

REGULATORY CHANGES AND ITS IMPACTS ON OIL CONTRACTS AUCTIONS IN BRAZIL

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Overview

One of the main goals of the reforms implemented in Brazil from the mid-1990s in the energy industry was the introduction of competitive pressures in industries traditionally characterized by an organization based on state-owned monopolies. The convergence between the different models adopted in distinct segments was that the deregulation of these industries, in general, was, based on the construction of market-oriented governance structures.

In the oil and gas industry, the Oil Act (Law n. 9478/1997), among other measures, ended Petrobras monopoly in the upstream activities. According to the law, concession contracts should be granted through annual public auctions. For those auctions, the National Petroleum, Natural Gas and Biofuels Agency – ANP (the Brazilian oil and gas federal regulatory agency) chose a competitive first price, closed envelope, multi-unit, simultaneous auction. (i.e. the winner is the highest bid, and all bids must be presented in sealed envelopes, which must contain bids for all the areas in which the agent has an interest).

The announcement of the discovery of significant hydrocarbon reserves in the Brazilian pre-salt layer in 2007, motivated the government to propose legal measures to amend the previous regulatory framework.

In 2009 the Brazilian Government proposed a new legal framework that created a mixed regime for exploration and production of oil and natural gas in the country. The concessions regime was maintained, which, as of the end of 2010, passed with the approval of Law no. 12.351 / 2010, to coexist with a production-sharing regime, which would be the contractual modality to be established for new bids in the pre-salt areas. The changes included an overview of the strategic role to be played by the Brazilian petroleum sector different from that one previously defined, both regarding the (at the time) newly global Brazilian insertion and supporting conditions of such insertion.

Between 2008 and 2013, however, the bidding rounds were suspended. This five years gap caused a decline in the exploratory activities, which became more marked as of 2012. The effect was intensified due to the drop of oil price and Petrobras' investments decrease.

According to the International Energy Agency (IEA, Brazil is the 10th largest global oil producer and the largest in Latin America. In 2018, oil production in Brazil until August was, on average, 2.5 million barrels per day. From 2005 to 2016, oil & gas production in Brazil yielded, in government participations (royalties and special participation) alone, R\$295 billion . These numbers are significant. Nonetheless, the oil industry is still a fraction of what it could be in Brazil. Its whole potential is still unknown. Less than 5% of the sedimentary basins are granted for O&G exploration purposes and only 30 thousand wells were drilled in Brazil so far.

By the end of 2016, the Brazilian government approved an alteration in the pre-salt legal framework. Pursuing greater autonomy to Petrobras, but also in order not limit the exploration capacity of the pre-salt oil province to the exploration capacity of the company, the government amended Law 12,351 / 2010, granting Petrobras preference to act as operator in each pre-salt block (with a minimum stake of 30 percent of the chosen block). In addition, several legal and regulatory changes were adopted in order to boost the Brazilian Oil and Gas Industry: there were significant changes in the Local Content policy, the REPETRO deadline extension, the adoption of more attractive contractual terms (including the revision of the contracts arbitration clause), among other measures.

The paper focuses in answering two main questions. What are the main results of the legal and regulatory changes in the auctions of new oil blocks? Is it possible to identify differences in attractiveness between offshore and onshore areas?

Methods

The paper will present a brief synthesis of the legal framework that regulates the Brazilian Bidding Rounds. Based on the past bidding rounds data, we will present a quantitative and qualitative analysis of the Brazilian Bidding Rounds results and draw some conclusions for the future.

Results

The main results of the paper are identifying the incentives in the Bidding Rounds model, and the impacts of the recent regulatory changes on oil contracts auctions in Brazil.

Conclusions

The new rules of the Brazilian Bidding Rounds attracted investments and other players for the Brazilian Industry. In general, they clearly brought positive results for the Brazilian government. However, the results indicate that most of the attractiveness of the Brazilian Upstream is still concentrated in the offshore basins, suggesting that additional measures are required to attract investments for the onshore and shallow waters sedimentary basins

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