

THE ODEBRECHT INSOLVENCY FILING: BASIC INFORMATION AS OF JULY 17, 2019

On June 17, 2019, Odebrecht S.A., along with its parent companies and certain of its subsidiaries (collectively, “Odebrecht”), filed for court-supervised, debtor-in-possession reorganization (“*recuperação judicial*” or “RJ”). The matter is being processed before the 1st Insolvency Court of the City of São Paulo, State of São Paulo.

Odebrecht reportedly does business in twenty-five countries and is active in the following sectors: petrochemicals; engineering and construction; sugar, ethanol and energy; oil and gas; urban mobility, highways, ports and logistics; and real estate.

Several companies within Odebrecht’s corporate group did not file for RJ, including Braskem S.A., Odebrecht Engenharia e Construção S.A., Ocyan S.A., OR S.A., Odebrecht Transport S.A., Odebrecht Defesa e Tecnologia S.A., Enseada Indústria Naval S.A., Odebrecht Insurance Brokerage, Odebrecht Retirement Fund and Odebrecht Foundation.

Atvos Agroindustrial S.A. (a producer and seller of ethanol, VHP sugar and electric energy from sugarcane) had already filed for RJ along with certain of its subsidiaries on May 29, 2019. Its parent company, Atvos Agroindustrial Investimentos S.A., is one of the petitioners in Odebrecht’s June 17 filing.

Per the list of pre-petition claims that accompanied the initial filing, Odebrecht’s total indebtedness exceeds BRL 98 billion (USD 25 billion), making this the largest-ever court-supervised reorganization in Brazil.

Odebrecht owes more than BRL 65 billion to third parties and BRL 33 billion in intercompany loans. Claims held by local public and private banks (Banco do Brasil, Caixa Econômica Federal, federal development bank BNDES, Bradesco, Itaú-Unibanco, and Santander Brasil) amount to nearly half of Odebrecht’s reported debt to third parties; a claim for USD 3 billion in connection with a bond issuance has also been listed.

Pursuant to Brazilian law, certain types of indebtedness – especially taxes and certain debts guaranteed by the creditor’s temporary property over the debtor’s assets (“*alienação fiduciária*”) – are not affected by in-court reorganization. Odebrecht has added those claims to its list of pre-petition claims but it is not protected from actions that the respective creditors may take.

Court proceedings

On June 18, 2019, the lower court entered a decision pursuant to which it (a) affirmed its

jurisdiction over the matter, (b) accepted the filing, (c) appointed an independent supervisor (“*administrador judicial*”) to oversee the RJ, (d) granted an injunction to prevent creditors from enforcing collaterals over shares held by Odebrecht in Ocyan, Atvos Agroindustrial and Braskem, (e) determined that any request to claw back on Odebrecht’s assets must be first submitted to the RJ court even if another court is also vested with jurisdiction, and (f) ordered a 180-day stay period. Creditors have since managed to obtain an injunction allowing enforcement of the collaterals over Ocyan, Atvos Agroindustrial and Braskem shares, and that issue is still pending before the appellate court.

The list of pre-petition claims was published on June 25, 2019. The court-appointed supervisor is currently working on a revised list of pre-petition claims based on its review of (a) Odebrecht’s books and internal records and (b) requests for addition, modification or exclusion received from creditors; this revised list should be issued by August 26, 2019. Separately, Odebrecht has 60 days to submit its restructuring plan in court, the final term being August 26, 2019 as well.

The terms to submit the revised list of pre-petition claims and the restructuring plan may both be extended by the court. Creditors will then have 15 days to challenge the revised list of claims in court, and simultaneously 30 days to submit any objections to the plan.

The plan must be later voted at a creditors’ meeting that is yet to be called, and voting rights will be exercised in accordance with the revised list of pre-petition claims issued by the supervisor.

Creditors to the companies who are not petitioners in the Odebrecht RJ (such as Braskem and Ocyan) should also monitor the development of the proceedings. The impacts of Odebrecht’s reorganization on such companies are still uncertain. Notably, the restructuring plan to be submitted by Odebrecht and negotiated with its creditors may contemplate sales of (or encumbrances over) assets held by those companies, corporate changes such as mergers or spin-offs and cash sweeps.

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