
Private to Private Onshore Oil and Gas Transactions in Brazil

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I. Introduction

Brazil is the world's fifth largest country (both in population and area)³, the ninth largest energy consumer in the world, and the third largest energy consumer in the Western Hemisphere, behind the United States and Canada.⁴ Brazil was the ninth largest oil producer in 2009 with production of 2.7 million barrels of oil per day.⁵ As of January 1, 2011, Brazil reported 12.9 billion barrels in proved oil reserves, the second largest in South America after Venezuela.⁶ Approximately 93% of Brazil's proved oil reserves are located offshore, with the remaining 7% located onshore.⁷ See Table I below for information regarding the location of Brazil's proved oil reserves.

Table I – Proved Oil Reserves (December 31, 2009)⁸

Location	Proved Oil Reserves (December 31, 2009)	
	10 ⁶ barrels	Percent by Location
Onshore	923.8	7.2%
Offshore	11,933.2	92.8%
Total	12,857	100%

The purpose of this paper is to present a general overview of the primary legal issues that arise in onshore private to private oil and gas transactions in Brazil. Our analysis will be concentrated on the regulatory approvals required in connection with such transactions taking into consideration the acquisition structures commonly used. Our aim is to equip investors and legal practitioners with practical information, which will allow them to (a) maneuver through the regulatory approval process with greater confidence and understanding and (b) negotiate appropriate provisions in definitive documentation. In addition to setting forth the legal issues that arise in private to private onshore oil and gas transactions, this paper will describe the history of the Brazilian oil and gas industry and the legal framework which allows companies to engage in oil and gas exploration, development and production in Brazil.

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³ CENTRAL INTELLIGENCE AGENCY, CIA – WORLD FACTBOOK – SOUTH AMERICA – BRAZIL, <https://www.cia.gov/library/publications/the-world-factbook/geos/br.html> (last visited Mar. 7, 2011).

⁴ U.S. ENERGY INFORMATION ADMINISTRATION INDEPENDENT STATISTICS AND ANALYSIS, COUNTRY ANALYSIS BRIEF: BRAZIL (January 2011) <http://www.eia.doe.gov/emeu/cabs/Brazil/Full.html> (last visited Mar. 7, 2011).

⁵ *Id.*

⁶ *Id.*

⁷ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Oil, Natural Gas and Biofuels Statistical Yearbook 28 (2010), available at <http://www.anp.gov.br/?pg=38591&m=&t1=&t2=&t3=&t4=&ar=&ps=&cachebust=1298142173202>, follow “English” hyperlink under the 2010 report (last visited Feb. 21, 2011) [hereinafter Statistical Yearbook].

⁸ *Id.*

II. Executive Summary

Pursuant to the Brazilian Federal Constitution, all hydrocarbons are owned by the federal government of Brazil and the exploration and production of non-strategic hydrocarbons by private and semi-private companies is required to be carried out pursuant to the terms of concession agreements entered into between the concessionaires and the Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (“ANP”), the governmental body responsible for regulating the Brazilian oil and gas industry. See Section X for an explanation of the new production sharing regime approved for the pre-salt and other strategic areas.

Prior to the denationalization of the oil and gas industry in 1995, all oil and gas exploration and production activities in Brazil were carried out by Petróleo Brasileiro S.A. (“Petrobras”), the state-owned oil and gas company. Since 1999, ANP has held 10 public bid rounds whereby ANP has auctioned both onshore and offshore exploration blocks to domestic and foreign bidders, where the winning bidder is granted a concession over the applicable block by entering into a concession agreement with ANP. Although Petrobras continues to hold the majority of the onshore concessions, some concessions are now held by both domestic and foreign companies.

Private to private onshore oil and gas transactions in Brazil involve the acquisition of exploration and production rights granted pursuant to the terms of concession agreements. Such acquisitions are primarily structured through (a) indirect investment in the form of a company acquisition that results in a change of control of the ultimate beneficiary holder of the concession, (b) direct investment in the form of (i) an assignment of the concession agreement, or (ii) a farm-in or farm-out arrangement of the interest of a concessionaire. In limited instances, services agreements (often times referred to as “risk agreements”) whereby private companies contracted to provide certain operational services to Petrobras (as the concessionaire) are assigned in connection with a company purchase.

All assignments of concession agreements or rights derived pursuant to a concession agreement are subject to the prior approval of ANP. In the event of a corporate reorganization or a change of control transaction where the entity which granted the original performance guarantee (required as a condition to the grant of the original concession) to ANP is no longer an affiliate of the concessionaire, the transaction will also be subject to prior approval of ANP as if the change of control transaction were an assignment. ANP is very diligent in its investigation of the qualification of assignees in order to ensure that each assignee has the experience and financial capability to carry out the obligations assumed by the original concessionaires. Depending on the complexity of the transaction and the level of qualification required for certain fields, the preparation of the necessary documentation can be arduous and time consuming. The parties should take into consideration that the ANP approval process may take from 3 to 9 months (and in some cases up to a year), which may affect certain conditions to closing agreed upon by the parties.

No assignment of exploration rights can occur before ANP approval is obtained, and the parties should not assume commitments on the timing of such approval. Although, the definitive transaction document does not need to be submitted to ANP, the parties should make sure the language of the agreement is clear that ANP approval is a condition precedent to closing. The penalties for an assignment without the consent of ANP (including indirect change of control with substitution of performance guarantee) are the imposition of a fine of

R\$500,000 (approximately US\$300,000⁹) and termination of the concession agreement if such breach is not remediated within the term determined by ANP.¹⁰

One of the primary challenges facing investors and legal practitioners is that ANP has not yet promulgated specific regulations addressing the legal requirements for the assignment of concessions. As a result, buyers and sellers are forced to maneuver the regulatory landscape without standardized processes, procedures and requirements. However, considering that ANP has not offered blocks through bid rounds since the tenth bid round in 2008, the only mechanism for investors to acquire exploration and development rights in Brazil has been the acquisition of exploration and development rights from the current concessionaires.

III. Background of Denationalization of Brazil's oil and gas industry

III.A. *Petróleo Brasileiro S.A. ("Petrobras")*

The evolution of the Brazilian oil and gas industry is strongly correlated to the history of Petrobras, which was established pursuant to the terms of Law 2004/1953 (the "1953 Law"),¹¹ and in connection with a public governmental campaign coined "*the petroleum is ours.*"¹² The federal government of Brazil has historically owned, and currently owns, title to all hydrocarbons existing within the national territory of Brazil.¹³ Pursuant to the terms of the 1953 Law, the federal government of Brazil, or the "union", declared a monopoly, through Petrobras, over (a) prospecting and exploitation of deposits of petroleum and natural gas and of other fluid hydrocarbons; (b) refining of domestic or foreign petroleum; and (c) ocean transportation of crude petroleum of domestic origin or of basic petroleum by-products produced in the country, as well as pipeline transportation of crude petroleum, its by-products and natural gas of any origin (the "1953 Monopoly Activities").¹⁴

In 1988, the Brazilian Congress adopted a new constitution (the "Federal Constitution"), article 177 of which affirmed the federal monopoly in the 1953 Monopoly Activities, and declared a monopoly in the following activities: (a) import and export of the products and basic by-products resulting from the activities set forth in the preceding items; and (b) prospecting, mining, enrichment, reprocessing, industrialization and trading of nuclear mineral ores and minerals and their by-products.¹⁵ Article 177 also affirmed Petrobras' monopoly over all the activities described in article 177.

⁹ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

¹⁰ Portaria ANP No. 234, de 12 de agosto de 2003 [ANP Ruling 234 of August 12, 2003], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE] (Braz.), available at <http://nxt.anp.gov.br/NXT/gateway.dll?f=templates&fn=default.htm&vid=anp:10.1048/enu> (last visited Feb 22, 2011).

¹¹ Lei No. 2.004, de 3 de outubro de 1953 [Law 2.004 of October 3, 1953], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE] (Braz.), available at <http://www.planalto.gov.br/ccivil/leis/L2004.htm> (last visited Feb. 21, 2011) [hereinafter Petrobras Law].

¹² DONEIVAN F. FERREIRA, PRODUÇÃO DE PETRÓLEO E GÁS EM CAMPOS MARGINAIS, UM NASCENTE MERCADO NO BRASIL [PRODUCTION OF PETROLEUM AND GAS IN MARGINAL FIELDS, A MARKET STARTING IN BRAZIL] (2009) (Braz.), referencing an article entitled PRODUÇÃO DE PETRÓLEO E GÁS NATURAL EM CAMPOS TERRESTRES COM ACUMULAÇÕES MARGINAIS – UM REGISTRO HISTÓRICO [OIL AND GAS PRODUCTION IN ONSHORE FIELDS WITH MARGINAL ACCUMULATIONS – A HISTORIC RECORD] by Anabal Santos Jr.

¹³ Lei No. 9.478, de 6 de agosto de 1997 [Law 9,478 of Aug. 6, 1997], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE], art. 3 (Braz.), available at http://www.planalto.gov.br/ccivil_03/Leis/L9478.htm (last visited Feb 22, 2011) [hereinafter Petroleum Law].

¹⁴ Petrobras Law, *supra* note 13, art. 3.

¹⁵ Constituição Federal [C.F.] [Constitution] amend. 9, art 177 (Braz.), available at <http://www.v-brazil.com/government/laws/titleVII.html>.

In 1995, the Brazilian Congress passed the ninth amendment to article 177 of the Federal Constitution (the “Ninth Amendment”), which ended Petrobras’ monopoly and authorized the union to operate its hydrocarbon monopoly by contracting with both state-owned and private companies for the activities described in article 177.¹⁶

Today, Petrobras is an internationally recognized integrated oil, gas and energy company, operating in the following segments of the oil, gas, and energy industry: (a) exploration and production; (b) downstream, marketing, transportation and petrochemicals; (c) distribution; and (d) natural gas, energy and biofuels.¹⁷ Petrobras currently operates on 5 continents and in 28 countries, focusing principally on the United States and the west coast of Africa (besides Brazil).¹⁸ In 2010 Petrobras reported proved oil and natural gas reserves of 15.985 billion boe.¹⁹ Petrobras was ranked fifth in Platts 2010 Top 250 Global Energy Companies, rising five places from the 2009 rankings.²⁰ See Table II below for statistics on the Platts Top 5 Global Energy Companies.

In October 2010, Petrobras completed a US\$70 billion global public offering of common and preferred shares²¹, the largest public offering in the world since 1987.²² In the first nine months of 2010, Petrobras reported net profit of over \$13 billion, 27.9% more than a year earlier.²³ Petrobras’ 2010-2014 business plan provides for investments of US\$224 billion, with US\$212.3 billion planned investment in Brazil and US\$11.7 billion planned investment overseas.²⁴

As of October 2010, Petrobras reported over US\$190 billion in assets and over US\$100 billion in revenues.²⁵ Petrobras is publicly traded on the Bolsa de Valores, Mercadorias & Futuros de São Paulo (BMF Bovespa), the New York Stock Exchange (NYSE), the Bolsa de Madrid (BMAD), and the Buenos Aires Stock Exchange (BCBA). As of January 31, 2011, the federal government’s ownership in Petrobras was as follows: common shares – 54%, preferred shares – 1%, and capital stock – 31%.²⁶

¹⁶ Constituição Federal [C.F.] [Constitution] amend. 9, art 177 (Braz.).

¹⁷ Petrobras Fact Sheet: 3Q2010, available at http://www.petrobras.com.br/ri/Show.aspx?id_materia=PzGcgWVvMd+XMl0/rG8Vjw==&id_canal=Bck97OedPvHqEJjG7OmPVQ==&id_canalpai=zJGXTN3TSOxyagTLortuQQ== (last visited Mar. 7, 2011).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Platts 250 Top Global Energy Company Ratings (2010), available at <http://www.platts.com/Top250Home> (last visited Mar. 7, 2011) [hereinafter Platts 250 (2010)].

²¹ Petrobras Fact Sheet, *supra*, note 17.

²² Chris V. Nicholson. *Petrobras Raises \$70 Billion in Share Issue*, DEALBOOK (Sept. 24, 2010, 5:42 AM) <http://dealbook.nytimes.com/2010/09/24/petrobras-raises-70-billion-in-share-issue/> (last visited Mar. 7, 2011).

²³ Petrobras Fact Sheet, *supra*, note 17.

²⁴ *Id.*

²⁵ Platts 250 Top Global Energy Company Ratings: Petrobras (2010), available at <http://www.platts.com/Top250Detail/petrobras> (last visited Mar. 7, 2011) [hereinafter Platts 250: Petrobras].

²⁶ Petrobras: Governance – Capital Ownership, available at http://www.petrobras.com.br/ri/Show.aspx?id_canal=yag+RHRsrUnIez2Bu5q7OQ==&id_canalpai=QsHWEXhHxpu+rIq2h24GkQ==&ln=en (last visited on Mar. 7, 2011).

Table II - 2010 Top 250 Global Energy Companies: Top 5²⁷

RANK	COMPANY	ASSETS	REVENUES	PROFITS	RETURN ON INVESTED CAPITAL
1 ²⁸	ExxonMobil Corp.	US\$233,323M	US\$275,564M	US\$19,280M	15.7%
2 ²⁹	BP plc	US\$235,968M	US\$239,972M	US\$16,578M	13%
3 ³⁰	Gazprom Oao	US\$270,501M	US\$98,135M	US\$25,578M	11.4%
4 ³¹	Petrobras	US\$190,411M	US\$100,880M	US\$16,002M	11.8%
5 ³²	Total SA	US\$156,913M	US\$157,67M	US\$11,875M	11.6%

III.B. The Petroleum Law

Although the Ninth Amendment permitted private competition in the Brazilian oil and gas industry, the rules and regulations governing participation of private companies in oil and gas exploration and production were not adopted until August 6, 1997 when the Brazilian government passed Law 9478/1997 (the “Petroleum Law”). The Petroleum Law affirms that the federal government owns the petroleum, natural gas, and other liquid hydrocarbons located in the national territory of Brazil,³³ and permits the federal government to contract with companies incorporated under the laws of Brazil with headquarters in Brazil.³⁴ The Petroleum law created (a) the Brazilian Energy Policy Council (“CNPE”), the governmental body responsible for proposing national energy policies to the president of Brazil and (b) ANP, the governmental body responsible for regulating the Brazilian oil and gas industry and implementing the petroleum and natural gas policy as determined by the CNPE.³⁵

The Petroleum Law is comprised of 83 articles that address nearly all aspects of Brazilian oil and gas law. The Petroleum Law sets forth (a) the objectives of the country’s energy policy which include (i) guaranteeing the domestic supply of petroleum products, (ii) protecting consumer interest, (iii) protecting the environment, (iv) promoting free competition, (v) attracting investment, and (vi) expanding Brazil’s competitiveness in international markets;³⁶ (b) the special provisions with respect to the ratification and relinquishment of Petrobras’ rights in fields in the production, exploration and development phases;³⁷ (c) the concession regime by which the exploration, development and production of oil and natural

²⁷ Platts 250 (2010), *supra* note 18.

