

MEDIATION IN BRAZIL:

KEY ASPECTS AND RECENT CHANGES IN BRAZILIAN LAW



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1) MEDIATION:

- Mediators only help to reestablish communication between the parties, who have to consensually agree on solutions;
- Mediators have no power of decision, being merely facilitators of the discussions;
- Preferentially when parties have a previous relationship.

2) CONCILIATION:

- Conciliators actually suggest solutions to encourage settlement;
- Preferentially when there is no previous relationship between the parties.

3) ARBITRATION:

- Used after the parties were not able to amicably solve the conflict;
- The arbitrator's decision has the strength of a judicial decision and does not admit an appeal.



WHY MEDIATE?

- ✓ Parties' autonomy;
- ✓ Informality;
- ✓ Cost effective;
- ✓ Preserves relationship.

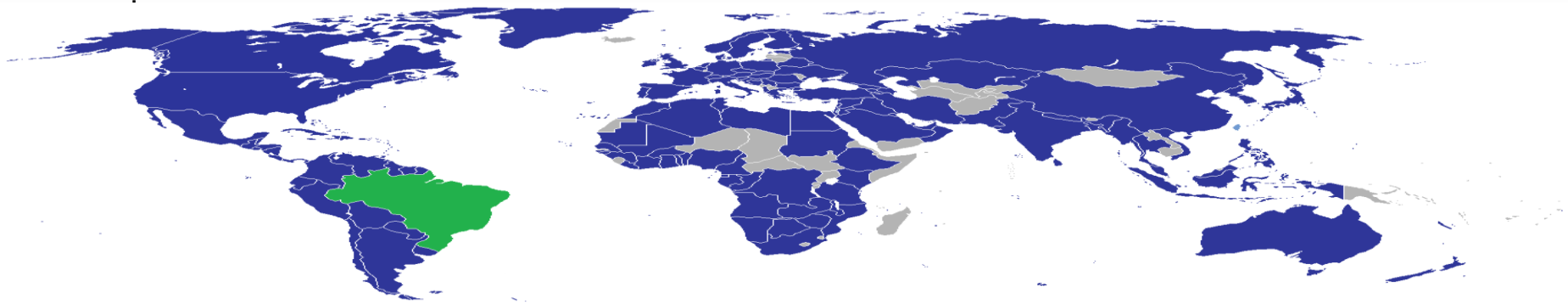


✓ **Regulation is still very recent:**

- New Brazilian Civil Procedural Code – CPC: Law 13.105, dated March 16th, 2015.
- Brazilian Mediation Law: Law no. 13.140, dated June 26th, 2015.

✓ **Need to implement mediation:**

- Overload of the Judicial system: Until 2015, more than 100 million lawsuits*. High costs (1% of interest/month + indexation due to inflation) and long time (aprox. 5 years).
- World oil crisis: Fall of barrel price, reduction of freight and bankruptcy of shipyards/shipping



✓ **Brazilian offshore support market*:**

- PETROBRAS: Termination of charter contracts of foreign vessels and imposition of fines.
- Since December, 2015: Dismissal of 49 foreign vessels and contracting of 34 Brazilian vessels. 15 foreign vessels changed its flags to Brazilian.
- July, 2016: Total of 412 offshore support vessels (293 Brazilian and 119 foreign).



*Brazilian Association of Offshore Support Companies – ABEAM

✓ Mediation in numbers*:

- Judicial Court of Rio de Janeiro in 2016: 5.680 cases.

- Results:

42,9% - No agreement;

34,5% - Agreement;

12,9% - Absence of the defendant;

9,6% - Absence of the plaintiff.



*Data from the Judicial Courts of Rio de Janeiro (NUPEMEC).

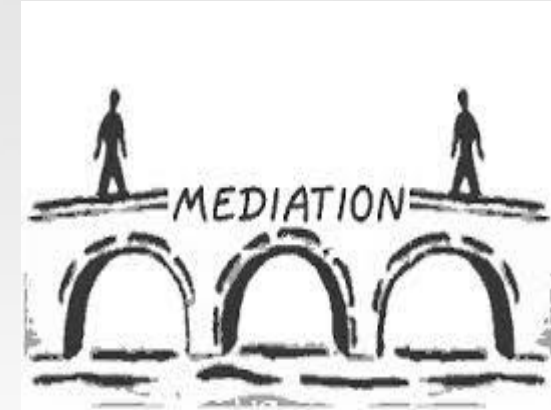
- I - Impartiality of the mediator;
- II - Equality between the parties;
- III - Oral negotiations;
- IV - Informality;
- V - Freedom of choice and autonomy of the will;
- VI - Search for consensus;
- VII - Confidentiality;
- VIII - Good faith.



