

CLIENT ALERT

Petrobras Reaches Global Resolution of FCPA Allegations

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Petroleo Brasileiro S.A. – Petrobras has finalized a global resolution of allegations that its high-ranking executives facilitated hundreds of millions of dollars of payments to Brazilian politicians and political parties, and that Petrobras concealed these bribes from investors and regulators.



The resolution comprises three principal parts: (1) a non-prosecution agreement (NPA) with the Department of Justice, including a \$853.2 million penalty; (2) an administrative settlement with the SEC, including a disgorgement of \$711 million and another \$222.5 million in prejudgment interest; and (3) a separate resolution with the Brazilian government. The SEC disgorgement will be offset by the amount that Petrobras has already paid toward a \$2.95 billion settlement in a class-action lawsuit. Nevertheless, the combined total of the assessed penalty and disgorgement (\$1.78 billion) is the most ever under the FCPA.

Eighty percent of the \$853.2 million paid as part of the NPA will go to the Brazilian government. This was in recognition that “Petrobras is a Brazilian-owned company that entered into a resolution with Brazilian authorities and is subject to oversight by Brazilian authorities,” per DOJ. This past May, DOJ had rolled out a new policy encouraging coordination not only among DOJ departments and other federal agencies, but also foreign enforcement authorities. The penalty was also discounted by 25 percent from the low end of applicable sentencing guidelines, reflecting “the company’s full cooperation and remediation.” The NPA also requires Petrobras to continue cooperating in “ongoing investigations and prosecutions” of companies and individuals, and to enhance its compliance program.

Petrobras is a cautionary tale for U.S. issuers and others doing business overseas. Bribery of foreign officials, compounded by concealing those payments from investors, can quickly add up to *billions* of dollars in payments to private plaintiffs and government authorities.

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