²⁸ Platts 250 Top Global Energy Company Ratings: ExxonMobil Corp. (2010), available at <http://www.platts.com/Top250Detail/exxonmobil> (last visited February 17, 2011).

²⁹ Platts 250 Top Global Energy Company Ratings: BP (2010), available at <http://www.platts.com/Top250Detail/bp> (last visited February 17, 2011).

³⁰ Platts 250 Top Global Energy Company Ratings: Gazprom Oao (2010), available at <http://www.platts.com/Top250Detail/gazprom> (last visited February 17, 2011).

³¹ Platts 250: Petrobras, *supra* note 23.

³² Platts 250 Top Global Energy Company Ratings: Total SA (2010), available at <http://www.platts.com/Top250Detail/total> (last visited February 17, 2011).

³³ Petroleum Law, *supra* note 13, art. 2.

³⁴ *Id.* art. 5; See BAKER & MCKENZIE, DOING BUSINESS IN BRAZIL 170 (2006), available at http://www.bakernet.com/NR/rdonlyres/ED606E61-DDD9-41CA-9470-0B5D3D443D25/0/dbi_brail2006pdf (last visited Mar. 22, 2011).

³⁵ *Id.* arts. 2 & 7.

³⁶ *Id.* art. 1.

³⁷ *Id.* arts. 31-35.

gas is to be carried out in Brazil;³⁸ and (d) the framework for the bidding process pursuant to which concessions shall be awarded.³⁹

The passage of the Petroleum Law and the opening of the oil and gas sector to both domestic and foreign private investment sent a clear message to the citizens of Brazil and the international community that the government acknowledged the importance of free competition in attracting investments and protecting consumers.

IV. The Bid Process

IV.A. Petrobras' Rights - Round 0

Although Petrobras lost the monopoly, the Petroleum Law ratified Petrobras' rights in each producing field and provided for a one-year period during which Petrobras was to identify fields in the exploration phase that Petrobras desired to retain.⁴⁰ On August 8, 1998, one year after the passage of the Petroleum Law, Petrobras entered into a total of 397 concession agreements with ANP (115 for exploration, 51 for development, and 231 for production).⁴¹ The process whereby Petrobras retained and relinquished fields is referred to as bid round 0, or "Round 0."⁴²

IV.B. Role of ANP

On October 10, 1999, Brazil passed Legal Ordinance no. 174 which approved the general rules governing the bidding procedure set forth in the Petroleum Law whereby qualified companies can compete for oil and gas exploration and production concessions in specific exploration blocks.⁴³ The bidding process is administered by ANP and consists of the following phases: (a) invitation for bid, (b) technical, financial and legal qualification of participants, (c) payment of a participation fee by participants, (d) presentation of the required guarantees by participants, (e) tender of the bids by the qualified participants, (f) judgment of the bids by ANP, and (g) execution of the concession agreement by ANP and the winning bidder.⁴⁴

ANP is responsible for drafting invitations for bid and for conducting the bidding process for exploration, development and production concessions. ANP initiates each bid round with the publication of a final tender protocol setting forth the bid procedure with respect to the applicable round. The terms of each tender protocol and corresponding concession agreement are based on the Petroleum Law, and differ from round to round.

Pursuant to article 37 of the Petroleum Law, the invitation for bid issued by ANP shall contain, *inter alia*, (a) a description of the blocks being offered, the estimated period for

³⁸ *Id.* arts. 36-52.

³⁹ *Id.* arts. 36-42.

⁴⁰ Pablo Luis Gay-Ger, *Overview of Brazilian Oil and Gas Law*, § 8 (2001). Rocky Mountain Mineral Law Foundation Conference Materials – 2001 Mining and Oil and Gas Development in Latin America (Chapter 17C).

⁴¹ *Id.* § 8.

⁴² Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gás and Biofuels]: The Bidding Rounds of Areas for E&P of Oil & Natural Gas in Brazil and the Opportunities offered in Brasil Round 10, <http://www.braziltradenet.gov.br/ARQUIVOS/Eventos/PACEuropa/01ANPEExecutiveSummaryOilandNaturalGasI.pdf> (last visited Mar. 7, 2011) [hereinafter Bid Round 10 Executive Summary].

⁴³ Gay-Ger, *supra* note 40, § 3.3.

⁴⁴ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gás and Biofuels], Final Tender Protocol for the Granting of Concession Agreements (2008), available at <http://www.brasil-rounds.gov.br/arquivos/editais/FT%20Protocol%20R10%20Final%20Version.pdf> (last visited Mar. 7, 2011) [hereinafter Final Tender Protocol – Round 10].

exploration and the investments in the minimum exploratory work program; (b) the requirements for technical, financial and legal qualification of the interested companies; (c) the government and landowner takes; and (d) the place, date and time the interested companies will be provided data, studies and other information necessary for the preparation of their bids.⁴⁵

IV.C. Bid Rounds 1-10 (Exploratory Blocks)

ANP conducted the first public bid round for the concession of oil and gas blocks that allowed foreign companies to compete with Petrobras on June 15-16, 1999.⁴⁶ Out of the 27 exploration and production blocks that were put up for bid by ANP, 12 were awarded. Amerada Hess, BP, British Bornea, Eni, Esso, Kerr-McGee, Petrobras, Shell, Texaco, YPF and Unocal made winning bids, with some acting in partnership with Petrobras.⁴⁷ Of the 12 blocks awarded, Petrobras won 5 with the other 7 being awarded to foreign companies.⁴⁸ The majority of the bids were for relatively unexplored offshore areas located off Brazil's Atlantic coast.⁴⁹

The second bid round (2000) winners included not only many of the large companies who became concessionaires in the first round, but also medium size or independent companies.⁵⁰ The third bid round (2001) included deep-water offshore blocks as well as onshore blocks, and resulted in nearly R\$600 million (approximately US\$360 million⁵¹) in signing bonuses from the winning concessionaires.⁵²

The fourth bid round (2002) resulted in 14 winning companies, 4 of which were new players in the Brazilian market.⁵³ The fifth bid round (2003) marked the implementation of a new system of design and bidding for exploration blocks; it also included the minimum exploration program as part of the valuation criterion.⁵⁴ In the sixth bid round (2004), the following three types of exploratory block were offered: (a) mature, (b) new (c) high potential.⁵⁵ The seventh bid round (2005) included important risk exploratory blocks in the

⁴⁵ Petroleum Law, *supra* note 13, art. 37.

⁴⁶ Gay-Ger, *supra* note 40, § 9.

⁴⁷ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 1), http://www.brasil-roudas.gov.br/resultado_rodadas/RESUMO_round1_vencedoras.asp (last visited Mar. 7, 2011).

⁴⁸ U.S. ENERGY INFORMATION ADMINISTRATION INDEPENDENT STATISTICS AND ANALYSIS, COUNTRY ANALYSIS BRIEF: BRAZIL (July 2003) *available at* http://www.geni.org/globalenergy/library/national_energy_grid/brazil/BrazilCountryAnalysisBrief.shtml (last visited Mar. 7, 2011).

⁴⁹ COUNTRY ANALYSIS BRIEF (2003), *supra* note 48.

⁵⁰ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 2), http://www.brasil-roudas.gov.br/resultado_rodadas/RESUMO_round2.asp (last visited Mar. 7, 2011).

⁵¹ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

⁵² Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 3), http://www.brasil-roudas.gov.br/resultado_rodadas/RESUMO_round3.asp (last visited Mar. 7, 2011).

⁵³ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 4), http://www.brasil-roudas.gov.br/resultado_rodadas/RESUMO_round4.asp (last visited Mar. 7, 2011).

⁵⁴ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 5), http://www.brasil-roudas.gov.br/resultado_rodadas/RESUMO_round5.asp (last visited Mar. 7, 2011).

⁵⁵ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 6), http://www.brasil-roudas.gov.br/resultado_rodadas/RESUMO_round6.asp (last visited Mar. 7, 2011).

Campos, Santos and Espírito Santo basins and was considered a great success resulting over R\$1 billion (approximately US\$654 million⁵⁶) in signing bonuses.⁵⁷

The eighth bid round was suspended after the auction of blocks in only two sectors due to court injunctions. The injunctions were based on the rules of the eighth bid round restricting the number of blocks in one sector that could be granted to the same investor. Although such injunctions were overruled by decisions of the Brazilian Supreme Court, the eight bid round was not restarted.

The CNPE had authorized ANP to restart the eight bid round in 2007, but the round was not restarted. In 2008 and 2009, the CNPE decided that the decision over the eighth bid round would be decided after approval of the production sharing regime (*see* Section X) as some important pre-salt areas were part of the eighth round. The bidders are still waiting to see what the CNPE will decide regarding such round, particularly the bidders with winning bids.

The ninth bid round (2007) was marked by the withdrawal of numerous blocks in the pre-salt areas by the CNPE after ANP issued its invitation to bid. Despite the withdrawal of the pre-salt blocks, 117 blocks were awarded and ANP collected a record R\$2 billion (approximately US\$1.2 billion⁵⁸) in signing bonuses. In the last bid round, the tenth bid round (2008), only onshore blocks were offered and the signing bonuses were not impressive. *See* Exhibit I which sets forth certain data on each bid round for exploratory blocks, except round 8 which remains suspended.

ANP selects the winning bidder based on a scoring mechanism, which is disclosed in the invitation for bid. Bid round 10 (2008) was scored according to the following allocations: (a) signature bonus – 40%, (b) local content – 20% and (c) minimum exploratory program (“MEP”) – 40%.⁵⁹

As a result of the ten public bid rounds for exploratory blocks, there are a number of private companies with exploration activities in Brazil. *See* Exhibit II for a list of the current concessionaires in Brazil.

IV.D. Marginal Fields

Beginning with the important offshore discoveries in the 1970’s and 1980’s in the Campos basin, exploration and production activity in Brazil has been primarily focused on offshore fields. Petrobras has historically concentrated its financial and human resources on the Brazilian coast,⁶⁰ with investments in onshore fields as a low priority.

Since the denationalization of Petrobras’ monopoly in 1995 and the ratification of Petrobras’ rights in producing fields (and certain other exploratory fields) in 1998, several onshore fields have been returned to ANP. In addition, there are multiple fields that are currently held by Petrobras or other private concessionaires that are classified as mature fields. These returned

⁵⁶ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

⁵⁷ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Rounds Overview (Round 7), http://www.brasil-rounds.gov.br/ingles_topo/RESUMO_geral_resultados.asp (last visited Mar. 7, 2011); Agência Nacional do Petróleo, Gás Natural e Biocombustíveis: Former Rounds Overview – Exploratory Blocks - Aggregate Results, http://www.brasil-rounds.gov.br/resultado_rodadas/RESUMO_round7.asp (last visited Mar. 7, 2011).

⁵⁸ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

⁵⁹ Final Tender Protocol – Round 10, *supra* note 44, § 4.7.

⁶⁰ FERREIRA, *supra* note 12.

fields and mature fields are referred to as “marginal fields.”⁶¹ In many areas of the country, particularly isolated areas in the northeast, the exploration and production of marginal fields has been important for promoting social and economic development, distribution of wealth and improvement in the quality of life.⁶²

After the market opened in 1998, Petrobras attempted to involve private parties in the exploration of marginal fields.⁶³ In 2000, Petrobras hired the company PetroReconcavo through a services agreement with risk clause for the operation of 12 mature fields.⁶⁴ In 2001, Petrobras promoted the first public bid for assignment of marginal fields, however the bid was not very successful with only two companies obtaining fields. The following year another public bid was announced, but it was later cancelled.⁶⁵

In 2003, ANP issued Ruling 279/2003 approving the procedure for the assignment of marginal fields.⁶⁶ The intention of ANP was to incentivize the development of technology and to promote employment. This ruling defined a marginal field as a field with production of (a) less than 500 barrels per day of oil, provided the most recent production forecast approved by ANP did not exceed such amount, or (b) less than 70,000 cubic meters per day (or 150,000 cubic meters per day in certain cases depending on the infrastructure).⁶⁷

Despite Petrobras’ and ANP’s efforts between 1998 and 2003 to encourage private parties to explore and develop the marginal fields, the significant exploration and development of marginal fields by private parties did not begin until 2005 when ANP held the first bid round for marginal fields. The first bid round for marginal fields took place contemporaneously with the seventh bid round for exploratory blocks. In the first bid round 153 companies expressed interest, 91 companies qualified to bid, and 53 companies submitted bids.⁶⁸ ANP offered 17 marginal fields, received offers for 16 marginal fields and awarded concessions for 14 marginal fields.⁶⁹ In the following year, ANP held the second bid round for marginal fields (“Second Marginal Round”). In the Second Marginal Round, 61 companies expressed interest, 55 companies qualified to bid, and 30 companies submitted bids.⁷⁰ ANP offered 14 marginal fields, received offers for 11 marginal fields and awarded concessions for 7 marginal fields.⁷¹ See Exhibit III which sets forth certain data on each the first and second bid rounds for marginal fields.

⁶¹ See BAKER & MCKENZIE, *supra* note 34, at 173.

⁶² FERREIRA, *supra* note 12.

⁶³ FERREIRA, *supra* note 12.

⁶⁴ FERREIRA, *supra* note 12.

⁶⁵ FERREIRA, *supra* note 12.

⁶⁶ Portaria ANP No. 279, de 31 de outubro de 2003 [ANP Ruling 279 of October 31, 2003], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE] (Braz.), available at <http://nxt.anp.gov.br/NXT/gateway.dll?f=templates&fn=default.htm&vid=anp:10.1048/enu> (last visited Mar. 7, 2011) [hereinafter Marginal Field Ruling].

⁶⁷ *Id.*

⁶⁸ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Marginal Fields – Results by Companies, http://www.brasil-rounds.gov.br/ingles_topo/RESUMO_geral_empresas_AM.asp (last visited Mar. 7, 2011) [hereinafter Marginal Fields – Results by Companies].

⁶⁹ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Marginal Fields – Results by Area, http://www.brasil-rounds.gov.br/ingles_topo/RESUMO_geral_areas_AM.asp (last visited Mar. 7, 2011) [hereinafter Marginal Fields – Results by Area].