"We're looking for impartial people
who think the way we do."

DEFINITION OF MEDIATION:

"... Technical activity carried out by impartial third party without decision-making power, which, chosen or accepted by the parties, assists and encourages them to identify or develop consensual solutions to the dispute."



- ✓ Nobody is obliged to remain in mediation.
- ✓ Unlike in arbitration, undisputable rights that admit transaction may also be the object of mediation (ex.: alimony, child custody and claims involving public authorities).
 - However, agreements involving such rights must be judicially homologated.
- ✓ Mediation may include all or part of the conflict.

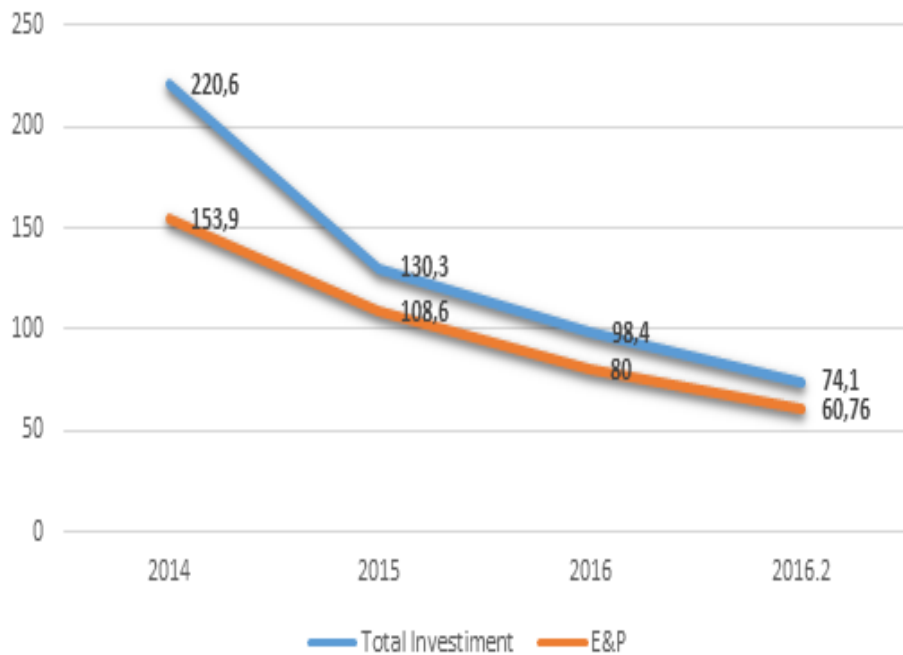
- ✓ Time bar is suspended.
- ✓ Mediator is prevented from representing the parties for 1 year after the last mediation hearing.
- ✓ In case of agreement: final term is an extrajudicial executive title and, once judicially homologated, judicial executive title.
- ✓ As long as parties agree: can be through the internet or other distance way of communication.
- ✓ A party domiciled abroad may chose to abide by Brazilian mediation rules.

- ✓ **No specific mention to mediation.**
- ✓ Law 10.233/2001:
 - Regulated land and waterway transport and created the regulatory agencies ANTT (land) and ANTAQ (water).
 - Possibility of **conciliation and arbitration to settle port disputes.**
- ✓ Port Law (Law 12.815/2013) and Decree 8.465 / 2015 (regulated the Port Law):
 - Criteria for **arbitration to settle port disputes.**
- ✓ Advised that parties choose a **mediator with specific knowledge of maritime and port legislation.**

