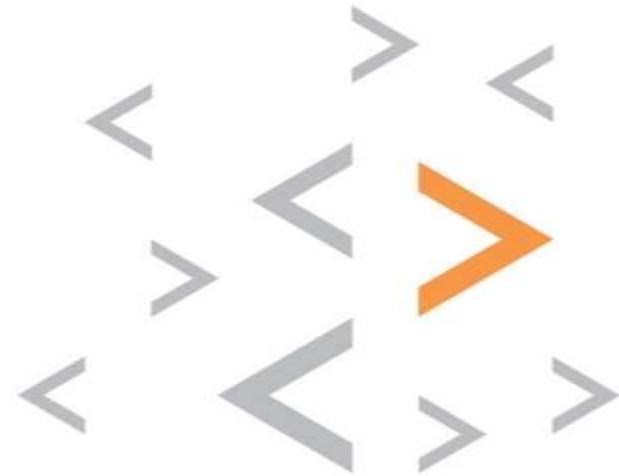


CAR WASH OPERATION

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Car Wash Operation and its impacts in the Brazilian Construction Industry



WHAT IT IS ABOUT?

- The scandal initially began as a money laundering investigation in March 2014, but quickly transitioned into a wider exploration of allegations of corruption at state-controlled Petrobras and a number of other firms. Some of Petrobras's directors have been accused of taking bribes from construction companies in return for awarding lucrative contracts.
- Petrobras directors had been deliberately overpaying on contracts, including for office construction, drilling rigs, refineries and exploration vessels.
- Petrobras directors then used the diverted funds to funnel money to the politicians who had appointed them to Petrobras and to the political parties such politicians represented.

WHY IT IS DIFFERENT FROM BEFORE?

- Enactment of the Anticorruption Law (Law No. 12,846/2013) and of the Organised Crime Law (Law No. 12,850/2013).
 - Although “Collaboration” has existed in Brazilian criminal law since at least 1995, the Organised Crime Law provided for a detailed road map for collaboration. One or more of the following results must be achieved:
 - identification of co-authors and participants in the criminal organization, and of their respective crimes;
 - exposure of the hierarchical structure and division of functions within the organization;
 - total or partial recovery of proceeds.

WHY IT IS DIFFERENT FROM BEFORE?

- Persuasion of suspects to provide detailed confessions in exchange for reduced penalties (“rewarded collaboration”).
 - ✓ Judge Sergio Moro helped prosecutors to put pressure on suspects by approving lengthy “preventive detentions” (i.e. before trial), denying bail to them. In practice: **make a deal or stay in jail.**
 - ✓ Legal discussions on the constitutionality/legality of such measures – Brazilian Constitution provides for the principle of “presumption of innocence”.
- Media extensive coverage of the operation and massive support from the public opinion - Virtuous or Vicious Cycle?.

IMPACTS IN THE CONSTRUCTION INDUSTRY

- The biggest construction companies have lost market share – prohibition to contract with the Public Government; lack of financing; stricter compliance rules and procedures from Employers and Financial Institutions, main shareholders/offices arrested; antitrust investigations.
- Change of the “concession model” - *i.e.* practical market refusal of the usual structure of having construction companies in both sides of the same project.
- Small and medium size construction companies started to participate in infrastructure projects, specially in Sanitation, Airport expansions and Highways.
 - ✓ Easier segregation into in several packages.
 - ✓ Easier to obtain financial guarantees.

IMPACTS IN THE CONSTRUCTION INDUSTRY

- Opening of the market to foreign companies, including through:
 - ✓ M&As – Ex. CCCC acquiring Concremat and Vinci Construction acquiring Orteng;
 - ✓ Financing of projects - with the retreat from BNDES and other financing sources, direct foreign investment is expected to increase its importance in the development of infrastructure projects – *e.g.* financing and/or credit guarantee from ECAs;
 - ✓ Public Bidding Rules which now foster larger foreign investment participation in key industry sectors - *e.g.* airport concessions which were directed to national players in the past.

IMPACTS IN THE CONSTRUCTION INDUSTRY

- Owners and Financial Institutions more concerned with compliance rules and procedures:
 - ✓ Previous due diligence in the main contractor and its main subcontractors;
 - ✓ Very strict and hard anticorruption clauses in the Construction Contracts (including right to terminate the Contract or suspend the payments in case of suspected violations);
 - ✓ Audit rights during construction phase, including by a third party hired by Owner;
 - ✓ Elaboration of very comprehensive internal Codes and Standards of Ethics and Conduct.

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