⁷⁰ Marginal Fields – Results by Companies, *supra* note 68.

⁷¹ Marginal Fields – Results by Area, *supra* note 69.

In connection with the announcement of the Second Marginal Round, ANP reported that there were 157 onshore marginal fields, the majority of which were operated by Petrobras.⁷² Therefore, taking into consideration the 7 marginal fields that were awarded in the Second Marginal Round, over 100 marginal fields existed in 2006.

Since the Second Marginal Round in 2006, ANP has not held any additional bid rounds for marginal fields. Therefore, the only option for investors to acquire exploration and production rights in marginal fields is through an assignment of rights from Petrobras (or the existing concessionaire). Due to the recent significant pre-salt discoveries (*see Section X*), which will require immense human and financial resources, discussions regarding the possibility of Petrobras returning the marginal fields have recently resurged in the Brazilian oil and gas sector.

V. Concession Agreements

V.A. The Concession Regime

Pursuant to the Petroleum Law, Brazil adopted the concession model whereby the winning bidder on an offered block executes a concession agreement with ANP whereby the concessionaire agrees to take the risk of exploration, development and production in exchange for the right of exclusive exploration and development of the block awarded and ownership of the petroleum, natural gas, and other liquid hydrocarbons produced (net of all taxes, signing bonus, royalties, special participations, and payments for occupation or retention of the areas owed to ANP).⁷³ ANP enters into concession agreements with the winning bidders with respect to each block awarded and supervises the performance thereunder for the term of the concession agreement.⁷⁴

V.B. Obligations of Concessionaire

Pursuant to article 44 of the Petroleum Law, the concession agreement must provide that the concessionaire is obligated to (a) adopt all necessary measures to maintain the reserves and other natural resources, to ensure the safety of persons and equipment and to protect the environment; (b) notify ANP immediately of any discovery of any oil, natural gas or any other mineral deposit; (c) evaluate the discovery pursuant to guidelines provided by ANP, present a report on the commercial viability of the discovery and declare its interest in developing the field; (d) submit a development plan to ANP for the discovery deemed commercially viable, which shall include a time schedule and estimates of investments; (e) assume civil liability for any acts performed by agents of the concessionaire, indemnify ANP for any and all damages resulting from the exploration, development and production activities, and reimburse ANP or federal government for any expense it or they had to bear as a result of any claims arising from acts for which the concessionaire is liable; and (f) adopt the best practices of the international oil industry and to obey the rules and relevant scientific

⁷² Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: 2^ª Rodada de Campos Marginais da ANP: Introdução a Indústria de Campos Marginais de Petróleo e Gás Natural [National Agency of Petroleum, Natural Gas and Biofuels: 2nd Round of Marginal Fields of ANP], slide n. 9 (2006), available at http://www.anp.gov.br/brasil-rounds/round8/round2_AM/Apresentacoes_forum/apresentacao_newton.pdf (last visited Mar. 7, 2011) [hereinafter Marginal Round 2].

⁷³ Petroleum Law, *supra* note 13, art. 26.

⁷⁴ Gay-Ger, *supra* note 40, § 2.5.

and technical procedures, including as to the appropriate recovery techniques, aiming at the rationalization of production and control of reserves depletion.⁷⁵

V.C. Government Participations

Article 45 of the Petroleum Law states that the invitation for bid and each concession agreement shall set forth the various payments due to the government, which are referred to as “government participations.”⁷⁶ The categories of government participations are (a) signing bonus, (b) royalties, (c) special participations and (d) payment for occupation or retention of the area.⁷⁷

Signing Bonus. ANP must specify the minimum signing bonus in the invitation for bid, and the signing bonus offered in the winning concessionaire’s bid for concession shall be paid to ANP upon execution of the concession agreement.⁷⁸

Royalty. A royalty equal to 10% of production must be paid monthly in local currency to ANP beginning on the date of commencement of commercial production.⁷⁹ ANP has the discretion to reduce the royalty by up to 5% to take into account geological risks, production expectations and other relevant factors (such as production in remote areas, nonassociated gas, and heavy oil).⁸⁰

Special Participation. The invitation for bid may also provide for the payment of a special participation in the event of large volume of production or high profitability of oil and gas fields.⁸¹ The special participation is calculated net of royalties, exploration investments, operation costs, depreciation of goods and taxes.⁸² The special participation varies from 10% - 40% of the volume produced and is required to be paid on a quarterly basis.⁸³

Payment for Occupation or Retention. ANP must specify the payment for occupation or retention of the area in the invitation for bid, taking into account the geological characteristics, the location of the sedimentary basin in which the block is located, as well as other relevant factors.⁸⁴ The payment for occupation or retention of the area shall be paid annually for the duration of the exploration phase and the production phase, and shall be increased by ANP for the duration of any extension of the exploration phase.⁸⁵

Landowner Royalty. With respect to concession contracts for onshore blocks, the concessionaire shall pay a landowner royalty between 5% and 1%, which shall be determined in ANP’s discretion, beginning on the date of commencement of commercial production.⁸⁶ The concessionaire and the landowner must enter into a separate contract which shall provide

⁷⁵ Petroleum Law, *supra* note 13, art. 44.

⁷⁶ *Id.* art. 37 & 45.

⁷⁷ *Id.* art. 45.

⁷⁸ *Id.* art. 46.

⁷⁹ *Id.* art. 47.

⁸⁰ *Id.* art. 47.

⁸¹ *Id.* art. 50.

⁸² *Id.* art. 50.

⁸³ Decreto N° 2.705, de 3 de agosto de 1998 [Decree 2.705 of August 3, 1998], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE], art. 21 (Braz.), available at http://www.planalto.gov.br/ccivil_03/decreto/D2705.htm; Gay-Ger, *supra* note 40, § 6.8.

⁸⁴ Petroleum Law, *supra* note 13, art. 51; *Id.* art. 28.

⁸⁵ Petroleum Law, *supra* note 13, art. 51; Gay-Ger, *supra* note 40, § 4.4.

⁸⁶ Petroleum Law, *supra* note 13, art. 52.

for (a) the criteria for determining the value; (b) the payment conditions; or (c) penalties in the event of default of concessionaire or landowner.⁸⁷

V.D. Exploration Phase and Production Phase

Pursuant to Article 24 of the Petroleum Law, each concession agreement shall provide for an exploration phase and a production phase.⁸⁸ The exploration phase shall include evaluation activities of any discovery of oil or natural gas to determine commercial viability, and the production phase shall include development activities.⁸⁹

V.E. Concession Agreement Terms – Bid Round 10

The term of the concession agreements executed in connection with bid round 10 (the “Round 10 Concession Agreement”) was a maximum term of 34 years.⁹⁰ The term of the exploration phase ranged from 3 to 7 years, and was divided into two terms, the first of which was associated with the minimum exploratory program (“MEP”).⁹¹ The term of the production phase was set at 27 years.⁹² During the first term of the exploration phase, which ranged from 3 to 5 years for blocks auctioned in bid round 10, the winning concessionaire was obligated to complete the MEP as set forth in its bid for the concession.⁹³ The concessionaire was permitted to terminate the concession agreement during the exploration phase with no penalties provided the PEM is completed.⁹⁴ ANP has the right to extend the exploration phase to allow the concessionaire to evaluate discoveries made in the last year of the exploration phase, provided ANP approves the evaluation plan submitted by the concessionaire, and such extension applies only to the area covered by the evaluation plan.⁹⁵

The concessionaire must report any discovery of natural resources within the concession area to ANP in writing within 72 hours of the discovery.⁹⁶ Prior to the end of the exploration phase, the concessionaire may issue a declaration of commerciality (“Declaration”) for the discovery of a commercially viable field.⁹⁷ Within 180 days from the date of delivery of the Declaration, the concessionaire shall deliver a development plan to ANP.

Upon expiration of exploration phase, 100% of the area awarded must be released and returned to ANP, except for each field discovered and declared commercial for which ANP has approved a development plan.⁹⁸ The production phase (which includes the development

⁸⁷ Gay-Ger, *supra* note 40, § 7.4.

⁸⁸ Petroleum Law, *supra* note 13, art. 24.

⁸⁹ *Id.*

⁹⁰ Final Tender Protocol – Round 10, *supra* note 44, § 8.1.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* Table 2 & § 8.3.

⁹⁴ Federal Republic of Brazil Ministry of Mines and Energy, ANP Concession Agreement for the Exploration, Development and Production of Oil and Natural Gas, cl. 7.1 (2008), http://www.brasil-rounds.gov.br/arquivos/editais/Conc_agreement%20R10.pdf (last visited Mar. 7, 2011) [hereinafter Round 10 Concession Agreement]. See also Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gás and Biofuels], Concession Agreements and Tender Protocol: Models and Extracts, *available at* http://www.brasil-rounds.gov.br/ingles_topo/contratos_e_editais.asp (last visited Mar. 7, 2011) for links to concession agreements and tender protocols for all prior bid rounds. See also Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gás and Biofuels], Final Tender Protocol and Contract, *available at* <http://www.brasil-rounds.gov.br/ingles/edital.asp> (last visited Mar. 7, 2011) for links to the English versions of the Final Tender Protocol and the Concession Agreement for bid round 10.

⁹⁵ Final Tender Protocol – Round 10, *supra* note 44, § 8.3.

⁹⁶ Round 10 Concession Agreement, *supra* note 94, cl. 6.1.

⁹⁷ *Id.* cl. 7.1.

⁹⁸ Gay-Ger, *supra* note 40, § 3.6.

stage) is 27 years beginning from the date the concessionaire sends the Declaration to ANP for a specific oil and gas reservoir.⁹⁹ Therefore, independent production blocks will have different dates corresponding to the production phase.¹⁰⁰

No later than October 31 of each calendar year, the concessionaire shall deliver an annual production plan for each field to ANP, which shall be prepared in accordance with the development plan for the field, the applicable Brazilian legislation and the best practices of the oil industry.¹⁰¹ After the 15th of each month, the concessionaire is obliged for each production block to provide ANP with a bulletin giving the monthly production, specifying the volume of petroleum and/or natural gas produces in the previous month, the operating consumption, and the accrued production.¹⁰² In the same time frame the concessionaire must inform ANP as to the quantities of petroleum and/or natural gas sold and the price paid¹⁰³.

V.F. Concession Agreement Terms – Marginal Fields

The concession agreements executed in connection with marginal field bid rounds have similar conditions to the concession agreements of the other bid rounds. The primary differences are related to the provisions regarding reclamation of the fields.

The term of the concession agreements executed in connection with the Second Marginal Round (the “Marginal Concession Agreement”) is 17 years, with the possibility of extension. The term is divided into the evaluation phase and the production phase. The evaluation phase is 2 years¹⁰⁴ and the production phase is 15 years, with the possibility of extension.¹⁰⁵ The concessionaire is responsible for developing a minimum work program.¹⁰⁶

The conditions regarding the declaration of commerciality which triggers the beginning of the production phase and the disclosure obligations are almost the same as the Round 10 Concession Agreement.¹⁰⁷ The royalties for the Marginal Field Concession Agreement was set as 5% of production, being the concessionaire also responsible for paying a fixed occupation fee per area and 0.5% of the production to the owner of the property.¹⁰⁸

V.G. Local Content Requirements

The invitation for bid published by ANP specifies the maximum and minimum percentages of good and services required to be sourced from local suppliers (commonly referred to as the “local content”).¹⁰⁹ Each bidder is required to include in its bid the percentage of local content intended to be used during the exploration phase and the production phase, and 20% of the bidder’s overall score (as calculated by ANP pursuant to the terms of the invitation for

⁹⁹ Round 10 Concession Agreement, *supra* note 94, cl. 8.1.

¹⁰⁰ *Id.* cl. 8.1.

¹⁰¹ *Id.* cl. 10.2.

¹⁰² *Id.* cl. 11.3.

¹⁰³ Decreto No. 2705, de 3 de agosto de 1998 [Decree 2705 of August 3, 1998], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE] (Braz.), available at http://www.planalto.gov.br/ccivil_03/decreto/D2705.htm (last visited Mar. 2, 2011).

¹⁰⁴ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels], Concession Agreements of Second Bid Round of Marginal Fields, cl. 5.1 (2006), available at http://www.brasil-rounds.gov.br/portugues_topo/contratos_e_editais.asp (last visited Mar. 2, 2011) [hereinafter Marginal Field Concession Agreement].

¹⁰⁵ *Id.* cl. 8.1

¹⁰⁶ *Id.* cl. 5.3.

¹⁰⁷ *Id.* cl. 7.

¹⁰⁸ *Id.* Annex 3.

¹⁰⁹ Final Tender Protocol – Round 10, *supra* note 44, § 8.5.

bid) is attributable to the proposed local content.¹¹⁰ The local content proposed by the winning bidder is incorporated into the applicable concession agreement.¹¹¹ The percentages set forth in Table III below were published in the invitation for bid for bid round 10 (the “Round 10 Final Tender Protocol”).

Table III - Local Content Maximum and Minimum: Round 10 (onshore only)¹¹²

Block Location	Exploration Phase		Development Phase	
	Minimum %	Maximum %	Minimum %	Maximum %
Onshore	70%	80%	77%	85%

Historically, onshore blocks have a significantly higher requirement for local content as compared to deep water and shallow water blocks. Table IV below sets forth the average local content requirements for bid rounds 1-7, and 9.

Table IV: Average Local Content Requirements: Bid Rounds 1-7 and 9¹¹³

Bidding Rounds	Round 1	Round 2	Round 3	Round 4	Round 5	Round 6	Round 7	Round 9
	1999	2000	2001	2002	2003	2004	2005	2007
Local Content: Exploration Stage	25%	42%	28%	39%	79%	86%	74%	69%
Local Content: Development Stage	27%	48%	40%	54%	86%	89%	81%	77%

VI. Assignments of Concession Agreements

VI.A. Petroleum Law

Pursuant to article 29 of the Petroleum Law, a concessionaire is permitted to transfer a concession agreement, provided (a) the assignment is previously approved by ANP and (b) the transferee meets the technical, financial and legal qualification requirements applicable to the original concessionaire as set forth in the invitation for bid (often referred to as the “bid protocol” or “tender protocol”) corresponding to the bid round in which the original concessionaire was awarded the concession.¹¹⁴ Furthermore, transferors must also comply with the terms of the applicable concession agreement.

¹¹⁰ *Id.* §§ 4.5.2 & 8.5.

¹¹¹ *Id.* § 8.5.

¹¹² *Id.* Table 11.

