
“LAVA JATO” EFFECTS AND THE NEW INFRASTRUCTURE CONCESSIONS PLAN: BUSINESS OPPORTUNITIES FOR FOREIGN COMPANIES

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The effects of “Lava-Jato” operation, added to the issuance today of an infrastructure concessions plan by President Roussef, will enhance the participation of foreign companies in public contracts.

For the first time in months, it is possible to perform a clear analysis on the aftermath of Operation “Lava-Jato”, a word that has been basically embedded to the front pages of all major national and international newspapers since the beginning of March, 2014, when the Operation was initiated.

During such span, tens of executives of Brazilian largest construction and oil companies – including Petrobras - were investigated and arrested, and week after week new corruption schemes were discovered, adding more companies, executives and politicians to the criminal pages.

Considering the arrests of their executives, the difficulty to negotiate with national and foreign banks, the crisis of their major commercial partner – Petrobras – and their recently acquired bad reputation, some of the companies involved in the schemes had no other option but to file for Judicial Reorganization. That was the case for companies such as OAS, Galvão Engenharia and Schahin.

The financial situation of such companies is just an initial sign of the impacts caused by Operation Lava-Jato. Besides the aforementioned construction conglomerates, several others shall face judicial and administrative proceedings after all the investigations are finished which may result in

severe restrictions for those companies to contract with public companies.

While most economists are now focusing on whether or not it is the right time to invest in Petrobras again, some are assessing the market and indicating a good opportunity for foreign companies to cash in on public contracts, given the reduced number of competitors.

Such opportunity stems from the fact that state-owned companies must not enter into agreements with companies whose lack of good standing has been declared. That is one of the several criteria established by Law 8.666/93, which regulates the procedure of public procurements in Brazil. Moreover, apart from the legal restrictions that will probably be imposed upon a handful of companies, their bad reputation alone can certainly diminish their chances of winning a public competition.

Added to this factor, President Roussef has issued on June 2015 a new infrastructure concessions plan in the total amount of 60 billion USD. This plan comprises infrastructure concessions in the fields of ports, airports, highways and railways. The plan is likely to provide conditions for a positive environment in order to increase competition in the new public biddings

Considering the challenges Brazilian companies will face from now on when trying to participate

in public tenders and also the fact that foreign companies must receive equal legal treatment as far as public competitions are concerned, expectations are that an increasing number of international companies shall have the capacity to win public contracts in Brazil, opening a market that was commonly dominated by Brazilian companies.

Our firm is specialized in Corporate and Infrastructure Law and our teams possess large expertise in advising foreign companies on establishing in Brazil as well as participating in public bids and contracting with the government.