

DEALNEWS / BRAZIL



OGX: Debt-For-Equity Exchange Through ADR Program for Prepetition Bondholders

by ALICIA LOBEIRAS (alobeiras@cgsh.com)

OGX Petróleo e Gás S.A. is one of the most recent examples of an in-court restructuring where prepetition bond debt was converted into equity pursuant to a plan of reorganization. OGX is a company engaged in large-scale onshore and offshore exploration and production of oil and gas. Partially as a result of a large-scale exploratory campaign that did not meet OGX's projections between 2009 and 2012, leading to lower-than-expected revenues, the company found itself unable to meet its debt payment obligations, particularly with respect to approximately \$3.6 billion in U.S. dollar-denominated bond debt. The company, together with several affiliates, filed for reorganization in Brazilian court, requesting *recuperação judicial* on October 30, 2013. OGX's plan of reorganization was approved by creditors and confirmed by the Brazilian bankruptcy court in June 2014.

A key facet of the plan was the distribution of equity to creditors in order to extinguish their debt claims. In order to facilitate this, the Company, together with creditors' counsel, decided to issue the equity to holders of international bonds through American Depositary Receipts ("ADRs"). The common shares underlying the ADRs were exempt from registration pursuant to Section 3(a)(10) of the Securities Act of 1933. Section 3(a)(10) exempts from registration securities issued pursuant to a judicial order deeming the issuance both procedurally and substantively fair. In OGX, this judicial order was issued by the Brazilian court overseeing the *recuperação judicial* proceeding.

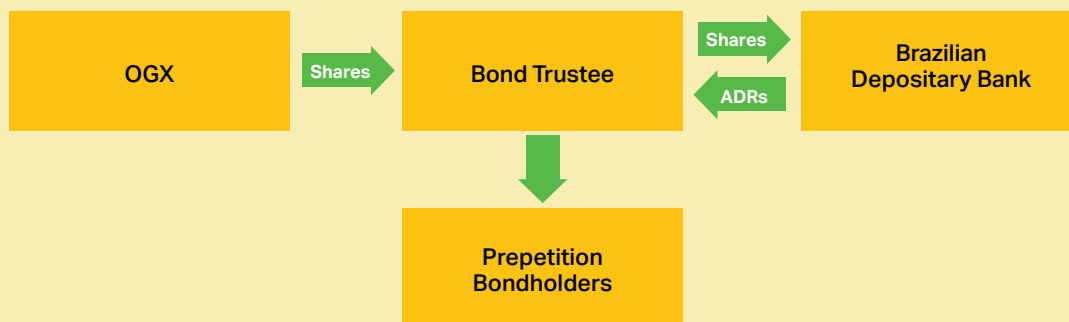
OGX – KEY FACTS

Filing Date	October 30, 2013
Plan's Court Approval	June 26, 2014
Date of Distribution to Holders	December 28, 2015
Recognized Bondholder Claims	US\$3.6 billion
Restructuring Consideration	Debt for equity - 57,274,891 ADRs, each representing 1 common share
Number of filing parties	OGX + 3 affiliates

In the case of OGX, an ADR program made sense because it facilitated easy distribution to bondholders by allowing a distribution to be made through DTC instead of through a Brazilian clearing system. The process in Brazil for foreign investors in Brazilian securities can be inconvenient and burdensome, and is particularly problematic when dealing with a large number of holders, many of whom are not familiar with the process. Since holders receiving ADRs do not directly hold any Brazilian securities, the ADR program eliminates the need for individual holders to go through a Central Bank process. The local Brazilian custodian for the ADR program would hold the Brazilian securities and satisfy the applicable registration requirements under Brazilian securities law.

Continued ►

Furthermore, since the prepetition bonds were held through global notes through DTC, the ADR program also simplified the distribution process by using the same process that is typically used to make regular principal and interest payments through DTC. The trustee, which was the entity that received shares on behalf of the prepetition bondholders pursuant to the plan, deposited the Brazilian common shares with the local Brazilian custodian for the ADR program. The depositary bank for the ADR program then issued the ADRs in the United States back to the trustee, and the trustee distributed the ADRs to bondholders in a record date distribution through DTC.



The ADRs were delivered and registered by OGX in the name of the trustee on October 16, 2014, at which point OGX's obligations under the Plan were fulfilled. The ADRs were delivered by the trustee to the prepetition bondholders on December 28, 2015.

Cleary Gottlieb Steen & Hamilton LLP represented the bondholders as U.S. Counsel. **Pinheiro Neto Advogados** represented the bondholders as Brazilian counsel. **Rothschild** served as restructuring advisor for the bondholders. **Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados** served as Brazilian counsel for OGX. **Angra Partners** served as restructuring advisor for OGX.