¹¹³ Director Nelson Narciso Filho, *The Oil and Gas Industry in Brazil: The Role of the Regulator*, May 2009, at slide n. 18, available at http://ita.doc.gov/td/energy/The%20Oil%20and%20Gas%20Industry%20in%20Brazil_ANP.pdf (last visited Mar. 7, 2011).

¹¹⁴ Article 29 states that “a concessionaire may transfer the concession contract, preserving its object and conditions of contract, provided the new concessionaire meets the technical, economic and legal requirements established by the ANP, as provided in Art. 25...the transfer can occur only with the prior written consent of the ANP.” Petroleum Law, *supra* note 13, art. 29. Article 25 provides that “concessions to explore and produce oil and natural gas may only be granted to companies

Such transfers or assignments are primarily structured through (a) indirect investment in the form of a company acquisition that results in a change of control of the beneficiary holder of the concession or (b) direct investment in the form (i) an assignment of the concession agreement or (ii) a farm-in or farm-out arrangement within the consortium. There is currently no express ANP regulation that sets forth the process by which concessionaires can request assignment approval and submit documentation indicating the technical, financial and legal qualification of the transferee.

VI.B. Assignment Provisions in Concession Agreements

Clause 1.2.8 of the form Round 10 Concession Agreement defines an assignment as follows:

“Assignment means any sale, assignment, transfer or any other form of alienation by any means of all or part of the rights and obligations of the Concessionaire under this Agreement.”

The provisions regarding assignments of the Round 10 Concession Agreement are set forth in clause 28 of the Round 10 Concession Agreement.¹¹⁵ The amalgamation, spin-off and merger of a concessionaire¹¹⁶ are treated as an assignment for the purposes of the Round 10 Concession Agreement.¹¹⁷

In the event of a corporate reorganization in which the entity giving the performance guarantee is no longer an affiliate of the concessionaire, such reorganization is also to be treated as an assignment.¹¹⁸ Although a change of control is expressly included in the definition an “assignment,” the substitution of the performance guarantee by an entity that is not an affiliate of the concessionaire (which often times occurs in change of control transactions) is considered an assignment subject to ANP approval.¹¹⁹

The partial assignment of blocks resulting in the division of a block into two or more resulting blocks is only permitted during the exploration phase.¹²⁰ The concessionaire must adhere to specific geographic orientation requirements with respect to the division of blocks subject to a partial assignment, and ANP shall define a MEP for each new block that shall exceed the MEP for the original block.¹²¹ During the production phase, the partial assignment of blocks is expressly forbidden, except in case of an assignment necessary to implement a unitization agreement.¹²²

In many instances, the same transaction may involve the assignment of more than one block. In the event the blocks to be assigned were acquired by the original concessionaire in more than one bid round, the assignee must meet the technical, financial and legal qualification requirements with respect to each applicable bid round (as set forth in the applicable invitations for bid). The current position of ANP is that such assignees must submit a separate set of documentation for each block. Since the specific requirements for technical,

that meet the technical requirements, economic and legal requirements established by the ANP.” Petroleum Law, *supra* note 13, art. 25.

¹¹⁵ Round 10 Concession Agreement, *supra* note 94, cl. 28.

¹¹⁶ The definition of “Concessionaire” in the Concession Agreement includes the operating company and all other companies making up the consortium with which the operator is affiliated, if applicable. Round 10 Concession Agreement *supra* note 94, cl. 1.2.9

¹¹⁷ Round 10 Concession Agreement, *supra* note 94, cl. 28.2.

¹¹⁸ *Id.* cl. 28.12(f).

¹¹⁹ *Id.* cl. 28.12(f).

¹²⁰ *Id.* cl. 28.7 – 28.8.

¹²¹ *Id.* cl. 28.8.

¹²² *Id.* cl. 28.10.

financial and legal qualification differ from one round to the other, it is important to review the invitation for bid and the assignment provisions of the applicable concession agreement for each block to ensure the submission of proper documentation.

ANP is very rigorous in its analysis of the documents presented by assignees and they advise some practical measures to expedite the process. The most useful advice given to parties is the suggestion to schedule one or more meetings prior to the submission of documentation in order to clarify ANP's interpretation of which documents ANP will require to be submitted. It is advisable to meet with the technicians from the Exploration Department and the Bidding Promotion Department. In certain cases a formal consultation to the public attorney office is advisable. As detailed in Section VI.D., the Exploration Department and the Bidding Promotion Department are the first two departments to review and analyze the documentation, and they often request additional documentation. Normally, the review and analysis conducted by the Exploration Department and the Bidding Promotion Department is more time intensive than the reviews and analyses conducted by the other departments.

Although ANP does not provide a form petition to request assignment, the petition must be executed by the assignor, which is the concessionaire with the current title of the concession rights, clearly identify the request for the prior and express approval of ANP of the assignment, and include the necessary information and documentation from the assignee(s) (the "Approval Petition").¹²³

The majority of the documents to be presented are the ones mentioned in the applicable invitation for bid as requirements for the technical, financial and legal qualification. The documents required to be submitted for the technical, financial and legal qualification in bid round 10 are detailed in Section VI.F., and must be presented to ANP as if the assignee was taking part in the applicable bid process.

In addition to the documents required for the technical, financial and legal qualification listed in the applicable invitation for bid, certain other documents are required to be presented pursuant to the terms of the applicable concession agreement. For example, clause 28.12 of Round 10 Concession Agreement requires, *inter alia*, the following additional documentation: (a) a statement from the assignee accepting the terms and conditions of the concession agreement; (b) a consortium agreement (if applicable) executed among the assignor and the assignees, or among the assignees in case assignor transfers all its rights; (c) a performance guarantee from an affiliate of the assignee; (d) guarantees for the deactivation and abandonment in the event the existing fund created by the assignor for the deactivation and abandonment will not be transferred by assignor to assignee; and (e) in the event the assignment results in the division of blocks, the concessionaire shall present the plans, programs and reports as per the concession agreement, related to each area.¹²⁴

All documents submitted to ANP must be notarized; and in the event a document is signed or originates in a country other than Brazil such document is required to be notarized in the country of origin, consularized at a Brazilian consulate, and translated into Portuguese by an official translator.¹²⁵

As described in Section VI.F., each bidder can be qualified as a non-operator or as an operator in one or more of the following operator categories: (a) ultra-deep and deep waters,

¹²³ *Id.* cl. 28.12.

¹²⁴ *Id.* cl. 28.12.

¹²⁵ Final Tender Protocol – Round 10, *supra* note 44, § 3.3.2.

(b) shallow waters and (c) onshore. In the event the assignee or an affiliate of the assignee is already qualified by ANP in the same category as the assignor, or for a more restrictive category, the assignor is not required to present the documents for technical, financial and legal qualification provided such information is updated.¹²⁶

The transaction documents such as share purchase agreements and joint operating agreements do not need to be presented to ANP, but it is important that transaction documents state that the assignment is not effective until ANP approval is received. The legal or in fact assignment of a concession agreement without ANP approval is considered to be null and void, and is subject to the penalties as mentioned in the concession agreement and the law.¹²⁷

VI.C. Timing¹²⁸

The timing regarding the assignment process approval may be set forth in the applicable concession agreement. For example, pursuant to clause 28.15 of the Round 10 Concession Agreement, ANP has 90 days from the date the assignor presents the petition for assignment approval along with all required documentation to (a) approve the assignment, (b) deny approval of the assignment, or (c) request additional documentation.¹²⁹ In the event ANP requests additional information, the assignee has 30 days to present the requested documents and ANP has another 90 days from the date of receipt of the additional documentation to (a) approve the assignment, (b) deny approval of the assignment, or (c) request additional documentation.¹³⁰

Due to the lack of specific regulation, it is not unusual for ANP to request additional documents, thus extending the approval process past 90 days. Parties should plan for the approval process to take an average of 3 to 9 months, and in some cases up to a year in the event the parties delay in providing requested information and documentation.

The parties must also take into consideration the time it will take to gather, prepare, notarize, legalize, mail and translate the documents. In certain jurisdictions this process may take considerable time. In addition, it is important to make sure that the parties comply with the 30-day period for presenting additional documentation requested by ANP.

VI.D. ANP Approval Process

The Approval Petition is reviewed and analyzed by various departments within ANP, with each department evaluating the Approval Petition from a different perspective. If the applicable concession agreement is (a) in the exploration phase, the petition for assignment approval should be directed to the Exploration Department or (b) in the production phase, the petition for assignment should be directed to the Development and Production Department.¹³¹ The Exploration Department or the Development and Production Department is the first department to analyze the documentation, and will (a) formulate a procedure for the internal

¹²⁶ Round 10 Concession Agreement, *supra* note 94, cl. 28.13.

¹²⁷ *Id.* cl. 28.14.

¹²⁸ Josie Quintella & Luciana Braga, O Procedimento de Cessão de Direitos [The Process of Assignment of Rights], (Oct. 2008), http://www.brasil-rounds.gov.br/arquivos/seminarios/SJF_Cessao_de_Direitos.pdf (last visited Mar. 7, 2011).

¹²⁹ Round 10 Concession Agreement, *supra* note 94, cl. 28.15.

¹³⁰ *Id.* cl. 28.15.

¹³¹ Quintella & Braga, *supra* note 128, slide n. 6.

review of the petition, (b) analyze and review the technical, financial and legal documentation submitted and (c) may request additional documentation.¹³²

After the Approval Petition is analyzed by the Exploration Department or the Development and Production Department, the Approval Petition is then forwarded to the Bidding Promotion Department.¹³³ The Bidding Promotion Department (a) analyzes and reviews the documentation submitted by the assignee regarding its technical, financial and legal qualification under the terms of the respective invitation for bid, (b) issues an opinion regarding the applicants technical qualification, and (c) may request additional documents.¹³⁴ After the assignee is deemed qualified by the Bidding Promotion Department, the Approval Petition is returned to the Exploration Department or to the Development and Production Department (i.e., the department where the Approval Petition was originally directed).¹³⁵

At this stage the Exploration Department or the Development and Production Department performs a second review and then forwards the Approval Petition to the Valuation Committee of Partnership Proposals, which verifies that the assignor has met the existing obligations under the applicable concession agreement.¹³⁶ Once the Valuation Committee of Partnership Proposals verifies that the assignor has met the existing obligations under the applicable concession agreement, the Approval Petition is then forwarded to the ANP Public Attorney Office, which is responsible for issuing a legal opinion either in favor of, or against the Approval Petition.¹³⁷ Finally, the Approval Petition is sent to the Board of Directors of ANP, which analyzes the legal and technical opinion, and approves or rejects the assignment through a Resolution of the Board.¹³⁸

Clause 28.16 of the Round 10 Concession Agreement states that once the Board of Directors of ANP formally approves an assignment approval request, the assignment shall become effective on the date the assignment approval request was received by ANP, provided ANP did not thereafter request additional documentation.¹³⁹ In the event ANP requested additional documentation, the assignment shall be effective from the date of the receipt of the last requested document.¹⁴⁰

VI.E. Assignment by Change of Control with Substitution of Performance Guarantee – Practitioner’s Experience

Although the Petroleum Law does not expressly address transfers or assignments of concession agreements in connection with changes of control, clause 28.12(f) of the Round 10 Concession Agreement states that any event causing the entity providing the performance guarantee to cease being an affiliate of the concessionaire constitutes an assignment subject to the prior consent of ANP.¹⁴¹ In many instances, the entity providing the performance guarantee is the parent company of the concessionaire. As a result, in many change of control transactions, the entity providing the performance guarantee will cease to

¹³² *Id.* slide n. 10.

¹³³ *Id.* slide n. 6.

¹³⁴ *Id.* slide n. 12.

¹³⁵ *Id.* slide n. 6.

¹³⁶ *Id.* slide n. 17.

¹³⁷ *Id.* slide n. 18.

¹³⁸ *Id.* slide n. 19.

¹³⁹ Round 10 Concession Agreement, *supra* note 94, cl. 28.16.

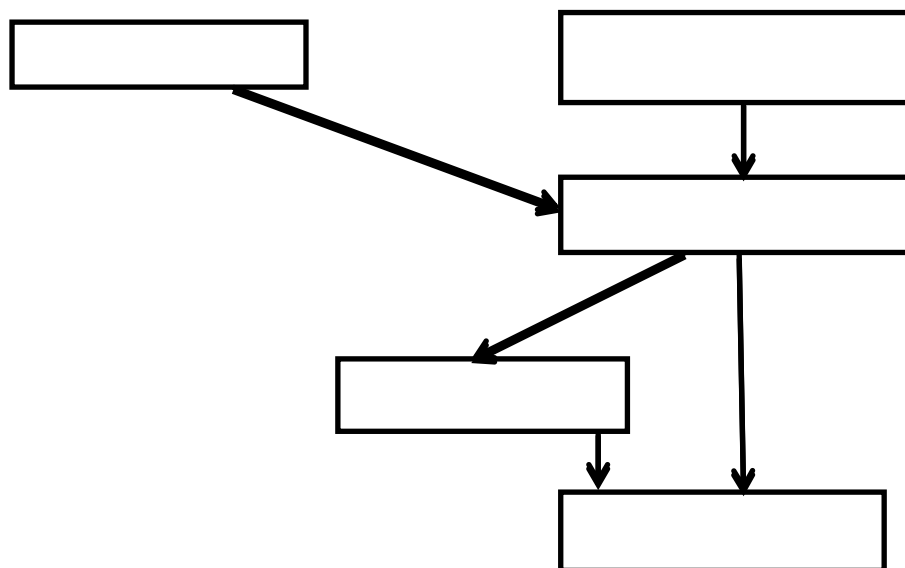
¹⁴⁰ *Id.* cl. 28.16.

¹⁴¹ *Id.* cl. 28.12(f).

be an affiliate of the concessionaire after the close of the transaction, and therefore, the change of control transaction will be treated as an assignment requiring ANP approval.

The initial challenge in change of control transactions with a substitution of the entity providing the performance guarantee (“Covered Transactions”) is determining which entity in the buyer’s chain of ownership will be able to meet the technical, financial and legal qualification requirements. Although the concessionaire is required to be incorporated in Brazil, with headquarters in Brazil,¹⁴² there is no restriction on the nationality of the ultimate beneficial owners, and therefore, many concessionaires are beneficially owned by foreign entities. In such instances, the change of control may occur at an ownership level that is multiple levels above the Brazilian operating company (i.e., the concessionaire), and the ultimate beneficial owner might be a foreign holding company formed exclusively to acquire the equity interests in the concessionaire which would not be able to meet the technical, financial and legal qualification requirements.