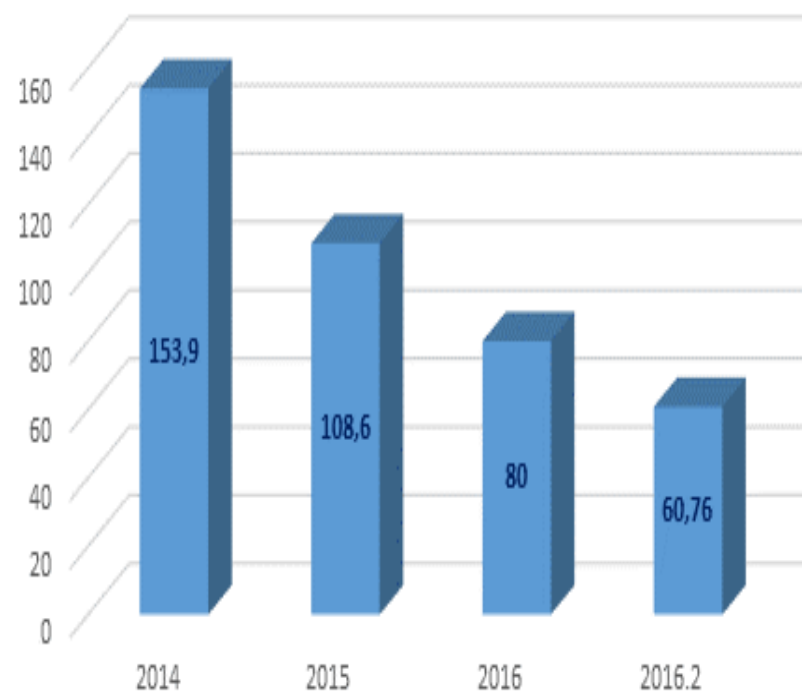


Reduction of PETROBRAS investments:

Reviews on Petrobras' Business Plan
Investments in billions of USD



E&P



Not only bad news...

- New players: In July, 2016, selling of pre-salt field in the Basin Campos by PETROBRAS to STATOIL (US\$ 2.5 billions).

According to Brazilian Oil Institute – IBP:

- Brazil can reach the mark of 5.4 million of barrels/day in 2040.
- Brazil has the 4th largest demand for oil transport (largest market in South America fuels).
- Pre-salt reserves have great geological features and large sedimentar basins (estimated 56 billion boe reserves).



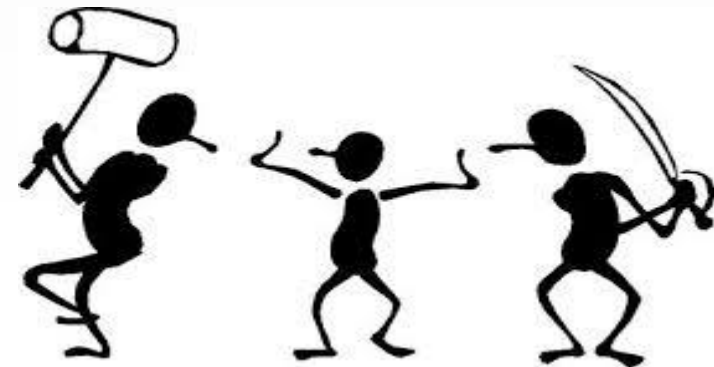
WHAT TO EXPECT?

- ✓ **More conflicts with PETROBRAS:** mediation is faster and cheaper than Judicial Courts.



- ✓ With the **new Mediation Law and CPC:**

- Incentives to mediation, conciliation and arbitration;
- Slight change of culture: parties submitting disputes to mediation and conciliation before litigation.



PÃO DE AÇUCAR GROUP:

2013: Mediation in the dispute between Abilio Diniz and French Group CASINO, arising from the shareholders' agreement of *Pão de Açúcar* company.

- Successful mediation conducted by Professor William Ury, Harvard anthropologist, granting a wider space for mediation in Brazil.



OI'S REHABILITATION PROCEEDINGS:

- ✓ Oi is Brazil's largest mobile phone provider and one of the 4 largest companies of landline.
- ✓ June, 2016: 7 companies from Oi Group requested rehabilitation proceedings.
- ✓ Early September: Judge determined that the dispute had to be first submitted to mediation.
- ✓ Decision was questioned by the Arbitral Chamber of São Paulo's Stock Exchange, but Brazil's Superior Court of Justice maintained it.
- ✓ **1st time a mediation will be held in the course of a rehabilitation proceeding lawsuit.**



TRANSPETRO x Maritime Labor Unions

- ✓ July, 2016: Mediation hearing suggested by the Superior Labor Court (TST);
- ✓ Attempt to reach an agreement for execution of a Collective Bargaining Agreement (disagreements concerning subcontracting of Nautical Inspectors);
- ✓ TRANSPETRO did not accept any amicable solution: case will be decided by TST.





Thank you.

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