Cooperation agreements as important tools for investigation and asset recovery: Brazil’s experience and best practices

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Federal Prosecutor – Brazil
St. Petersburg, November 5, 2015
### BRAZIL: GENERAL INFORMATION

<table>
<thead>
<tr>
<th>JUDICIARY BRANCH</th>
<th>FEDERAL PROSECUTION SERVICE</th>
<th>INTERNATIONAL COOPERATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUPREME COURT</td>
<td>PROSECUTOR GENERAL</td>
<td>EXTRADITION (INCOMING)</td>
</tr>
<tr>
<td>SUPERIOR COURT OF JUSTICE</td>
<td>ASSISTANT ATTORNEY GENERAL</td>
<td>LETTERS ROGATORY</td>
</tr>
<tr>
<td>FEDERAL COURTS OF APPEALS</td>
<td>FEDERAL (APPELLATE) PROSECUTORS</td>
<td>APPEALS ON MLA MATTERS</td>
</tr>
<tr>
<td>FEDERAL COURTS</td>
<td>FEDERAL PROSECUTORS</td>
<td>MLA REQUESTS</td>
</tr>
</tbody>
</table>

**CENTRAL AUTHORITIES**

1. MINISTRY OF JUSTICE (DRCI)
2. PROSECUTOR GENERAL’S OFFICE (SCI)
LEGAL FRAMEWORK ON INTERNATIONAL COOPERATION

1. FEDERAL CONSTITUTION
2. CODE OF CRIMINAL PROCEDURE
3. EXTRADITION ACT OF 1980
4. SOME NON-SPECIFIC STATUTES
5. SEVERAL BYLAWS
6. 30 EXTRADITION TREATIES
7. 19 MLA TREATIES
8. 15 TREATIES FOR THE TRANSFER OF OFFENDERS
9. MAJOR MULTILATERAL CONVENTIONS:
   - UNTOC AND ITS THREE PROTOCOLS
   - UNCAC
   - 1988 VIENNA CONVENTION ON DRUG TRAFFICKING
   - OAS CONVENTION ON MLA (NASSAU)
   - CPLP CONVENTION ON MLA (PRAIA)
   - MERCOSUR CONVENTION ON MLA (SAN LUIS)
   - OECD ANTIBRIBERY CONVENTION
   - 14 CONVENTIONS ON ANTITERRORISM AND TERRORIST FINANCING
CAR WASH CASE

Alleged corruption scheme at Brazil’s Petrobras

Brazilian prosecutors believe engineering executives formed a cartel to fix prices and overcharge state-run oil firm Petrobras, enriching themselves and politicians.

Source: Brazil's public ministry
C.Chan, 09/04/2015
Petrobras lost $2.1 billion to the largest corruption scheme in Brazilian history. The state oil giant released its first audited accounts of a scandal that has enveloped the company and badly wounded the government. Petrobras, the largest company in the world's seventh-biggest economy, announced losses of $7.2 billion for 2014.

By finally releasing its long-delayed results, the company is seeking to turn the page on five tumultuous months in which its chief executive and entire board were forced to resign and ratings agencies hit it with a string of downgrades.

Prosecutors accuse Petrobras executives of colluding with construction companies to massively inflate contracts and bribe politicians.
TWO COORDINATED TASK FORCES OPERATE IN CURITIBA AND BRASÍLIA
## STRATEGY OF THE FPS IN THE CAR WASH CASE

<table>
<thead>
<tr>
<th>Coordinated Prosecution of Criminal and Civil Cases</th>
<th>Use of Cooperating Defendants and Leniency Agreements</th>
<th>International Cooperation Tools</th>
</tr>
</thead>
</table>
| Criminal Code  
AML Law (# 9,613/1998)  
ACE Law (# 8,429/1992)  
Etc | Law 12,850/2013 (Organized Crime Act)  
Law 12,846/2013 (Anti bribery)  
Law 12,529/2011 (Competition) | UNTOC  
UNCAC  
MLATs |
| Prison, fines, removal from office, forfeiture | NPA and DPA  
Leniency programs | Mostly for getting evidence securing assets abroad |

- STRATEGY OF THE FPS IN THE CAR WASH CASE

- **COORDINATED PROSECUTION OF CRIMINAL AND CIVIL CASES**
  - Criminal Code
  - AML Law (# 9,613/1998)
  - ACE Law (# 8,429/1992)
  - Etc