Parties in Covered Transactions are often frustrated and surprised by the requirement that the entity providing the new performance guarantee meet the technical, financial and legal qualifications because in many instances, after the close of the proposed transaction, the original concessionaire will remain as (a) the operator of the block, (b) the owner of the operating equipment and facilities, and (c) the employer of many, if not all, of the same professionals. For example, in the diagram below, Buyer will purchase the equity interests of Company A from Seller. After the close of the transaction, the identity of Concessionaire will remain unchanged (except for a likely change in the name to reflect Buyer’s group affiliation), but since Seller provided the performance guarantee (and Seller will no longer be an affiliate of Concessionaire after the closing), the Buyer (or an affiliate of Buyer providing the performance guarantee) must meet the technical, financial and legal qualification requirements as if it were participating in the original bid round in which Concessionaire acquired the concession. Many buyers in Covered Transactions would prefer to (a) use the information of the concessionaire to comply with all requirements of its qualification, or (b) qualify as a non-operator because current operator remains the same.



¹⁴² Petroleum Law, *supra* note 13, art. 5. See BAKER & MCKENZIE, *supra* note 34, at 170.

Until a specific regulation is issued by ANP addressing Covered Transactions, the conservative approach would be to (a) disregard the possibility that the concessionaire will be permitted to submit the documentation for the technical, financial and legal qualification, and (b) assume that another entity in buyer's chain of beneficial ownership (and potentially the ultimate beneficial owner) will be required to submit such documentation in order to be qualified by ANP to present the performance guarantee.

In structuring any change of control transaction, it is important to (a) be familiar with current ANP interpretations and rulings regarding assignments and changes of control, (b) review the list documentation required for the technical, legal and financial qualification for each applicable bid round, (c) consider including an existing operating company in the buyer's chain of ownership, and (d) meet with ANP to determine a course of action with respect to the assignment approval process and qualification.

VI.F. Qualification – Bid Round 10 Participants

Pursuant to article 37 of the Petroleum Law, ANP must set forth the conditions for the technical, financial and legal qualification of the bid participants in the invitation for bid, and therefore the qualification requirements can differ depending on the bid round.¹⁴³ For example, in the event a bid round 10 winning concessionaire desired to transfer one or more of its concession agreement (whether by direct or through a Covered Transaction), the assignee (or, in the case of a Covered Transaction, the entity providing the performance guarantee) would be required to qualify with ANP in the same manner as the assignor was required to qualify in order to bid on the concession in the applicable ANP bid round.

Although qualification requirements can differ depending on round, in the most recent invitations for bid, the qualification requirements have remained substantially similar. Below is a detailed description of the technical, financial and legal qualification requirements set forth in the invitation for bid corresponding to bid round 10 (the "Round 10 Final Tender Protocol") that took place in 2008.

Nearly all documentation was required to relate to the ultimate parent company; provided however, the ultimate parent company could have chosen to designate an affiliate to sign the concession agreement, in the event of bidding success.¹⁴⁴ All documents were required to be notarized. If a document was signed or originated in a country other than Brazil such document was required to be notarized in the country of origin, consularized at a Brazilian consulate, and translated into Portuguese by an official translator.¹⁴⁵ ANP suggested that all information be concise, clear and objective, and responsive to the request.¹⁴⁶ In addition, ANP reserved the right to request such additional information as it deems necessary.¹⁴⁷ See Exhibit IV which indicates each document which was required to be notarized, consularized, and translated.¹⁴⁸

¹⁴³ *Id.* art. 37.

¹⁴⁴ Final Tender Protocol – Round 10, *supra* note 44, § 3.2.

¹⁴⁵ *Id.* § 3.3.2.

¹⁴⁶ *Id.* § 3.4.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* § 3.8.

Expression of Interest

As the initial step in the bid round 10 qualification process, each interested company was required to submit an expression of interest in the round, which was required to include the power of attorney, the expression of interest cover letter, the confidentiality agreement and the bylaws or articles of incorporation of the company participating in the bid round (a “Participating Company”) (each as further described below).¹⁴⁹

Appointment of Accredited Representative. Each Participating Company was required to appoint one or more Accredited Representative(s) to represent the Participating Company before ANP, and to whom any and all correspondence related to the bid round was to be sent.¹⁵⁰ If a Participating Company authorized more than one representative, the Participating Company was required to indicate one main representative among them, preferably one with an office in Brazil, in order to receive all the official communications of ANP.¹⁵¹

The Accredited Representative(s) was to be appointed by Power of Attorney signed by the Participating Company’s legal representative in the form attached hereto as Exhibit V, which is the form of power of attorney attached to the Round 10 Final Tender Protocol. ANP advised that the Authorized Representative(s) was an employee who knew how to deal with the legal, financial and technical aspects of the Participating Company, and was available during the entire bidding process, in order to ensure that requests and information sent by ANP were addressed to the relevant sectors of the Participating Company and were solved and answered as soon as possible.¹⁵² In the event the contact information for the Accredited Representative(s) was modified, the Participating Company was required to notify ANP no later than 15 days after the modification.¹⁵³

Expression of Interest Cover Letter. The Participating Company was required to submit a cover letter accompanying its expression of interest signed and notarized by an Accredited Representatives of the Participating Company.¹⁵⁴ The cover letter was required to contain (a) a certificate of truthfulness, accuracy and completeness of the submitted information; (b) the name of the Participating Company and any persons holding more than 20% of the voting capital; (c) the name(s), title(s), address(es), telephone number(s), fax number(s) and e-mail address(es) of the Accredited Representative(s); (d) an expression of interest regarding which category the Participating Company wished to participate (A, B, C operator or non-operator); and (e) a declaration stating that the Participating Company was aware of the set of Brazilian laws that prohibit and punish courses of action that damage competition and the objectives of the bidding round, and that the Participating Company expressly commits not to perform such courses of action aforementioned.¹⁵⁵

Confidentiality Agreement. The Participating Company was required to enter into a confidentiality agreement, through its Accredited Representative, in the form attached hereto

¹⁴⁹ Pursuant to the Round 10 Final Tender Protocol, a Participating Company that had submitted the expression of interest, containing all required documentation and information, was permitted to pay the participation fee before submitting the required documentation and information relating to the technical, legal, and financial qualification and, therefore, have access to the information and data package. However, the participation fee was nonrefundable, even in the event the participating company later withdrew from the bidding process, or failed to qualify or to receive the preferred operator category. Final Tender Protocol – Round 10, *supra* note 44, § 3.3.

¹⁵⁰ Final Tender Protocol – Round 10, *supra* note 44, § 3.3.1.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* § 3.3.2.

¹⁵⁵ *Id.*

as Exhibit VI, which is the form of confidentiality agreement attached to the Round 10 Final Tender Protocol.¹⁵⁶

By-laws or Articles of Incorporation. The Participating Company was required to submit a notarized copy of its by-laws and articles of association, with the respective amendments, duly registered in the competent Board of Trade or equivalent, as applicable.¹⁵⁷

Technical Qualification

The technical qualification of the Participating Companies for bid round 10 was based on their respective demonstrated experience in the oil and gas exploration and production activities.¹⁵⁸ The companies were permitted to request technical qualification as a non-operator or as an operator.¹⁵⁹

Qualification as Non-Operator. Any Participating Company desiring to be qualified as a non-operator was required to submit a written overview, signed by the Accredited Representative, of its primary activities, as well as its relationship to the main office or parent company, when applicable.¹⁶⁰ The Participating Companies that qualified as non-operators were only permitted to participate in the applicable bid round in a consortium that had a qualified company to operate the desired block.¹⁶¹

Qualification as Operator. The Participating Companies qualified as operators were classified in three categories: “A” operator – qualified to operate in blocks located in deep waters, ultra-deep waters, shallow waters and onshore, “B” operator – qualified to operate in blocks located in shallow waters and onshore, and “C” operator – qualified to operate in blocks located onshore, except for the blocks located in Amazonas Basin.¹⁶² Only Participating Companies qualified as operators were permitted to submit an individual bid.¹⁶³

Each Participating Company requesting to be qualified as an operator was required to submit a written technical summary signed by the Accredited Representative, which was to include all information regarding the Participating Company’s technical capability (e.g., areas of current exploration and/or production, capital investments grouped by exploration and production, and production volume for the last 5 years).¹⁶⁴ The technical qualification of operators was based on the technical expertise and experience of the group controlling the Participating Company.¹⁶⁵

With respect to Participating Companies with previous operational experience in Brazil or a foreign county, the following criteria was used to evaluate and score the Participating Companies for the purpose of determining the qualification of Participating Companies as “A”, “B” or “C” operators: (a) level of oil equivalent production, (b) onshore exploration and production operations, (c) offshore exploration and production operations, (d) exploration and production operations in deep and ultra-deep waters, (e) exploration and production

¹⁵⁶ *Id.* § 3.3.3.

¹⁵⁷ *Id.* § 3.3.4.

¹⁵⁸ *Id.* § 3.4.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* § 3.4.1.

¹⁶¹ *Id.*

¹⁶² *Id.* § 3.4.2.

¹⁶³ *Id.*

¹⁶⁴ *Id.* § 3.4.2.1.

¹⁶⁵ *Id.*

operations in adverse environments, (f) time of experience in operations and (g) ability to obtain environmental permitting.¹⁶⁶

Participating Companies without previous operational experience in Brazil or a foreign county, were required to provide detailed *curriculum vitae* of the employees of the Participating Company with relevant experience in the activities of exploration and production in Brazil or in foreign countries, detailing the nature of the employees' relationship with the Participating Company and the responsibility of each one in the future operation of the desired block.¹⁶⁷ In order to determine the qualification of such Participating Companies as "B" or "C" operators, the operational experience of the Participating Company's technical staff was evaluated and scored based on the number of years of experience of the technical staff in the areas exploration, drilling, reservoir evaluation and production.¹⁶⁸

The Round 10 Final Tender Protocol set forth a point system, which was used by the Comissão Especial de Licitação (Special Licensing Committee) for the purpose of categorizing each Participating Company as an "A", "B" or "C" operator.¹⁶⁹ In addition, the final qualification of the Participating Company as an "A", "B" or "C" operator was subject to the amount of minimum net equity of the Participating Company which information was required to be submitted for the financial qualification of the Participating Company.¹⁷⁰

Financial Qualification

Disclosure Documents. The Participating Companies for bid round 10 were required to submit the following financial information that was used by ANP to determine the financial qualification of the Participating Companies: (a) administrative report with respect to the last three years, (b) consolidated financial statements with respect to the last three years (including balance sheet, income statement, sources of revenue, application of funds statement, statement of change in net worth position (or accrued profit and loss statement, as applicable) and explanatory notes) with respect to the last three years, (c) independent accountant opinion with respect to the last three years, (d) bank reference letter prepared by a financial institution, indicating the record of, and confirming the good relationship between the Participating Company and the bank, or a credit line or credit contracts, (e) description of any material contingent liabilities constituted by relevant and identifiable obligations not reflected on the Participating Company's balance sheet which may influence the future activities of the Participating Company Detailed medium-term planning, (f) details of medium-term planning, if expected to materially alter the financial status of the Participating Company and (g) all additional information requested by ANP in order to support the Participating Companies' financial strength.¹⁷¹

Guarantees. The winning Participating Companies were required to provide the financial and performance guarantees described in the Round 10 Final Tender Protocol. See the form of performance guarantee attached hereto as Exhibit VII, which is the form of performance guarantee attached to the Round 10 Final Tender Protocol.¹⁷²

¹⁶⁶ *Id.* § 3.4.2.2.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* § 3.4.2.3.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* § 3.5.

¹⁷² *Id.* § 3.5.5.

Minimum Equity. The minimum net equity required for a Participating Company to be financially and technically qualified as a non-operator or as “A”, “B”, or “C” operator is shown in Table V below.

Table V: Minimum Net Equity for Financial and Technical Qualification

Qualification of the Participating Company	Minimum Net Equity Required ¹⁷³
“A” operator	R\$50,000,000 or over US\$30,120,000 or over
“B” operator	R\$20,000,000 or over US\$12,048,000 or over
“C” operator	R\$2,000,000 or over US\$1,204,800 or over
Non-Operator	R\$1,000,000 or over US\$602,400 or over

Legal Qualification

All Participating Companies were required to be legally qualified by ANP in order to participate in the bid process.

Domestic Participating Companies. Domestic Participating Companies were required to provide the following documentation for legal qualification: (a) legal opinion or organizational chart detailing the existing chain of corporate control between the main office, the parent company and the Participating Company, (b) written disclosure of all relevant legal or judicial claims including those which may have led to the insolvency, judicial reorganization or bankruptcy or any other event that could have affected the Participating Company’s good financial standing, (c) the documents and information required to be submitted in connection with the expression of interest and (d) confirmation that the Participating Company’s corporate purpose included oil and natural gas exploration and production activities.¹⁷⁴

Foreign Participating Companies. Along with the documents required to be submitted by the domestic Participating Companies, foreign Participating Companies were required to submit evidence that the Participating Company was legally constituted and in good standing, according to the laws of its home country.¹⁷⁵ In the event the foreign Participating Company won one or more concession bids, the winning Participating Company would have been required to form a Brazilian company, with its main office and administration in Brazil, or appoint a Brazilian company to provide the financial and performance guarantee.¹⁷⁶

VII. Assignment of Risk Agreements and Services Contracts

Although the oil and gas exploration and production market was opened for the participation of private parties in the late 1990’s, many years before private parties started developing such

¹⁷³ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

¹⁷⁴ Final Tender Protocol – Round 10, *supra* note 44, § 3.6.1.

¹⁷⁵ *Id.* § 3.6.2.

¹⁷⁶ *Id.*

activities through services contracts or service contracts with risk clause (“Risk Agreements”) executed with Petrobras. Services agreements with fixed remuneration had been executed by Petrobras since the beginning of its operation in 1953, but it was only after October 9th, 1975 that the federal government authorized Petrobras to grant Risk Agreements to private parties.¹⁷⁷

From 1975 to 1988, Petrobras executed 243 risk agreements with 42 different companies.¹⁷⁸ The private parties rendering the services had certain obligations regarding the exploration activities and took the risk of such activities. However, in the event of a commercially viable discovery, the private party had the right to be reimbursed for exploration and development costs, as well as the right to receive remuneration for the services rendered using a formula based on the volume produced.¹⁷⁹ In certain cases, Petrobras and a private party executed a Risk Agreement for the exploration and development phase, and a services agreement for the production phase. In such cases, the services agreement for the production phase had a fixed remuneration not related to the level of production.

