

An idealogical debate in the Brazilian petroleum industry

After the discovery of the new Brazilian oil frontier, called the pre-salt layer, the Brazilian petroleum industry finds itself at a turning point that has been driven by the Brazilian government's debate for the best way to explore these gigantic fields and distribute the subsequent wealth to the people and future generations.

Two years of intense research from the Executive Power has led the current debate in the National Congress regarding a new regulatory regime for these fields. It is now possible to get an idea of the strategic objectives that have structured the proposed Bills of Law.

Prior to any analysis, it is important to point out that the pre-salt area, where extraordinary reserves have already been confirmed in at least four gigantic fields – Tupi, Júpiter, Iara and Guará – had already been publicly tendered and contracted under the concessionary regime established by the current Law, when the National Council for Energy Policy (CNPE), citing the constitutional principle of national interest, issued a resolution excluding the exploration blocks situated in the Espírito Santo, Campos and Santos basin from 9th Bid Round held by the National Petroleum, Natural Gas, and Biofuels Agency (the government regulator). Furthermore, the CNPE requested that the Ministry of Mines and Energy (MME) evaluate changes to the regulatory regime for the new paradigm of exploration and production of oil and natural gas for the rest of the blocks that have not already been concessioned.

The questions raised by this great national debate have been provoked by 4 Bills of Law in Congress that have proposed: production sharing agreements, designating Petrobras as the sole operator of the blocks, constituting an entirely new state company, capitalizing Petrobras by ceding it exploration and production rights, and creating a

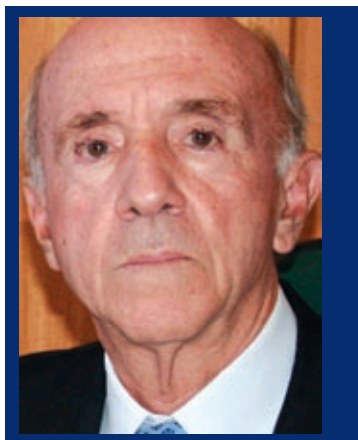
social fund from oil profits as a source for funding for government projects.

Although these projects should have incited great controversy in the Congress, the surprising fact is that the discussion has focused on the division of current and future royalties from the oil fields between the Federal government, and oil-producing and non-producing States and Municipal governments, to the detriment of the issues of greater concern to the oil industry: **(i)** maintaining the current concessionary regime versus implementing a production sharing agreements; **(ii)** the new role of Petrobras as the sole operator; and **(iii)** the question of the Consortium Operational Committee.

The question regarding the concession contracts and the production sharing agreements is less concerning as long as there are well-defined and long-term contractual rules for the oil industry. This kind of stability may raise interest in operating under either regime, depending, of course, on the commercial terms offered by the Government in future bid rounds under a production sharing agreement.

The same cannot be said about the other two points.

In fact, the issue that raises the most consternation – according to testimony industry leaders at the



public hearing held in Congress – is the new role of Petrobras and the Consortium Operational Committee. These issues are exactly the ones that can either make or break the Brazilian petroleum industry.

Above all these issues is the revival of the ideological debate regarding the economic role of the state, which had been a closed issue since the enactment of the Constitution of 1988, which had established a primarily liberal market.

We are currently revisiting the 1960s and 1970s – the last time the country went through a development phase with a strong presence of the State in the economy, with the expansion of state companies organized under holding/subsidiary companies, and creating conglomerates that actively participate in the economy of the nation.

This strong presence of the state companies in the economy had been redirected in the 1990s upon the opening of the Brazilian market to the world, at a time of increasing foreign trade and privatization of the economy, and extinguishing several state companies.

The Constitution of 1988, together with free market economics and political democracy expanded both imports and exports to and from Brazil, causing a very positive impact in the lives of Brazilians.

Specifically regarding the oil exploration and production industry, it is clear that after the enactment of Law 9478/97, the same positive impact was felt upon the occasion of deconstructing the state oil monopoly and transforming Petrobras into a concessionaire, equal to other oil companies with activities in the country, from its original role as the monopoly acting in the name of the state – resulting in the unprecedented expansion of the private sector in the oil industry.

Today, the tide has changed, and not only in Brazil. There has been a global trend to re-establish a strong state presence in the economy, due, in part, to the crisis in capitalist economies after September 2008, and, according to other analysts, due to the success of the “capitalist” model of China.

At present, it appears that, with the 4 Bills of Law, the Government is reaching out with two clear objectives: to reassert a strong state presence in economic segment of oil and gas, with Petrobras as its main player; and to capture the larger share of pre-salt profits for the treasury of the Federal government, to the detriment of State and Municipal governments.

The debate in the Senate has thus far revealed this trend. ■

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The screenshot displays the T&B Petroleum website interface. At the top, there is a navigation bar with the logo and the URL [WWW.HRBLAW.COM.BR](http://www.hrblaw.com.br). Below the navigation bar, there are links for HOME, ABOUT US, NEWSLETTER, CONTACT US, and LINKS. The main content area features a large article titled "BRAZIL: The oil and gas area leads GAP 2 investments" dated 03/26/2010. The article text reads: "The CEO of Petrobras, José Sergio Gabrieli de Azevedo, participated today, in Brasilia, in the launch event for the GAP 2, the second phase of the Federal Government's Growth Acceleration Program (GAP), which foresees total investments in the order of R\$1.89 trillion as of 2011. According to Gabrieli, Petrobras' investments in the GAP 2 will add up to some R\$250 billion, by 2014, and to an additional R\$462 billion after 2014. The investments are part of the Company's business plan, which is currently under development. A third of the 845 projects included in the plan was included in the GAP 2." To the right of the article, there is a sidebar with a "Last Edition" section for "Year X 2009 #27" and a "Click here to" button. The website also includes a search bar and a sign-up form for the RSS feed.