



REPÚBLICA FEDERATIVA DO BRASIL

*Paulo Fernando Santos de Lacerda*

TRADUTOR PÚBLICO JURAMENTADO E INTÉRPRETE COMERCIAL

MAT. JUCERJA Nº 243 - CPF 297.096.447-34

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187.087(001) Livro 383 Fl. 1 - 20

I, SWORN PUBLIC TRANSLATOR AND COMMERCIAL INTERPRETER SIGNED BELOW, APPOINTED BY THE PRESIDENT OF THE TRADE BOARD OF THE STATE OF RIO DE JANEIRO (JUCERJA), LICENSED IN THE FOLLOWING LANGUAGES: ENGLISH, FRENCH, AND SPANISH UNDER PERMIT 243-----

HEREBY CERTIFY IN GOOD FAITH----- THAT ON THIS DATE A DOCUMENT WAS PRESENTED TO ME WRITTEN IN PORTUGUESE, WHICH I NOW TRANSLATE INTO THE ENGLISH IDIOM WITH THE BEST OF MY KNOWLEDGE AND IN GOOD FAITH, AS COMMANDED BY MY OFFICIAL DUTY, AS FOLLOWS: -----

-----  
*(Stamp of the Court of Justice of the State of Rio de Janeiro, stamped electronically on all pages of the original document) -----*

*(Coat of Arms of the Public Prosecution Office of the State of Rio de Janeiro) -----*

PUBLIC PROSECUTION OFFICE OF THE STATE OF RIO DE JANEIRO --

TJRJ CAP EMP07 20180010626925487 03/01/18 10:33:4013368

PROTELET -----

1<sup>st</sup> Prosecution Office for Bankruptcy Estates -----

Judicial District of the Capital - RJ -----

7<sup>th</sup> Business Law Court -----

Case No.: 0203711-65.2016.8.19.0001 -----

Judicial Reorganization of Oi S/A and other companies -----

To The Honorable Judge: -----





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The Public Prosecution Office is aware of everything that was added to the case files since its last submission (pages 250.119/250.136). Moving on, the Public Prosecution Office issues its opinion on the following terms and for the following purposes: -----

1. **Page 249.670** - Publication Certificate. -----
2. **Pages 249.671/249.708** - Objections and proofs of claim.

The Public Prosecution Office awaits withdrawal from the case files of the incidents and the opening of examination of the documents in the appropriate case files. -----

3. **Pages 249.709/249.767, 250.166/250.194** - The Public Prosecution Office is aware of the interlocutory appeal that was filed, having as subject matter the maintenance of management powers of executive officers and Directors of Oi S/A. -----

4. **Pages 249.768/249.780** - Submission by Société Mondiale requesting rejection of the request for urgent relief filed by the RJ Debtors for suspension of the meeting of the Board of Directors of Oi S/A. -----

5. **Pages 249.781/249.879, 249.880/249.885** - Submission by creditors in compliance with the provisions of the notice





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concerning individualization of the vote of the bondholders. -----

6. **Pages 249.886/249.891, 249.892/242.897, 250.195/250.266**

- Objections to the judicial reorganization plan. -----

7. **Pages 249.898/249.905** - Submission by Société Mondiale

requesting postponement of the General Creditors' Meeting,

because of alleged nullities and illegalities of the RJ

Plan that was submitted. -----

8. **Pages 249.906/249.936** - Power of Attorney added to the

case records. -----

9. **Pages 249.937/250.016** - Submission by Société Mondiale

adding to the case records versions translated into

Portuguese language of the judgment issued by the Court of

the Southern District of New York, among other documents. -

10. **Pages 250.017/250.053** - Report of monthly activities

of the RJ Debtors, regarding October 2017. -----

11. **Pages 250.054/250.112** - Submission by the Judicial

Administrator adding to the case records the updated list

of bondholders who submitted the documentation necessary

for purposes of segregation of the right to speak and vote

at the General Creditors' Meeting. -----





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12. **Pages 250.113/250.118** - Submission by Banco Finantia requesting safeguarding and acknowledgement of its right to choose the payment option of its credits among those offered in the RJ Plan. -----

13. **Pages 250.119/250.136** - Submission by the Public Prosecution Office. -----

