, Petrobras entered into a Non-Prosecution Agreement with the Department of Justice and agreed to pay \$1.78 billion combined to the DOJ, the SEC, the shareholders of Petrobras, and Brazilian criminal authorities. While numerous investigations arising out of the original *Lava Jato* investigation remain ongoing, the settlement represents the latest victory for Brazil’s enforcement authorities, who changed the course of Latin America’s political landscape and spawned a continuing wave of anti-bribery investigations across the continent.

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The [settlement papers](#) detail a scheme in which senior Petrobras executives inflated the cost of infrastructure projects by deliberately overpaying its largest contractors. Those contractors, in turn, paid billions in kickbacks to Petrobras executives, who then shared the proceeds with Brazilian politicians and political parties who helped the executives obtain their high-ranking positions at Petrobras. Petrobras fraudulently recorded these payments as funds spent on improving and procuring assets, resulting in an overstatement of assets totaling approximately \$2.5 billion. As part of the settlement, Petrobras [admitted](#) that it failed to maintain accurate accounting records and that certain Petrobras executives signed false accounting certifications while they were involved in paying bribes to Brazilian politicians and political parties.

The resolution is the latest chapter in the Operation *Lava Jato* investigation, which originated in Brazil and has proceeded to engulf political leaders, prominent corporate executives, and leading companies across Latin America. The investigation alleges the involvement of prominent politicians in Brazil, including former Brazilian Presidents Luiz Inácio Lula da Silva and Dilma Rousseff, current President Michel Temer, and dozens of congressional representatives and local elected officials. In many cases, the allegations arising out of the *Lava Jato* investigation have led directly to these politicians’ impeachment from office. Allegations of wrongdoing in the *Lava Jato* investigation have also reached prominent political figures outside of Brazil, including former Presidents of Argentina, Nelson Kirchner and Cristina Fernandez de Kirchner; former Presidents of Peru, Ollanta Humala and Pedro Pablo Kuczynski; and current President of Venezuela, Nicolas Maduro.

While the ouster of political figures has given rise to political and economic upheaval in the region, it has also emboldened the anti-corruption efforts of the Brazilian criminal authorities tasked with enforcing the nation’s laws as well as those foreign authorities that benefit from cooperation with their Brazilian counterparts. The settlement exemplifies the continuing era of unprecedented cooperation between U.S. and Brazilian authorities, and specifically acknowledges the assistance provided by Brazilian authorities to the DOJ, as Brazilian criminal authorities received 80% of Petrobras’ total criminal penalty, or \$682,560,000. Like the \$800 million global resolution of Rolls-Royce plc with authorities in the United States, the United Kingdom, and Brazil, this resolution demonstrates that the DOJ remains vigilant in investigating and resolving allegations of bribery and corruption even in circumstances where foreign authorities will receive the vast majority of the total penalty.

The settlement is also unique for its parallel resolution of civil actions by the SEC and a private class of Petrobras shareholders who alleged that the company misled investors in the United States through the filing of false financial statements as part of a \$10 billion stock offering in 2010. In the settlement announcement, the SEC stated that these financial statements misrepresented the company’s “assets, infrastructure projects, the integrity of its management, and the nature of its relationships with its majority shareholder, the Brazilian government.” As part of its settlement, Petrobras agreed to pay a total sum of \$933 million in disgorgement and prejudgment interest, with the total SEC amount to be determined after final determination of the amount to be paid into the private plaintiffs’ settlement fund in the

matter of *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.), as Petrobras' payments to the SEC will be reduced by the amount of any payment Petrobras makes to the *In re Petrobras Securities Litigation* settlement fund. The structure for resolving the SEC's action and the shareholders' derivative suit in parallel introduces a novel approach to resolving private rights of action under Rule 10(b)(5) based on facts identified during FCPA investigations.

Furthermore, the resolution of the matter reflects U.S. authorities' confidence in the remediation efforts executed under the watchful eye of Brazilian authorities. Despite the depth and breadth of the schemes in question, the DOJ did not insist on the imposition of a corporate monitor because, in part, Petrobras "is a Brazilian-owned company that entered into a resolution with Brazilian authorities and is subject to oversight by Brazilian authorities." This posture reflects the emerging sophistication of the Brazilian anti-corruption enforcement regime as well as deference on the part of the DOJ.

Finally, it is worthwhile to note that the joint settlement does not resolve ongoing inquiries into other investigations that have grown out of the Petrobras scandal. In Brazil alone, Operation *Lava Jato* has led to a litany of investigations into a variety of sectors beyond the energy industry, including but not limited to global events like the Olympic Games and the World Cup, Brazilian public pension funds, the medical device industry, the construction industry, the mining industry, the agricultural and meat-packing industries, and the transportation industry. Other countries in the region have launched their own follow-on inquiries, including investigations in other Latin American countries into bribes paid to prominent political figures by the construction conglomerate Odebrecht and other Latin American companies featuring prominently in the *Lava Jato* investigation. The DOJ and the SEC also remain active in their investigations of individuals and companies alleged to have participated in related bribery schemes that implicate the interests and jurisdiction of the United States.

The Petrobras settlement caps the unprecedented transformation of a local Brazilian police operation centered on a gas station car wash into a cross-border anti-corruption movement that shifted the paradigm for global anti-corruption enforcement and altered the political and economic landscape of an entire region. If your organization has significant contacts with Brazil or other LatAm jurisdictions that have recently begun cracking down on public corruption, it may be a good time to assess your anti-corruption profile in light of this latest evidence of the significant cross-border cooperation efforts and cross-industry focus of enforcement agencies in the U.S., Brazil, and throughout Latin America.