- **USE OF COOPERATING DEFENDANTS AND LENTIENCY AGREEMENTS**
  - Law 12,850/2013 (Organized Crime Act)
  - Law 12,846/2013 (Anti bribery)
  - Law 12,529/2011 (Competition)

- **INTERNATIONAL COOPERATION TOOLS**
  - UNTOC
  - UNCAC
  - MLATs

- **Prison, fines, removal from office, forfeiture**

- **NPA and DPA, Leniency programs**

- Mostly for getting evidence securing assets abroad
ORGANIZED CRIME LAW
(Law 12,850/2013)

UNDERCOVER OPERATIONS (AGENTS)

CONTROLLED DELIVERY

INTERCEPTION OF COMMUNICATIONS

ACCESS TO COMPUTER DEVICES

COOPERATING WITNESS/DEFENDANT

TASK FORCES

WITNESS PROTECTION
(Law 9,807/1999)
USE OF COOPERATING DEFENDANTS FOR ASSET RECOVERY IN THE CAR WASH CASE

→ 32 COOPERATION AGREEMENTS
  • 20 sealed before the 13th Criminal Court of Curitiba
  • 10 sealed before the Supreme Court in Brasilia
  • 2 sealed before the 3rd Criminal Court of Rio de Janeiro

→ MLA REQUESTS FOR ASSET RECOVERY

ASSETS RECOVERED

USD 156 million

FROZEN ASSETS ABROAD

USD 304 million

Legal basis for recovery
  • Final convictions
  • Cooperation agreements

(As of October 2015)
Article 37. Cooperation with law enforcement authorities
1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.
Article 37. Cooperation with law enforcement authorities

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
Article 37. Cooperation with law enforcement authorities
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
Article 37. Cooperation with law enforcement authorities
4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.
Article 37. Cooperation with law enforcement authorities

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.
Swiss attorney general freezes $400 million in Petrobras probe

The Swiss attorney general issued an order this week to freeze $400 million of assets allegedly tied to a corruption scheme at Brazil’s Petrobras.

The Office of the Attorney General of Switzerland (OAG) said Wednesday it has released $120 million of the frozen assets for repatriation after reaching an agreement with two account holders.

“The release of over $120 million reflects Switzerland’s clear intention to take a stand against the misuse of its financial center for criminal purposes and to return funds of lawful origin to their rightful owners,” the OAG said.

The attorney general has opened nine investigations into alleged money laundering tied to Petrobras since April 2014 involving eight Brazilian citizens and one person who has yet to be identified.

The OAG has received about 60 reports flagging “suspicious transactions” from the Money Laundering Reporting Office that may also be connected to corruption at Petrobras.

The OAG said its probe has uncovered over 300 accounts at over 30 Swiss banks that were “apparently used to process the bribery payments under investigation in Brazil.”

The accounts are owned by senior executives at Petrobras and the company’s suppliers, financial intermediaries and Brazilian and other foreign companies that have either directly or indirectly paid bribes, the attorney general said.

“The Brazilian bribery scandal affects Switzerland’s financial center and its anti-money-laundering strategy, with result that the OAG has a close interest in contributing fully to the resolution of the scandal through its own investigations,” the OAG said.

Swiss criminal proceedings into the case are ongoing.

Last week the Financial Times reported that former Petrobras executive Pedro Barusco admitted to using Swiss bank accounts in a bribery scheme at the company.

Barusco told Brazilian officials he opened a number of accounts at different banks including an account at HSBC he shared with his wife.
INTERNATIONAL COOPERATION IN CRIMINAL MATTERS (CAR WASH CASE)

73 outgoing MLARs
28 countries
Evidence and assets

6 incoming MLARs
6 countries
Evidence
INTERNATIONAL COOPERATION IN CRIMINAL MATTERS (CAR WASH CASE)

- UNCAC
- UNTOC
- 52 MLA requests
- 21 countries and territories
RESTITUTIONS TO PETROBRAS IN 2015

157 + 69 = R$ 226 million

USD 57.8 million
JOINT INVESTIGATION TEAMS
EQUIPOS CONJUNTOS DE INVESTIGACIÓN

BRAZIL

COUNTRIES A and B
Thank you

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