

PRE-SALT: NEW PROSPECTS FOR THE BRAZILIAN ENERGY MARKET

L.O. Baptista Advogados Associados
São Paulo, Brazil

Recent discoveries of vast off-shore oil reserves along Brazil's coast present a potential boon for the Brazilian energy industry—but production will not come without its hurdles.

The pre-salt reservoirs extend along a large portion of the Brazilian coast, running from Espírito Santo state all the way to Santa Catarina state. According to the Brazilian oil industry regulatory agency (ANP), the pre-salt reservoirs could produce as many as 50 billion barrels of oil per year (not taking natural gas into account), which would place Brazil among the top oil producers in the world.

However, in spite of all benefits, a number of challenges must be overcome before exploration begins. The first challenge concerns technology and the environment. As we know, the depth (more than 5 thousand meters ultra-deep water) at which oil and natural gas are found calls for new – and very high – investments to adapt the drilling methods to the pre-salt layer and protect the environment at the same time.

Moreover, several legal issues are involved. These have to do with the oil and natural gas exploration system. Since 1997, explorations are done through concessions (preceded by a bid), where the ANP is the regulatory agent and the compensation for the activities carried out is in the form of government takes.

Since the pre-salt – and perhaps in relation to all future high potential and low risk discoveries – the government has been giving signs of change. It has created a social fund and a government-owned company responsible for hiring companies to carry out exploration and production of the reserves. Part of the production would be used as payment. In addition, the government has signaled that it is essential that Petrobras continues to act as the operator of all pre-salt fields (even if as part of a consortium).

On the other hand, the industry is for keeping the concession regime and increasing the government's take; more specifically, the percentage of royalties and special participation set forth in the Petroleum Law. This would ensure the competitiveness and profitability of this economic activity.

In any case, in spite of so many signs, it is still not clear when the exploration of the Brazilian pre-salt will begin.

Finally, the political challenges that the intended changes will pose cannot be overlooked. The nearing presidential elections, the complexity of the topic and political parties' interests (including those of the Brazilian states in sharing the benefits generated with the pre-salt) are key issues in this regard.

Since 2007, legislators have been presenting bills that indicate what interests are at stake. The president's bill is expected to be sent to the Brazilian Congress by no later than August. Broad discussions on the topic - especially the submission of proposals by the civil society and the industry as provided for in the Petroleum Law - are important as well.

In any case, legal advice – in the form of legal opinions, reports and lawsuits, if necessary – is vital in order to defend the rights of this market's stakeholders, considering the lawfulness and even the constitutionality of the government's proposals.