14. **Pages 250.137/250.139** - Decision which, among other measures, ordered the summoning of the Judicial Administrator to update and regularize the amounts indicated on pages 242.147/242.148, 242.267/242.270, 249.880/249.881 e 249.781/249.793. -----

15. **Pages 250.140/250.148** - Decision which, among other measures, rejected the request for postponement of the General Creditors' Meeting filed by Société Mondiale, maintaining the previously assigned date. -----

16. **Pages 250.149/250.153** - Submission by ANATEL informing that, in relation to the agency, the clauses that are contrary to the legislation that regulates telecommunications activities are suspended. -----

17. **Page 250.154** - Information of resignation of the attorneys that subscribe the document, under the terms of Article 112 of the Code of Civil Procedure. -----





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18. **Pages 250.155/250.165, 250.267/250.275** - Submissions by Burlington Loan and Silver Point, respectively, requesting, in summary, acknowledgment of their right of subscription of shares in proportion to their credit. -----

19. **Page 250.276** - Case records sent to the judge's chambers for decision. -----

This is the indispensable report. -----

Nowadays, everybody knows that the RJ Debtors achieved approval of their plan by a wide margin<sup>1</sup>. As could be foreseen, intensive negotiations led to changes in the terms of the initial proposal submitted to the consideration of the General Creditors' Meeting, and accordingly the task of appreciating its provisions is renewed. -----

As stated previously, it is the duty of the Public Prosecution Office to point at clauses containing provisions that are contrary to the legislation, and of the Judiciary Branch to remove them, refraining valuation concerning the economic contents. This judicial activity is important, not only at the present time, but it also extends along the phase of compliance of the plan, and it may not be dismissed. -----





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Well, on the occasion of its previous expression, the analysis started with the consideration concerning difference of treatment between holders of labor claims and how, in regard to the credit of "Fundação Atlântico" a much longer period of grace was being established than in comparison with other creditors, as well as differentiated monetary restatement and interest rates. **The decision that followed clarified well the question, considering the high amount (more than half a billion reais), the nature of the creditor (non-profit private pension institute, the obligations of which toward its associates obviously spread over a long time), a fact that obviously already differentiated it from the other credits integrating Class I of the General List of Creditors of the reorganization. The reasons for the above-mentioned decisions are utterly compelling.** Considering, furthermore, the approval quorum of the plan regarding such class, the approval of "Fundação Atlântico" itself and the undeniable fact that maintenance of the inflow of employer contributions depends on the good operation of the RJ Debtors (in summary, on the success of the reorganization plan), **the**





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Public Prosecution Office does not renew the previous criticisms contained on Page 250.129. -----

<sup>1</sup> The approved version is available at the site kept by the Judicial Administrator in the interest of this case: -----

<http://www.recuperacaojudicialoi.com.br/pecas-processuais/>

There is no obstacle concerning the clauses regarding payment of the only creditor composing Class II (BNDES), that agreed with the terms of the plan. -----

An issue that was not approached previously concerns the credits held by ANATEL in relation to the RJ Debtors, the payment method of which is the subject matter of the provisions contained in Clause 4.3.4. ANATEL already expressed itself contrarily to the payment methods, according to the petition on pages 250.149/250.153, ascertaining, in summary, that the credits can only be paid as provided by applicable legislation (Acts No. 10522/2002 and 13494/2017), informing that it would have suspended preventively such provisions -----

In the first lines, it seems evident that the agency is not entitled to issue any decision concerning effectiveness or not of provisions of the reorganization plan proposed and/or approved at the General Creditors'





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Meeting. It extrapolates completely its competence to enter concretely in the acknowledgment of the judicial issue concerning validity of the clauses. The reorganization court is not bound in any way to the terms of an administrative decision, that is void in this aspect, although the main issue has been well analyzed regarding its outlines.-----

On the other hand, currently the non-tax credits of ANATEL are part of the General Creditors' List and therefore, in principle, should follow the fate reserved to them by the approved reorganization plan. However, one may not ignore, either, that Act No. 13494/2017 has provided for a completely different treatment concerning the payment method of these claims. Indeed, as long as no other law is enacted to rule the matter, this norm shall guide the method of monetary restatement and amortization of the debts, and not the plan approved during the General Creditors' Meeting. Obviously, the plan is not as binding as a law approved by the National Congress. It is unconceivable that it might have the strength to change its terms in view of the nature of ANATEL's public credits.-----







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What would be possible to the General Creditors' Meeting would be to elect one or more payment methods already established by law, never to innovate regarding their provisions to benefit the debtor with better conditions.

