IFLR

# Deal: Eletrobras' privatisation explained

***By Natasha Teja*** August 09, 2022


## The privatisation of the Brazilian electricity company faced a myriad of political, social and regulatory obstacles that almost upended the deal on more than one occasion

The Brazilian government gave up its controlling share of Eletrobras in a rare victory for President Jair Bolsonaro's privatisation agenda on June 14. Advisers on the deal told IFLR that it faced a multitude of political and regulatory obstacles, in addition to the time pressure of completing the deal before the presidential elections in October 2022.

Many Brazilians view privatisations unfavourably due to the wave of privatisations that occurred in the 1990s which resulted in skyrocketing prices for service. "It's that backdrop of a somewhat difficult memory plus being seen to be selling valuable state assets which led to 27 lawsuits along the privatisation process to try and stop the deal from happening," said Anja Pfleger Andrade, counsel at Clifford Chance's São Paulo office who advised Eletrobras on all US federal law, New York law and Spanish law aspects of the deal. "That was a huge challenge."

Eletrobras' deal structure included certain subsidiaries that invested in larger hydrological projects by participating in special purpose entities (SPEs). Eletrobras was a minority investor in one of the SPEs for a project called Santo Antonio where an arbitral decision was awarded against Santo Antonio which could have led to accelerating Eletrobras' debt.

"Not only did we have to focus on the deal, but also ensure that these cross defaults across Eletrobas' debt would not be triggered," said Pfleger. This resulted in every part of the deal being tense for those involved.

***See also:*** *ISSB: markets applaud proposals, but divergence concerns remain*

The myriad of issues that arose required an innovative blend of different approaches to tackle the deal. Eletrobras isn't the first entity to undergo privatisation in Brazil, nor undergo equity or dual public offerings.

"We also did offerings in which there was FGTS, the Brazilian severance fund for registered employees, investor participation," said Jean Marcel Arakawa, partner at Mattos Filho. "We did all of this, but never before were all of those aspects combined in a single transaction."

Eletrobras was also not a typical privitisation deal in terms of its structure. "When Eletrobras issued new shares, the government declined its right to participate in that offering," said Jonathan Zonis, partner at Clifford Chance.

He continued: "The main way in which Eletrobras was diluted was not the government selling its shares, but the issuer (Eletrobras) issuing new shares sufficient to take the government's stake of voting shares down to about 45%, with voting power limited to 10% of the class of voting shares."

**Fitting the jigsaw pieces together**

The final stock offering for Eletrobras raised US$6.9 billion and due to the sheer size of the deal, structuring it was an arduous process. "The offering structure consisted of a sizeable primary offering complemented by a secondary tranche in order to attain the final government stake established by regulation," said Glenn Mallett, associate partner at BTG Pactual, who served as the underwriter for the transaction.

One of the challenges was to structure the secondary portion of the transaction because there were different conditions which needed to be met with the government selling directly or indirectly through BNDESpar (a subsidiary of the Brazilian Development Bank)," added Mallett. The entire transaction also had to be approved by Tribunal de Contas da União, the largest audit body in the Brazilian government.

***See also:*** *Regulatory harmonisation could help bring Latin America to forefront of capital markets*

Another challenge cited was pre-establishing the way the transaction would be allocated based on pre-set conditions before going to market. “When you allocate an offering, you do so according to investor engagement, to the interest expressed in the transaction and taking into consideration different investor profiles and size,” said Mallett.

It is a discretionary process without necessarily a standard rule since a lot of the process is informed by the marketing itself and by fluid market conditions.

“However, in the case of Eletrobras, we needed to pre-establish the parameters and score investors during the process, in order to come up with allocations which could be tracked and explained objectively, not falling within a notion of subjectiveness,” said Mallett. “This was one of the big concerns that the government had. They needed a very clear-cut process of how shares were allocated.”

Not only was structuring the offering difficult but it had to undergo multiple approvals. “The transaction had to go through not only corporate internal corporate approvals at the company, but also with the federal government,” said John Guzman, partner at White & Case who advised on the US side of the deal. “That was probably the largest challenge of the deal, making sure those approvals were done in order for us to complete the offering.”

However, the US side of the deal ran smoother compared to the obstacles the Brazilian counterparts faced. “Eletrobras is a well-known seasoned issuer and as a result they benefit from automatic effectiveness, which meant once they file the F3 [a registration statement filed by foreign private issuers with the SEC], it's effective,” said Guzman.

“The biggest hurdle on the US side ties back to the Brazilian privatisation process. We had to make sure that the process was complete and was adequately disclosed before we could go ahead to launch the deal,” added Guzman.

**Multiple listings**

Eletrobras is listed in three different exchanges: NYSE, Latibex and the Sao Paulo Exchange. While this added to the complexity of the deal, it also made it unique.

Challenges were faced when dealing with the existing shareholder base who had pre-emptive rights. “Multiple listings make it more complex because you have to deal with priority rights,” said Guzman. “If the company wants to do a primary offering you have to deal with how you can and cannot offer those priority rights in certain jurisdictions and that's what we struggled with.”

Eletrobras is not the first deal listed in Sau Paulo and New York to do a follow-on offering; however, meeting multiple requirements on competing timelines added to the complexity. “Timetables are different than when the annual report on Form 20-F is due in the US,” said Zonis at Clifford Chance. “The requirements of Form 20-F versus the Formulario de Referencia are themselves a bit different in addition to the differences in the Brazilian versus US financial statements.”

Despite all the roadblocks that could have ended the deal at different points towards its completion, it eventually became a success story in Brazil’s privatisation history.

“We had a very innovative transaction which was able to fulfil all preconditions,” said Mallett at BTG Pactual. “We had huge challenges in terms of oversight and all the pre-set regulations and conditions, yet they were fully met in a very difficult market.”

**TAGS** CORPORATE M&A BRAZIL DEALS CLIFFORD CHANCE WHITE & CASE

---


## Natasha Teja

EMEA REPORTER


Natasha joined IFLR as a reporter in 2020. She covers a wide range of areas including ESG, restructuring, and M&A. Being British/Singaporean, she is particularly interested in issues that affect both Europe and Asia Pacific.