The Risk Agreements are not considered concession agreements regulated by ANP and there is no regulation that requires the prior approval of ANP for a direct assignment or change of control. Therefore, the assignment of Risk Agreements is considered an assignment of a private contract, subject to its terms and applicable legislation. The standard Risk Agreement restricts the assignment of the contract without Petrobras prior approval, however the language does not expressly reference a change of control. Although a change of control is not expressly referenced, a change of control can be a controversial issue, and it is advisable to notify Petrobras and, if possible, obtain its prior approval of the transaction.

VIII. Brazilian Antitrust Approval

Brazilian antitrust law requires mandatory filings in cases of acts or agreements: (a) which result in the control of a market share, by the involved companies or their respective economics groups, equal or in excess of twenty per cent (20%); or (b) in which any of the entities involved in the transaction or the respective “group of companies” to which they belong (including the resulting entity) had gross revenues, during the preceding fiscal year, equal to or in excess of R\$400 million (approximately US\$241 million¹⁸⁰) in Brazil.¹⁸¹

The filing shall be made with the Secretary of Economic Law, which is responsible to inform the other bodies of the Brazilian System of Competition Defense. The final decision approving or disapproving the proposed transaction shall be made by the Administrative Council of Economic Defense (“CADE”).¹⁸²

The involved parties in the transaction must make the required filing either prior to the closing, or within 15 business days after the closing. It is important to note that the execution

¹⁷⁷ GETÚLIO CARVALHO, PETROBRAS: DO MONOPÓLIO AOS CONTRATOS DE RISCO [PETROBRAS: FROM THE MONOPOLY TO THE RISK AGREEMENTS] 215 (1976) (Braz.).

¹⁷⁸ FABIO BRANDÃO, THE PETROBRAS MONOPOLY AND THE REGULATION OF OIL PRICES IN BRAZIL 54 (1998).

¹⁷⁹ RAYMUNDO NONATO BOTELHO DE NORONHA, FORMAL OPINION CONSULTANT OF THE REPUBLIC ADOPTED BY THE GENERAL ATTORNEY OF THE REPUBLIC, DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE] (January 6, 1988) (Braz.).

¹⁸⁰ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

¹⁸¹ Lei No. 8884, de 11 de junho de 1994 [Law 8884 of Jun.11, 1994], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE], art. 54 (Braz.), available at <http://www.planalto.gov.br/ccivil/leis/L8884.htm> (last visited Mar 3, 2011) [hereinafter Antitrust Law].

¹⁸² *Id.*

of the first binding document between the parties, in Brazil or abroad, triggers the countdown of the 15 business day period mentioned above.¹⁸³

After the filing is made, it usually takes 6-9 months for CADE to issue its final decision approving or disapproving the transaction. In the event CADE adopts a summary proceeding, the timing could significantly be reduced to 2-3 months.

It is important to note that Brazilian antitrust law does not provide any filing exemptions, therefore, any acts or agreements restrain open competition as described in the first paragraph of this Section VIII, notwithstanding the format of the transaction (be it the acquisition of shares, the execution of an agreement or the assignment of a concession agreement) shall be submitted to the Secretary of Economic Law.

The antitrust filing must include certain information and documents listed in the exhibit to CADE Resolution 15/98.¹⁸⁴ The translation of such information is attached hereto as Exhibit VIII. The prior approval of CADE is not required for the closing of a transaction described in the first paragraph of this Section VIII, and it is standard practice for parties to close such transactions without CADE approval. In the event the parties believe CADE would not approve the transaction, the conservative approach would be to include CADE approval as a condition to closing.

IX. Recommended Provisions in Purchase Agreement

The most important provision to include in a purchase agreement relating to an onshore private to private transaction in Brazil is a provision requiring the prior approval of ANP (or Petrobras in case of Risk Agreements) as a condition precedent to closing. The transaction documents must be clear that no assignment will be effective without the prior approval of ANP. It is also important that the parties do not use language to characterize an in-fact assignment. Provisions limiting the activities of the selling concessionaire, or requiring the prior approval of the buyer for certain operational decisions, during the time between execution (or the effective date) of the purchase agreement and the closing, should be avoided.

Another important matter to consider in structuring the transaction is whether the buyer will be able to meet the technical, financial and legal qualifications. It is advisable to include a representation that buyer (or an affiliate of the buyer in the case of a Covered Transaction) meets, or will meet, the technical, financial and legal qualification requirements of ANP. Properly structuring the vehicles for the acquisition is extremely important in order to avoid high transaction costs and to expedite the ANP approval process.

The parties should include a “best efforts” covenant requiring the parties to use their best efforts to provide documents and information to ANP in a timely manner. The parties should consider assessing penalties for failure to present documents and information to ANP in a timely manner, such as indemnification of the non-defaulting party’s losses, or, in the case of a default by the buyer, forfeiture of its deposit (if applicable).

¹⁸³ *Id.*

¹⁸⁴ Resolução CADE No. 15, de 19 de agosto de 1998 [CADE Ruling 15 of August 19, 1998], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE] (Braz.), available at <http://www.cade.gov.br/upload/Resolu%C3%A7%C3%A3o%20n%C2%BA%2015.%20de%2019%20de%20agosto%20de%201998.pdf> (last visited Feb 22, 2011) [hereinafter CADE Ruling].

The parties should also set triggers to termination rights with the expectation that the ANP approval process could take 3 to 9 months, and in some cases up to a year in the event the parties delay in providing requested information and documentation. The language should expressly restrict the parties from using the ANP approval process as a way out of the transaction.

X. Pre-Salt New Legal Framework (the “Production Sharing Regime”)

In November 2007, Petrobras reported the discovery of the Tupi field, an offshore field located approximately 175 miles off the coast of Rio de Janeiro in the Santos Basin.¹⁸⁵ The discovery of the Tupi field was the largest discovery in the world since 2000, and marked the largest find in the Western Hemisphere since 1976.¹⁸⁶ The Tupi field contains high quality oil reserves in deep pre-salt sediments and is estimated to contain 5-8 billion barrels. In 2007 and 2008, Petrobras reported the discovery of three additional pre-salt fields in 2007 and 2008, which ranked as the top finds worldwide in those years.¹⁸⁷ ANP estimates Brazil’s pre-salt reserve potential at 80 billion barrels of oil.¹⁸⁸

As a result of the pre-salt findings and the expected high levels of production, the government of Brazil has recently passed three new laws approving a new production sharing model for the exploration and production of pre-salt blocks and other strategic areas.¹⁸⁹ Under the production sharing regime, the contractor carries out the exploratory activities at its own risk, and in the event of a commercial discovery, the contractor is reimbursed for the exploration costs from the proceeds of production.¹⁹⁰ The proceeds from production remaining after the contractor recovers its expenses are shared between the contractor and the federal government.¹⁹¹ Except for the royalties designated to states and municipalities, which are still under discussion in the Brazilian Congress, the proceeds received by the federal government from production will be used by contributed to a federal social fund with the purpose of serving as a regular source for financing the development of certain areas in the society.¹⁹²

Law No. 12351/2010 (the “Production Sharing Law”) grants Petrobras a dominant role in the exploration of the pre-salt areas. Pursuant to the Production Sharing Law, Petrobras will be the sole operator of all pre-salt blocks, will have a minimum interest of thirty percent in each block, and will be restricted from assigning its operatorship as well as the minimum interest.¹⁹³ In addition, under Law No. 12276/2010 (the “Assignment Law”), the federal government is authorized to grant block exploration rights with respect to certain pre-salt blocks to Petrobras without public bid.¹⁹⁴ Pursuant to the Assignment Law, the federal government can assign to Petrobras the research and extraction activities of oil, gas and other

¹⁸⁵ Peggy Williams, *A Brand-New Brazil*, OIL AND GAS INVESTOR, Feb. 2010, at 40, 42.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 43.

¹⁸⁹ Marilda Rosado & Ilana Zeitoune, *New Trends in the Oil and Gas Industry in Brazil*, VERAMOREIRA COMUNICAÇÃO, Feb. 27, 2011, available at <http://veramoreiracomunicacao.wordpress.com/2011/02/07/new-trends-in-the-oil-and-gas-industry-in-brazil/> (last visited Mar. 7, 2011).

¹⁹⁰ Lei No. 12.351, de 22 de dezembro de 2010 [Law 12,351 of December 22, 2010], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE], art. 2 & 6 (Braz.), available at https://planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12351.htm (last visited Mar. 7, 2011) [hereinafter Production Sharing Law].

¹⁹¹ *Id.* art. 2.

¹⁹² *Id.* art. 46 to 60.

¹⁹³ *Id.* art. 2 and 10.

¹⁹⁴ Lei No. 12.276, de 30 de junho de 2010 [Law 12,276 of June 30, 2010], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE], art. 1 (Braz.), available at http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12276.htm (last visited Mar. 7, 2011) [hereinafter Assignment Law].

hydrocarbons with respect to certain pre-salt areas not previously granted to third parties, dismissing the requirement of public bidding, subject to a payment which may be made through government bonds.¹⁹⁵ In these instances, Petrobras will assume total risk of the exploitation activities and will have the ownership of the volumes of oil and gas produced up to five billion barrels oil equivalent.¹⁹⁶

The last piece of regulation of the new regime was Law No. 12304/10 (“PPSA Law”), which authorized the executive branch to create the Empresa Brasileira de Administração de Petróleo e Gás Natural S.A. - Pré-Sal Petróleo S.A.¹⁹⁷ This new state-owned company will be owned 100% owned by the federal government and will (a) be responsible for managing the production sharing agreement on behalf of the federal and (b) represent the federal government’s interest on operating committees for each block where the federal government will be permitted to elect 50% of the members and hold a tie-breaking vote.¹⁹⁸

The new product sharing regime gives the federal government and Petrobras a controlling role in the exploration and production activities in the pre-salt areas. Amidst criticism that the new product sharing regime will cripple competition and deter foreign investment, the federal government maintains that a new model for the pre-salt areas was necessary because the concession regime was originally designed for areas where exploration risk was very high, and the pre-salt areas present less risk for exploration (than the onshore areas) and more certainty of reaching commercial production.¹⁹⁹ It is anticipated that the current concession regime will continue to apply to the existing concession agreements and to future concessions of areas not considered strategic. The expectation is that most of the onshore blocks to be selected for future bid rounds will follow the concession regime.

XI. Expectations of Petrobras Divestment and Investment Opportunities

Due to (a) the recent pre-salt discoveries, (b) the expected potential of the pre-salt areas, and (c) the federal government’s grant of special rights to Petrobras with respect to the pre-salt areas, the expectation of the market is that Petrobras will focus its activities in the pre-salt areas. The complexity of exploration Peroin ultra-deep water, the distance from the coast, the characteristics of the pre-salt layer and the corrosive environment will demand huge financial and human resource investment by Petrobras. However, it is still uncertain whether Petrobras will return the onshore fields (including marginal fields) and give smaller and medium size players the opportunity to take part in the exploration and development of the onshore fields.

The original language of the Assignment Law permitted Petrobras to pay for the assignment of certain pre salt areas using its marginal fields, which would have incentivized Petrobras to return marginal fields. However, although the provision was ultimately vetoed by the President, and Petrobras did not return such areas, there is an expectation that the federal government may pass a similar law in the near future encouraging Petrobras to return marginal blocks to ANP.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Lei No. 12.304, de 2 de agosto de 2010 [Law 12,304 of August 2, 2010], DIÁRIO OFICIAL DA UNIÃO [FEDERAL OFFICIAL GAZETTE], art. 1 (Braz.), available at http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12304.htm (last visited Mar. 7, 2011) [hereinafter PPSA Law].

¹⁹⁸ *Id.* art. 4.

¹⁹⁹ Rosado & Zeutoune, *supra* note 189.

Despite the fact that ANP has awarded 765 exploration blocks²⁰⁰ and 21 marginal fields²⁰¹ for concession since the first bid round in 1999 (excluding bid round 8), there remains a vast expanse of unexplored and undeveloped territory in Brazil. ANP reported in an executive summary announcing bid round 10 that only 4.4% of Brazil's 7.5 million kilometers having a potential for oil and gas development were under concession for exploration and production activities.²⁰² Although Petrobras lost its monopoly in 1995, it remains a dominant force in Brazil's oil and gas industry. ANP reported in 2010, that out of the 320 producing blocks under concession, Petrobras is the concessionaire for 264 (i.e., 82.5%).²⁰³

The next two years will prove interesting as it is anticipated that ANP will hold bid round 11 under the concession regime for non-strategic areas in 2011 and the pre-salt areas will be offered in the first round under the production sharing regime in late 2011 or 2012. With much of the focus on oil and gas exploration and development in Brazil turned toward the pre-salt offshore areas, onshore opportunities for midsize oil and gas companies may become increasingly more available in the next few years as Petrobras directs its attention and resources offshore. In ANP's own words "Brazil stands out as one of the best business opportunities in the international scenario. The discovery of new light oil reservoirs on Santos and Campos basins below the pre-salt layer, are the most visible of the new frontiers open in the country. Brazil may become one of the world's most important producers."²⁰⁴

²⁰⁰ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Exploratory Blocks – Results by Blocks, http://www.brasil-rouds.gov.br/ingles_topo/RESUMO_geral_blocos.asp (last visited Mar. 7, 2011) [hereinafter Former Rounds Overview – Exploratory Blocks – Results by Blocks].

²⁰¹ Marginal Fields – Results by Area, *supra* note 69.

²⁰² Bid Round 10 Executive Summary, *supra* note 42.

²⁰³ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: 2010 Fields in Production (December 31, 2010), <http://www.anp.gov.br/?pg=42366&m=&t1=&t2=&t3=&t4=&ar=&ps=&cachebust=1298143960395>, follow "Campos na etapa de produção (dados atualizados em dezembro de 2010)" hyperlink (last visited Mar. 7, 2011)

²⁰⁴ Bid Round 10 Executive Summary, *supra* note 42.