AT THIS POINT, THE PUBLIC PROSECUTION OFFICE ECHOES THE REQUEST OF THE AGENCY, PLEADING FOR THE REMOVAL OF SUCH CLAUSE IN VIEW OF ITS DISCREPANCY IN RELATION TO THE CURRENT SPECIFIC LAW. -----

The evolution of the wording of the reorganization plan into the terms that were approved, dismissed a series of other perplexities detected in the proposal primitively sent to consideration by the creditors on December 19<sup>th</sup> concerning the creditors belonging to Class III. Unless there is a mistake, there are no provisions for any exclusive treatment for some creditors without a reasonable justification. -----

In this respect, it is clear that the greater weight of the credit held by some creditors, the complexity of their formation and the fact that they are represented by securities that circulate in the secondary market are more than sufficient reasons for their clustering and equalization of payment methods. Currently, the plan does





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not contemplate anymore differentiated payment to a closed group according to non-objective criteria. The option of one or another payment method is based solely on value standards (and, for this reason, on importance concerning a future restructuring of the liabilities) and origin of the credit. The payments that are foreseen are proportional to the amounts of the credits showing these same properties. -----

However, the provision in one of the annexes of the judicial reorganization plan for the reimbursement of expenses incurred by creditors to receive their credits in the reorganization procedure, a clause that affronts the bankruptcy act, as already noted by the Public Prosecution Office (Page 249.131), remains. The provision, previously inserted in the "Comfort Letter" (Clause 11), was embodied in the pertinent provisions in a document attached to the RJ Plan. To this effect, please see Section 11 ("Payment of Fees and Expenses" of the Attachment to the Court Supervised Reorganization Plan, "Subscription and Commitment Agreement"<sup>2</sup>. -----

As already stated earlier, such expenses may not be demanded from the debtor, pursuant to express provision in





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the Bankruptcy and Reorganization Act of 2005, in its Article 5, II and may reach a quite expressive volume when one has in mind the billions of reais represented by the international bonds. In this concern, the legislator clearly removed the possibility of payments from the field of negotiation. -----

IN LIGHT OF THE ABOVE, ONCE AGAIN THE PUBLIC PROSECUTION OFFICE PLEADS FOR THE REMOVAL OF ANY AND ALL CLAUSE CONTAINED IN THE MAIN PORTION OF THE PLAN OR IN ITS ATTACHMENTS, PROVIDING FOR SUCH REIMBURSEMENTS. -----

Said attachment contains, moreover, other provisions deserving more attention by the court. There, also, the previously criticized promise for the exclusive payment of "fees"<sup>3</sup> to a closed group of creditors whose profile, unless we are mistaken, does not justify the non-egalitarian treatment and the exclusivity consecrated in the agreement previous to the General Creditors' Meeting. -

<sup>2</sup> Available at <http://www.recuperacaojudicialoi.com.br/wp-content/uploads/2017/12/Anexo-38.11-20171221-0i-Subscription-Agreement-EXECUTION-VERSION-Assinado.pdf> -----

THE PUBLIC PROSECUTION OFFICE DEEMS IT AS NECESSARY TO PERFORM A "FILTRATION" OF THE PROVISION WITH THEIR





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**EXTENSION TO ALL CREDITORS THAT BELONG TO CLASS III WITH A SIMILAR PROFILE, THEREFORE PRESERVING EGALITARIAN TREATMENT.** -----

Moving on, the questions regarding the manner how the company will be managed hereafter, its governance and the manner how the new shares with which a material fraction of the liabilities will be paid are going to be issued, arise for examination. **As well emphasized in a previous decision of this honorable court (Page 250.141/250.148), removal of the manager (change of control and command of the management of the indebted business company) is a form of reorganization expressly provided for in the Bankruptcy and Reorganization Act of 2005 in its Article 50, III and IV which also arises clearly from Article 64, VI.** -----

