



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

AES/CS:JN
F. #2012R01716

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 29, 2020

By ECF and Hand Delivery

The Honorable Raymond J. Dearie
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Odebrecht S.A.
Criminal Docket No. 16-643 (RJD)

Dear Judge Dearie:

The government and the defendant Odebrecht S.A. (the “Company” or “Odebrecht”) respectfully submit this letter to advise the Court that the parties have agreed to voluntarily extend the term (“Term”) of the obligations contained in the plea agreement entered into by Odebrecht on December 21, 2016 in the above-referenced matter (the “Plea Agreement”). The parties have agreed to extend the Term of the Plea Agreement as to all of the obligations contained within the Plea Agreement, and have attached a letter dated January 17, 2020 (the “Extension Letter”) which memorializes the parties’ agreement.

As the Court is aware, on December 21, 2016, the parties entered into the Plea Agreement. The Term of the Plea Agreement is currently scheduled to expire on February 20, 2020. See ECF Dkt. No. 10. In the Plea Agreement, Odebrecht pleaded guilty to a criminal information charging a conspiracy to violate the Foreign Corrupt Practices Act (“FCPA”), in violation of 18 U.S.C. § 371.¹ The government also commenced a related criminal case, United States v. Braskem S.A., 16-CR-644 (RJD) against Braskem S.A., which was controlled by Odebrecht.²

¹ Odebrecht was sentenced by the Court on April 17, 2017.

² The related criminal case against Braskem is not impacted by, or subject to, the terms of the proposed voluntary extension of the Odebrecht Plea Agreement, other than to the extent that Odebrecht’s obligations pursuant to the Plea Agreement relate to its subsidiaries and affiliates, including Braskem.

Under the Plea Agreement, Odebrecht agreed to, among other things, implement and maintain a compliance and ethics program and to retain an independent compliance monitor. The Plea Agreement provided that Odebrecht would be in breach of the Plea Agreement if it failed to fulfill the monitorship obligations or failed to implement and maintain a compliance and ethics program, among other commitments. The parties also agreed that in the event the government determined that Odebrecht had failed to perform or fulfill completely each of its obligations under the Plea Agreement, an extension of the Term could be imposed by the government, in its sole discretion, for up to one year.

In the Extension Letter, attached hereto, the government informed the Company that it has failed to fulfill its obligations under the Plea Agreement. Specifically, the government's determination was premised on: (1) Odebrecht's failure to fulfill the monitorship obligations, including failing to adopt and implement the agreed upon recommendations of the monitor and failing to allow the monitor to complete the monitorship; and (2) Odebrecht's failure to implement and maintain a compliance and ethics program designed to prevent and detect violations of the FCPA and other applicable anticorruption laws throughout its operations.

The Company has acknowledged its failure to fulfill its obligations under the Plea Agreement and has agreed to extend the Term of all the provisions and obligations of the Plea Agreement to November 16, 2020, which is an additional 270 days beyond the Term's original expiration date of February 20, 2020. This would provide the Company with additional time to fulfill its obligations under the Plea Agreement without prejudice to any other remedy the government may pursue, including breach and prosecution.

The parties are available to supply any additional information the Court may require.

Respectfully submitted,

Odebrecht S.A.
Defendant

RICHARD P. DONOGHUE
United States Attorney

_____/s/
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ROBERT ZINK
Chief, Fraud Section
U.S. Dept. of Justice, Criminal Division

_____/s/
Christopher Cestaro, Deputy Chief
David Last, Principal Assistant Deputy
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cc: Clerk of the Court (RJD) (by ECF)
All Counsel of Record (by ECF)



U.S. Department of Justice

Criminal Division

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January 17, 2020

BY ELECTRONIC MAIL

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Re: United States v. Odebrecht S.A., No. 16-CR-643 (E.D.N.Y.)

Dear Mr. Bautista:

On December 21, 2016, Odebrecht S.A. (the “Company” or “Odebrecht”), entered into a plea agreement (the “Plea Agreement”) with the Department of Justice, Criminal Division, Fraud Section and the United States Attorney’s Office for the Eastern District of New York (the “Department”). Pursuant to the Plea Agreement, Odebrecht retained an independent compliance monitor on February 20, 2017. By agreement of the parties, the Plea Agreement and all of its terms, including the independent compliance monitor, are set to expire on February 20, 2020.

The Department hereby provides notice to the Company that it has determined that the Company has failed to fulfill its obligations under the Plea Agreement. This determination is premised on: (1) Odebrecht’s failure to fulfill the monitorship obligations, including failing to adopt and implement the agreed upon recommendations of the monitor and failing to allow the monitor to complete the monitorship; and (2) Odebrecht’s failure to implement and maintain a compliance and ethics program designed to prevent and detect violations of the FCPA and other applicable anticorruption laws throughout its operations.

The Company has acknowledged its failure to fulfill its obligations under the Plea Agreement, and the Department and the Company have agreed to extend the term of the Plea Agreement, and all of the provisions and obligations of the Plea Agreement, for an addition 270 days beyond February 20, 2020 (i.e. November 16, 2020) in order to provide the Company with additional time to fulfill its obligations under the Plea Agreement without prejudice to any other remedy the Department may pursue, including breach and prosecution.

Sincerely,

/s/Christopher Cestaro
Christopher Cestaro
Deputy Chief
Criminal Division, Fraud Section

cc: David Last
Principal Assistant Deputy Chief, FCPA Unit
Criminal Division, Fraud Section