Exhibit I

Data on Historical Bid Rounds (Exploratory Blocks)²⁰⁵

Bidding Rounds	Round 1	Round 2	Round 3	Round 4	Round 5	Round 6	Round 7	Round 9	Round 10
	1999	2000	2001	2002	2003	2004	2005 ^{**206}	2007	2008
Sedimentary Basins	8	9	12	18	9	12	14	9	7
Bid Blocks	27	23	53	54	908	913	1.134	271	130
Awarded Blocks	12	21	34	21	101	154	251	117	54
Onshore Awarded Blocks	0	9	7	10	20	89	210	65	54
Offshore Awarded Blocks	12	12	27	11	81	65	41	52	0
Bid Area (km ²)	132,178	59,271	89,823	144,106	162,392	202,739	397,600	73,079	70,371
Awarded Area (km ²)	54,660	48,074	48,629	25,289	21,951	39,657	194,651	45,614	48,030
Onshore Awarded Area	0	10,227	2,363	10,620	697	2,846	186,916	32,195	48,030
Offshore Awarded Area	54,660	37,847	46,266	14,669	21,951	36,811	7,735	13,419	0
Average Size of the Blocks (km ²)	4,895	2,577	1,695	2,669	179	222	351	270	541
Conceded Blocks ^{**207}	12	21	34	21	101	154	240	108	40
Conceded Blocks/ Bid Blocks	44.4%	91%	64.2%	38.9%	11.1%	16.9%	21.2%	39.9%	30.8%
Conceded Area ^{**208}	54,660	48,074	48,629	25,289	21,951	39,657	171,007	45,329	44,954
Onshore Conceded Area	0	10,227	2,363	10,620	697	2,846	163,272	31,910	44,954
Offshore Conceded Area	54,660	37,847	46,266	14,669	21,254	36,811	7,735	13,419	0
Conceded Area/ Bid Area	41.4%	81.1%	54.1%	17.5%	13.5%	19.6%	43.0%	62.0%	63.9%
Blocks not Bid	15	2	19	33	807	759	883	154	76
Area not awarded	77,518	11,197	41,194	118,817	140,441	163,082	202,949	27,465	22,341

²⁰⁵ Former Rounds Overview - Exploratory Blocks - Results by Blocks, *supra* note 200.

²⁰⁶ The data only takes in to account blocks with exploratory risk.

²⁰⁷ The data refers to values after the effective signing of the concession contracts.

²⁰⁸ The data refers to values after the effective signing of the concession contracts.

Historical Bid Rounds (Exploratory Blocks) - Signature Bonuses²⁰⁹

Bidding Rounds	Round 1	Round 2	Round 3	Round 4	Round 5	Round 6	Round 7	Round 9	Round 10
	1999	2000	2001	2002	2003	2004	2005 *	2007	2008
Signature Bonuses (R\$)	321,656,637	468,259,069	594,944,023	92,377,971	27,448,493	665,196,028	1,085,802,800	2,109,408,831	89,406,927
Signature Bonuses (US\$)²¹⁰	193,765,958	282,079,263	358,394,279	55,648,490	16,534,972	400,714,087	654,087,607	1,270,728,211	53,859,594

²⁰⁹ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Exploratory Blocks – Aggregate Results (Bonus, PEM and Local Content), http://www.brasil-rounds.gov.br/ingles_topo/RESUMO_geral_resultados.asp (last visited Mar. 7, 2011).

²¹⁰ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

Exhibit II

Current Concessionaires of Exploration and Production Blocks in Brazil: January 2011²¹¹

	Group (1)	Origin (2)	Activities (3)	Operating (4)	Not Operating
1	Anadarko	United States	BE, CP	X	X
2	Arcadis	Netherlands	AM		X
3	Arclima	Brazil	AM, CD	X	
4	Aurizônia	Brazil	BE	X	X
5	BG	United Kingdom	BE	X	X
6	Brasoil	Brazil	BE	X	X
7	BrazAlta	Canada	BE	X	X
8	CEMIG	Brazil	BE		X
9	Cheim	Brazil	AM, CP	X	
10	Chevron- Texaco	United States	BE, CP	X	X
11	Codemig	Brazil	BE		X
12	COMP/Imetame	Brazil	BE	X	X
13	Const. Cowan	Brazil	BE	X	
14	Devon	United States	BE, CP	X	X
15	Dover	Canada	BE		X
16	EBX	Brazil	BE	X	X
17	Ecopetrol	Colombia	BE		X
18	Egesa	Brazil	AM, CP	X	
19	El Paso	United States	BE, CD	X	X
20	Engepet	Brazil	AM	X	
21	ENI Group	Italy	BE	X	
22	ERG	Brazil	AM		X
23	Eromanga	Australia	BE		X
24	Esso	United States	BE	X	
25	Galp Energia	Portugal	BE, CD	X	X
26	Genesis 2000	Brazil	AM, CP	X	
27	Hess	United States	BE	X	X
28	HRT	Brazil	BE	X	
29	Inpex	Japan	BE		X
30	Integral	Colombia	BE	X	

²¹¹ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Current Concessionaires – Concessionaires of E&P in Brazil – January/2011, http://www.brazil-rouds.gov.br/ingles_topo/lista_de_concessionarios.asp (last visited Mar. 7, 2011)

	Group (1)	Origin (2)	Activities (3)	Operating (4)	Not Operating
31	Karoon	Australia	BE	X	
32	Koch	United States	AM, BE, CD, CP	X	X
33	Lábrea	Brazil	BE		X
34	Maersk	Denmark	BE	X	X
35	Norse	Norway	BE	X	X
36	Odebrecht	Brazil	BE, CP	X	
37	ONGC	India	BE	X	X
38	Orteng	Brazil	AM, BE, CP	X	X
39	Panergy	Brazil	AM, CP	X	
40	Partex	Cayman Islands	BE,CP	X	X
41	Perenco	United Kingdom	BE	X	
42	Petro Latina	Singapore	BE		X
43	Petrobras	Brazil	BE, CD, CP	X	X
44	PetroRecôncavo	Brazil	BE, CP	X	
45	Phoenix	Brazil	BE		X
46	Pioneira	Brazil	AM, BE, CP	X	
47	Proen	Brazil	AM, CD	X	
48	Quantra	Brazil	BE	X	X
49	Queiroz Galvão	Brazil	BE, CD	X	X
50	RAL	Brazil	AM, BE, CP	X	
51	Repsol YPF	Spain	BE	X	X
52	Rich	Canada	BE	X	
53	Rio Proerg	Brazil	AM	X	
54	Severo & Villares	Brazil	AM, CP	X	
55	Shell	United Kingdom	BE, CD, CP	X	X
56	Silver Marlin	Brazil	AM, BE, CP	X	X
57	Sipet	Brazil	AM, BE	X	X
58	SK	Korea	BE		X
59	Sollita	Brazil	AM, CD	X	
60	Somol	Angola	BE		X
61	Sonangol	Angola	BE, CD	X	X
62	Statoil	Norway	BE, CD	X	X
63	STR	Brazil	BE	X	X
64	SynergyGroup	Panama	BE, CD, CP		X
65	TDC	United States	BE		X

	Group (1)	Origin (2)	Activities (3)	Operating (4)	Not Operating
66	TotalFinalElf	France	BE		X
67	UBX	Brazil	BE, CD, CP	X	
68	UTC	Brazil	BE, CD, CP	X	
69	Vale	Brazil	BE		X
70	VB	India	BE		X
71	Vibrapar	Brazil	BE		X
72	Vitória Ambiental	Brazil	BE	X	
73	W.Washington	Brazil	BE, CP	X	
74	Woodside	Australia	BE		X

Notes:

1. This category reports the group to which the concessionaire belongs, and not the name of the Brazilian subsidiary.
2. This category reports the location of the central office of the group.
3. **BE** - Exploratory Blocks (i.e., areas sold through competitive bidding auctions that may or may not become commercial.)
AM -Marginal Fields (i.e., mature fields which may or may not be in production)
CP - Fields in Production
CD - Development Fields
4. A group can be operator of certain concession and non-operator in others.

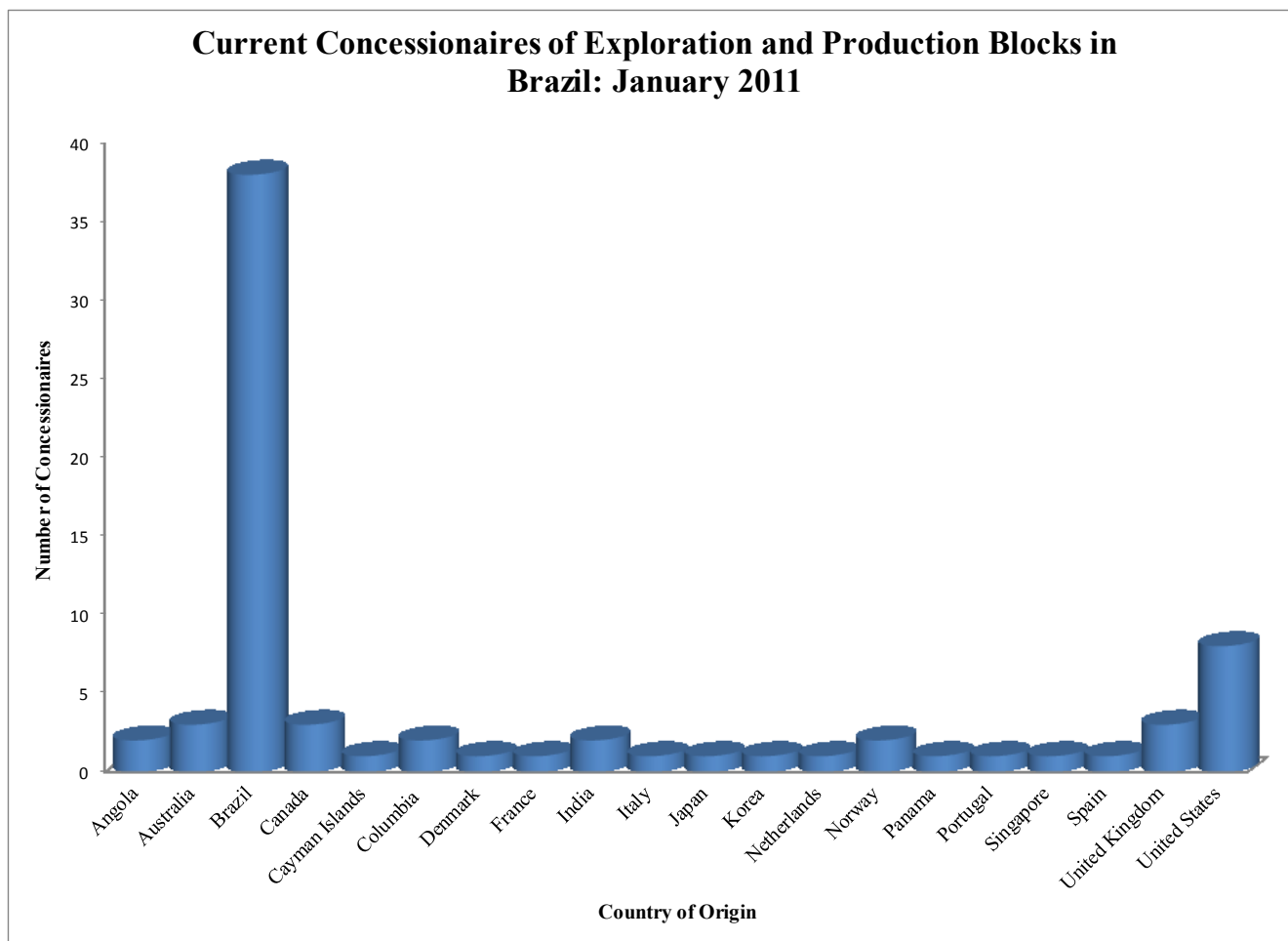


Exhibit III

Data on Historical Bid Round (Marginal Fields)²¹²

Bidding Rounds	Round 1	Round 2
	2005	2006
Sedimentary Basins covered	4	3
Offered Marginal fields	17	14
Bidding Marginal Fields	16	11
Awarded Marginal Fields (i.e., concession agreements signed)	14	7
Awarded Marginal Fields / Offered Marginal Fields	82.4%	50.0%

Historical Bid Rounds (Marginal Fields) - Signature Bonuses²¹³

Bidding Rounds	Round 1	Round 2
	2005	2006
Signature Bonuses (R\$)	3,045,804	33,676,717
Signature Bonuses (US\$)²¹⁴	1,834,792	20,286,854

²¹² Marginal Fields – Results by Area, *supra* note 69.

²¹³ Agência Nacional do Petróleo, Gás Natural e Biocombustíveis [National Agency of Petroleum, Natural Gas and Biofuels]: Former Rounds Overview – Marginal Fields – Aggregate Results (Bonus, PME and Local Content), http://www.brasil-rounds.gov.br/ingles_topo/RESUMO_geral_resultados_AM.asp (last visited Mar. 7, 2011).

²¹⁴ Conversions to US dollars made using the following conversion: 1R\$ = .6024 US\$.

Exhibit IV

Formalization of the Qualification Documents²¹⁵

Type of Document	Equivalent Section in Round 10 Final Tender Protocol	Document	Mandatory	Notarized	Foreign Companies	
					Certified by a Brazilian Consulate (only if notarized abroad)	Translated by a Sworn Translator in Brazil (only if written in a foreign language)
Expression of Interest	3.3.1	Power of attorney to the Authorized Representative's appointment	√	√	√	No, use the form attached as Annex III to the Round 10 Final Tender Protocol
	3.3.2	Expression of Interest Cover	√	√	√	√
	3.3.3	Confidentiality Agreement	√	√	√	No, use the form attached as Annex IV to the Round 10 Final Tender Protocol
	3.3.4	By-laws or Articles of Association	√	√	√	√
Payment of the Participation Fees	3.10	Payment for the Participation Fees	√	√	√	No, use the form attached as Annex II to the Round 10 Final Tender Protocol
		Evidence of Participation Fees	√	No	No	No
Technical Qualification	3.4.1	Technical Summary	Only for non-operator	√	√	√
	3.4.2.2(a)	Technical Summary	Only for Operators	√	√	√
	3.4.2.2(b)	Summary of the Professional Curriculum	Only for Operators	√	√	√

²¹⁵ Final Tender Protocol – Round 10, *supra* note 44, Table 6.