It is certain that the creditors assembled in the General Creditors' Meeting resolved by large majority that this change in the command of the companies is a necessary measure for them to recover. However, as stated before, **we should not forget that the major company of the group has shares traded at stock exchange(s) and shall comply with a series of requirements of the Securities and Exchange Commission - CVM (and other bodies ruling negotiation of**





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securities bound to their shares abroad) with the purpose of preserving regularity of these transferable securities. It would not be desirable for non-compliance with the Corporate Act to cause future disputes concerning political rights granted by shares eventually not issued in a regular manner, or the issue of which was the result of a resolution deemed void. -----

3 "5. Consideration for Commitments. As consideration for the Commitments and the time and resources devoted to, and fees and expenses incurred in connection with, the negotiation of the transactions contemplated by the Agreed Plan and implementation of the Rights Offering, the undertakings by each Investor and the cost of reserving capital for their Commitments, each Investor shall receive: (a) a commitment fee of either (1) cash equal to R\$320 million multiplied by such Investor's Commitment Percentage (the "Cash Commitment Fee") in U.S. Dollars, or (2) a number of Common Shares equal to (a) R\$400 million divided by the Rights Offer Price, multiplied by (b) such Investor's Commitment Percentage (the "Commitment Fee Shares" and, together with the Cash Commitment Fee, the "Commitment Fee"), subject to adjustments as provided in





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Section 12(e) (iv), which fee shall be earned on the date on which this SRC Agreement becomes effective pursuant to its terms, and shall be payable on the Closing Date. The form of payment of the Commitment Fee (cash or Common Shares) will be at such Investor's option, unless the volume weighted average price per share of the Common Shares trading in the B3 during the 30 consecutive calendar days ending on the Business Day immediately prior to the Record Date is R\$10.0 (the "Reference Price") or more, in which case the election with respect to the form of payment of the Commitment Fee will be at the option of the Debtors. The Reference Price shall be adjusted in the event of any split, reverse split, stock dividend or other stock combination involving the Common Shares during the beginning on the date of this SRC Agreement and ending on the Record Date, in which case the Reference Price shall be adjusted proportionally to give effect to such split, reverse split, stock dividend or other stock combination involving the Common Shares. The aggregate Cash Commitment Fee in U.S. Dollars shall be calculated based on the closing rate for sale of U.S. Dollars published by the Brazilian Central bank on its website, on the section





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*Quotations and Bulletins, option "Closing Quotations of All Currencies as of the close of business on the Business Day immediately preceding the Closing Date; and (b) the right to subscribe, according to its Commitment Percentage, of any Unsubscribed Shares."* (my emphasis) ----

To this effect and clarifying the Public Prosecution's Office previous submission, the success in the compliance of the RJ Plan shall occur with a coordination between the decision of the creditors, the Bankruptcy and Reorganization Act of 2005 and the Corporate Act. **This may only happen with a General Shareholders' Meeting being convened by any of those legitimated to do so in the bylaws of the companies. If the due formalization and implementation of the measures approved by the General Creditors' Meeting by the shareholders is not achieved, there will be the hypothesis of non-compliance with the plan and unjustified resistance, attracting upon those refusing not only the measures provided by Article 64 of the Bankruptcy and Reorganization Act of 2005, besides being liable for the losses caused thereby to the companies, their creditors and shareholders.** -----





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In short, provided that the General Shareholders' Meeting duly formalizes the decisions of the creditors contained in the RJ Plan and the incorporation to by the bylaws of the relevant, there is nothing to question. The fact is that it is not enough to approve the plan and have its judicial confirmation. During the compliance phase all this shall become concrete, since the General Creditors' Meeting is not a direction body of the companies.-----  
Moreover, said resolving conditions of the plan as contemplated in Clause 12.1 and its sub-clauses, do not prevent the Court from taking the extreme measures provided for in Article 61, §1 combined with Article 73, IV, both of the Bankruptcy and Reorganization Act of 2005.  
**Finally, there is the question of fiscal regularity of the RJ Debtors, the assessment of which the legislator mentioned as a requirement to grant the reorganization as provided by Article 57 of the Bankruptcy and Reorganization Act of 2005.** Much has been written already about the theme and the debate has been hot since the current reorganization and bankruptcy act was enacted. Unrestrained defense of the provisions of Article 57 has







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been the subject of appeals filed by the Public Prosecution Office itself. -----

Elapsed time and reflection about the jurisprudence formed and consecrated, among others, at the Superior Court of Justice - STJ<sup>1</sup> led to a change in the understanding of the scope of Bankruptcy Estates Public Prosecution Offices in the Jurisdiction of the Capital. Indeed, the requirement of submitting Negative Debt Certificates at the current time would only lead to the expected conclusion of the controversies arising in this case at a future and uncertain time. It is not too much to foresee that the deterioration of the activities and of the relationships of the RJ debtors with their creditors and investors would be an unavoidable unfolding. As long as the plan is not confirmed, no payment and no measure provided for in it would be possible, because the compliance phase would not begin. -----

In a very short time, the activities allowing payment of the taxes would be threatened and the required compliance with these tax obligations would be something completely impossible. The crisis, instead of being overcome, would become chronic and without perspectives of change. **FOR**





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WHAT WAS SET FORTH, THE PUBLIC PROSECUTION OFFICE CONSIDERS AS SURMOUNTABLE THE REQUIREMENT INSCRIBED IN ARTICLE 57 OF THE BANKRUPTCY AND REORGANIZATION ACT OF 2005 FOR THE GRANTING OF THE JUDICIAL REORGANIZATION. -----

<sup>4</sup> In this sense, the very recent rulings issued by the 2<sup>nd</sup> and 4<sup>th</sup> Groups of the Superior Court of Justice - STJ: Special Appeal 1673421/RS, Special Appeal 2017/0119006-9, Rapporteur Justice Herman Benjamin, 2<sup>nd</sup> Group, tried on October 17<sup>th</sup>, 2017, published in the Electronic Daily Gazette of Justice on October 23<sup>rd</sup>, 2017; Interlocutory Appeal on Special Appeal 958025/RS, Interlocutory Appeal on the Appeal on Special Appeal 2016/0197246-1, Rapporteur Justice Luis Felipe Salomão, 4<sup>th</sup> Group, tried on December 1<sup>st</sup>, 2016, published in the Electronic Daily Gazette of Justice on December 9<sup>th</sup>, 2016.-----

**CONCLUSION** -----

For all that was set forth and in view of the terms of the judicial reorganization plan approved on December 20<sup>th</sup>, 2017, the Public Prosecution Office - MP pleads: -----

- That Clause 4.3.4 of the RJ Plan that contemplates the differentiated method of payment of non-tax credits of ANATEL, in divergence with the provisions of Act No. 13494/2017, that rules the matter, be completely removed; -





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- that the RJ Debtors be prohibited from performing reimbursement of expenses of the creditors, the refund of which is banned under the terms of Article 5, II of the Bankruptcy and Reorganization Act of 2005, declaring invalidity of the provision contained in the Annex "*Subscription and Commitment Agreement*".-----
- that the payment of the "fees" provided for with exclusivity in the Annex "*Subscription and Commitment Agreement*" be extended to all creditors belonging to Class III with the same profile (amount, origin of the credit and health of input guarantees) which undertake to invest new funds in the company by means of the subscription of those shares under the same conditions;-----
- that it be ordered to the directing bodies of the companies to call a General Shareholders' Meeting with the purpose of adapting the bylaws of the companies to the decision taken by the creditors in the General Creditors' Meeting, as well as formalize the capital increase and the issuance of relevant common shares, measures necessary for its compliance;-----
- Finally, exempting the RJ Debtors from submitting Negative Debt Certificates, that this Court confirms the approved plan and grants the judicial reorganization as





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provided by Article 58, "caput" of the Bankruptcy and  
 Reorganization Act of 2005. -----

Rio de Janeiro, January 3<sup>rd</sup>, 2018. -----

Gustavo Lunz -----

Public Prosecutor -----

HAVING NOTHING FURTHER TO TRANSLATE FROM THIS DOCUMENT, I  
 SIGN IT BY SETTING MY RIGHT HAND AND AFFIXING MY GOLDEN  
 SEAL AND OFFICIAL STAMP. -----

PAULO FERNANDO SANTOS DE LACERDA, Ph.D. -----

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 #243 -----

Rio de Janeiro, January 18, 2018. -----