Type of Document	Equivalent Section in Round 10 Final Tender Protocol	Document	Mandatory	Notarized	Foreign Companies	
					Certified by a Brazilian Consulate (only if notarized abroad)	Translated by a Sworn Translator in Brazil (only if written in a foreign language)
Financial Qualification	3.5.1(a) & (b)	Consolidated Financial Statement	√	√	√	√
	3.5.1(c)	Opinion of the Independent Accountant	Only if applicable	√	√	√
	3.5.2	Bank Reference	√	√	√	√
	3.5.3	Relevant Obligations	√	√	√	√
	3.5.4	Details of Medium Term Planning	√	√	√	√
	Annex XI	Summary of the Financial Statements	√	√	√	No, use the form attached as Annex XI to the Round 10 Final Tender Protocol
Legal Qualification	3.6.1(a)	Legal Opinion or Organization chart detailing the existing chain of control	√	√	√	√
	3.6.1(c)	Declaration in respect of all relevant legal or judicial claims	√	√	√	√
	3.6.1(d)	Commitment of the conformity of the Company's corporate purpose to the oil and natural gas exploration and	If applicable	√	√	√

Exhibit V

**POWER OF ATTORNEY OF ACCREDITED
REPRESENTATIVE²¹⁶**

By the present mandate instrument, [insert name of Company]_____, constituted and existing in accordance with the laws of __[insert Company's country of origin]__, with headquarters in _____[insert address of Company headquarters]_____, through its legal representative, _____[insert name(s) of legal representative(s) of Company]_____, in this act nominates _____[insert name of and full title of Accredited Representative]_____, as its adequate Attorney empowered to represent us before the Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (ANP), especially for the Tenth Licensing Round of Blocks ("Brasil Round 10") destined for the exploration of oil and Natural Gas, and with specific power for the practice of the acts and assume responsibility relative to negotiate and to propose that which is being presented, able to, in this regard, receive, submit and sign documents, to receive, and to authorize third-parties to receive, the Data and Information Package, pay fees/taxes, propose, resort to/obtain, agree, and also able to practice other acts necessary for the faithful compliance of this mandate.

Signed by:

[insert name(s) of Legal Representative(s) - notarized signature]

Position:

[insert position(s) of Legal Representative(s)]

[insert location and date]

²¹⁶ *Id.* Annex III.

ADDITIONAL INFORMATION OF ACCREDITED REPRESENTATIVE

MAIN REPRESENTATIVE:

[insert name(s) and signature of Accredited Representative(s)]

[insert occupation of Accredited Representative]

[insert address of Accredited Representative]

[insert phone, fax and e-mail of Accredited Representative]

(AN)OTHER REPRESENTATIVE(S):

[insert name(s) and signature of Accredited Representative(s)]

[insert occupation of Accredited Representative]

[insert address of Accredited Representative]

[insert phone, fax and e-mail of Accredited Representative]

Exhibit VI

CONFIDENTIALITY AGREEMENT²¹⁷

The undersigned hereby acknowledges its interest in Brazil's tenth oil and gas licensing round ("Brasil Round 10") and the procedures for qualification and bidding for rights to enter into a Concession Agreement with the Agência Nacional do Petróleo, Gás Natural e Biocombustíveis ("ANP") to explore for and, if successful, develop and produce hydrocarbon reserves in certain specific Blocks located in Brazil. Capitalized terms used herein and not defined have the meanings set forth in the Final Tender Protocol, which documents will also lay out and update, respectively, the Brasil Round 10 procedures.

The undersigned may receive, on behalf of the Company [insert company name], additional materials, data and information, including without limitation the Data Package, obtained in ANP.

All such materials, data and information provided to the undersigned or any party acting on behalf of the undersigned by ANP, or any party acting on their behalf, including any copies of such materials, data and information and any studies, reports, analyses or other materials based on such materials, data and information, in connection with Brasil Round 10 are referred to as "Confidential Information". The undersigned has no rights to use the data and information provided by ANP after the conclusion of Brasil Round 10 except for those data pertaining specifically to an area in which, as a result of Brasil Round 10, the undersigned or an affiliated company created in accordance with the terms of the Final Tender Protocol to sign the Concession Agreement becomes a Concessionaire. In the event the undersigned or one of its affiliates becomes a Concessionaire, the right to use the data and information is limited to the area under concession and to the period in which the Concession Agreement is in force.

The undersigned agrees to treat all Confidential Information as confidential, and shall not disclose any Confidential Information to a third party unless ANP has given its prior written consent to such disclosure.

²¹⁷ *Id.* Annex IV.

Notwithstanding the foregoing, the undersigned may disclose Confidential Information to any of its officers, directors, employees, affiliate companies and their employees, agents and advisors who (i) has a need to know the same in connection with carrying out work relating to Brasil Round 10, and (ii) has been advised of, and agrees to comply with, the restrictions upon such Confidential Information set forth in this Agreement as if it were the undersigned.

In addition, the undersigned may disclose Confidential Information to a third party without ANP's prior written consent to the extent such information:

- a) is already known to the undersigned as of the date of disclosure (with the exception of that information that was disclosed to the undersigned as Confidential Information, during the previous Rounds staged by ANP);
- b) is already in possession of the public or becomes available to the public other than through an act or omission of the undersigned;
- c) is developed independently by the undersigned without the use of any Confidential Information; or
- d) is acquired independently from a third party, which is under no legal obligation known to the undersigned prohibiting such disclosure.

In the event that the undersigned is required by applicable law, decree, regulation, rule or order of any competent authority to disclose any Confidential Information, the undersigned shall promptly notify ANP in writing so that ANP may seek an appropriate protective order and/or waive the undersigned's compliance with the confidentiality requirement.

In the event that such protective order or other remedy is not obtained, then the undersigned shall furnish only that portion of such Confidential Information that is legally required to be disclosed.

Upon the instruction of ANP the undersigned shall destroy or return all Confidential Information following the conclusion of its participation in Brasil Round 10.

This Confidentiality Agreement shall be governed by, and construed in accordance with, the laws of the Republic of Brazil, being the city of Rio de Janeiro

Executed on theday of the month of....., 2008.

By: [*Authorized Signatory*]

Name:.....

Title:.....

Company:.....

Exhibit VII

GUARANTEE OF PERFORMANCE²¹⁸

This is in reference to the Concession Agreement No. _____ [insert number] (“the Agreement”) pursuant to Blocks _____ [insert name of the Blocks] of even date herewith among the Agência Nacional do Petróleo, Gás Natural e Biocombustíveis (“ANP”), an agency of the Indirect Administration of the Government of the Federal Republic of Brazil, and [insert name of the company] (the “Guaranteed Entity”), a organized under the laws of Brazil.

With regard to the obligations assumed by the Guaranteed Entity under the Agreement or that may be imposed upon the Guaranteed Entity under or in connection with the Agreement, [insert name of the company] (the “Guarantor”), a [insert kind of company] organized under the laws of [insert country], an Affiliate of the Guaranteed Entity, agrees as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.
2. The Guarantor hereby expressly represents and warrants to ANP that: (i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) it has all requisite corporate power and authority to execute, deliver and perform this Guarantee, (iii) this Guarantee constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, (iv) no governmental approvals are required in connection with the execution, delivery and performance of this Guarantee, except as have been obtained and are in force, and (v) the execution, delivery and performance of this Guarantee by the Guarantor will not violate any provision of any existing law or regulation to which the Guarantor is subject or any provision of the Guarantor’s constitutive documents or of any material agreements to which it may be a party.
3. The Guarantor hereby unconditionally and irrevocably guarantees to ANP, as a primary obligor, the due and punctual performance of all of the obligations of the Guaranteed Entity under or in connection with the Agreement.
4. This Guarantee is irrevocable and unconditional and shall remain in full force and effect until all obligations of the Guaranteed Entity under or in connection with the Agreement are fully and irrevocably satisfied and discharged, notwithstanding (a) any amendment or termination of the Agreement, (b) any extension of term or other indulgence or concession granted by ANP, or (c) any delay or failure by ANP in pursuing any remedies available against the Guaranteed Entity.
5. ANP shall have no obligation to resort to any other guarantee or take any action against or in respect of the Guaranteed Entity prior to enforcing its rights under this Guarantee directly against the Guarantor. In addition, the Guarantor may not claim that ANP could have avoided

²¹⁸ *Id.* Annex X.

or mitigated, in any manner or through any action, the damages resulting from a default of the Guaranteed Entity under the Agreement or resort to any other guarantee held at any time in its favor, before proceeding against the Guarantor in connection with its obligations under this Guarantee. The Guarantor's obligations under this Guarantee shall be independent and absolute, and the Guarantor shall have no right of set-off or counterclaim with respect to any other claims it may have against ANP or any other Person.

6. All of the obligations of the Guarantor set forth herein shall bind the Guarantor and its successors. The Guarantor may not assign or delegate its duties or obligations hereunder without the prior written consent of ANP, and any purported assignment or delegation without such consent shall be null and void. The Guarantor confirms that this Guarantee shall remain in effect with respect to any assignee of the Guaranteed Entity under the Agreement that is an Affiliate of the Guaranteed Entity. Upon any such assignment the assignee shall be considered the Guaranteed Entity for all purposes hereunder to the extent of the assigned obligations.

7. This Guarantee shall be governed by and construed in accordance with the laws of the Republic of Brazil.

8. Any failure, delay and tolerance by ANP to exercise any right, in whole or in part, hereunder shall not be construed as a waiver of the right to exercise the same or any other right.

9. No amendment or modification of this Guarantee shall be effective unless in writing and signed by the Guarantor and ANP.

10. Any dispute concerning the legal interpretation or construction of this Guarantee shall be settled exclusively and finally by arbitration conducted in accordance with the ICC Rules.

11. The Guarantor shall pay upon demand and presentation of invoices all reasonable and actual costs and expenses incurred by ANP in connection with the successful enforcement of this Guarantee, including, without limitation, reasonable fees and expenses of counsel.

12. All notices, demands, instructions, waivers or other communications to be provided pursuant to this Guarantee, and any consents contemplated in this Guarantee, shall be in writing in Portuguese or English, shall be effective upon receipt, and shall be sent by personal delivery, courier, first class mail or fax to the following addresses:

(i) If to the Guarantor, to:

[insert address of Guarantor]

(ii) If to ANP, to:

Superintendência de Exploração
Avenida Rio Branco, 65, 19º andar
20090-004 Rio de Janeiro - RJ
Brazil
Fax (+55 21) 2112 8419

The addresses and fax numbers aforesaid of either party may be changed by means of a written notice given to the other party at least 15 Business Days prior to the effective date of such change.

13. This Guarantee may be executed in _____ (_____) number of counterparts, each of which shall be deemed to be an original.

14. This Guarantee has been duly executed by the Guarantor and ANP by their respective by their legal representatives as of the ____ day of _____, 200__.

_____ [*Name of guarantor*]

By: _____

Name: _____

Title: _____

Acknowledged and Accepted:

AGÊNCIA NACIONAL DO PETRÓLEO, GÁS NATURAL E BIOCMBUSTÍVEIS

By: _____

Name: _____

Title: _____

Exhibit VIII

English Translation of Exhibit to CADE Resolution 15/98²¹⁹

PART I – APPLICANTS

I.1 Name in accordance with the by-laws, name of the establishments, name of the legal representative, Finance Ministry Taxpayer’s Register CNPJ/MF and State Registration.

Applicant A

Applicant B

I.2 Applicant’s main activities field (follow the list of Attachment V)

Applicant A

Applicant B

I.3 Head office address, telephone and fax numbers and e-mail.

Applicant A

Applicant B

I.4 Names of shareholders or quota holders with their respective capital stock interest, including the nature of the corporate interest (obligatorily those interest exceeding 5%).

Applicant A

Applicant B

I.5 Group of companies of which it is a member.

Applicant A

Applicant B

²¹⁹ Cade Ruling, *supra* note 184.

I.6	Group's origin nationality
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Applicant A

Applicant B

I.7	Group's main activities sector (follow the list of Attachment V).
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Applicant A

Applicant B

I.8	List of all companies directly or indirectly members of the group, with operations in Brazil and Mercosul, as well as companies in which at least one of the members of the group holds capital stock interest in excess of 5%, with operations in Brazil and Mercosul.
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Applicant A

Applicant B

I.9	Billing, in the last fiscal year, of the applicant(s) regarding the totality of the group's companies in Brazil, Mercosul and worldwide.
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Applicant A

Applicant B

I.10	List of acquisitions, mergers, joint ventures and joint incorporation of new companies carried out by the group in Brazil and in Mercosul, over the past 3 years.
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Applicant A

Applicant B

PART II – ACT OR NOTIFIED AGREEMENT

II.1	Summary description of the transaction, including its type (acquisition, merger, consolidation, contract, joint venture, etc.).
II.2	Industry in which the operation occurred. (follow the list of Attachment V).
II.3	Clarify whether or not the operation results from an overseas transaction held between companies or a group of companies (global transaction with consequences in Brazil).
II.4	List of the assets involved and their location.
II.5	Date and value of the Transaction.
II.6	For transactions involving alterations in the composition of the corporate capital, table containing the structure of the corporate capital before and after the execution of the operation.
II.7	Reasons considered decisive for the execution of the notified transaction.

PART III – DOCUMENTS

III.1	Copies of the documents formalizing the notified transaction. For cases of prior notice, all documents available which evidence the conditions for the notified operation.
III.2	Copies of the last annual report prepared for the shareholders or quota holders.
III.3	Any complementary or additional contracts entered by the parties.
III.4	List of members of direction of the group that, at the same time are members of direction of any other company in the same line of business of the Applicants.
III.5	Shareholders, quota holders and/or any others agreements including rules related to the administration.

PART IV – LINE OF BUSINESS

IV.1	List of the line of products/services offered by each of the Applicants in Brazil and in Mercosur.
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Applicant A

Applicant B

IV.2	List of the line of products/services offered by the other companies belonging to the same groups of the Applicants in Brazil and in Mercosul.
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Applicant A

Applicant B

IV.3	Identify the products/services involved in horizontal or vertical relationships among the Groups of the Applicants.
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PART V – RELEVANT MARKETS

V.1	Estimate of the relevant market(s) identified in terms of value (R\$) and volume of sales in the last year.
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V.2	Absolute and percentage value and volume of sales of each Applicant, in each relevant market, in the last year.
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Applicant A

Applicant B

V.3	Estimated market share (in R\$) of the main competitors (over 5%) for last year. If not possible, an estimate in volume. Each competitor's address, phone and fax numbers, in addition to the methodology and source used to arrive at the estimate
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PART VI - GENERAL CONDITIONS OF THE RELEVANT MARKET	
VI.1	List of the five largest independent clients and suppliers in the relevant markets for each Applicant. (Name, address, phone and fax numbers and e-mail of the contact person).

Applicant A

Applicant B

VI.2	Common Mercosul Tariff Code (TEC) and the respective import tax rate. Indication of any foreseen changes in the import tax rate.
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VI.3	Estimated percentage of independent imports in the Brazilian market.
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VI.4	Identification of the factors having positive or negative influences on entry into the relevant markets.
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PART VII – FINAL INFORMATION	
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VII.1	Additional information considered relevant by the companies.
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VII.2	Indication of other jurisdictions notified of the operation.
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VII.3	Name, address, phone and fax numbers and e-mail of the company employee charged with providing information regarding the application. If the application is handled by an legal representative, this same information must include the power of attorney.
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