



**AIRPORT BANKRUPTCY LEADING CASE:  
Viracopos International Airport (VCP) judicial  
reorganization proceeding.**

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# Disclaimer

- ▶ The views and opinions expressed in this presentation are those of the authors and do not necessarily reflect the position of the Law Firms they are members of.
- ▶ There is no partnership or commercial relationship between both Law firms.
- ▶ Examples of analysis performed within this presentation are summarized. We strongly recommend to go deeper into the subject for a better understanding of the whole context

# Summary

- ▶ What is a judicial reorganization?
- ▶ Why Viracopos (VCP) filed for judicial reorganization?
- ▶ How is the judicial reorganization going?

# What is a judicial reorganization?

- ▶ Brazilian Bankruptcy law is inspired by US Chapter 11.
- ▶ The principle for preserving a company
  - This principle establishes that judicial reorganization aims to overcome the situation of economic and financial crisis of the debtor, in order to preserve the economic activity and the public interest resulting from the recovery, like the preservation of jobs, tax collection and circulation of goods, products and services, as well as the interests of creditors.

# What is a judicial reorganization?

- ▶ Existing credits on the day the Debtor filed for the Judicial Reorganization
- ▶ Creditors: Employees, Secured Creditors, General Creditors, Small Companies
- ▶ A negotiation proceeding between the Debtor and the Creditors that the Court of Justice supervises
- ▶ Debtor: private companies of a non-regulated market

# What is a judicial reorganization?

- ▶ It is not bankruptcy but a way to avoid it
  - The Board and the Officers keep running the company
  - Stay of proceedings (Enforcements)
  - Prevents insolvency before Tax Authority
  - Time frame to negotiate and present a Reorganization Plan for Creditors approval

# Why VCP filed for judicial reorganization?

- ▶ Economic and financial imbalances in the concession agreement
  - Crisis – Brazilian economic scenario

Ano	Projeção ANAC	PIB efetivo (IBGE)	Diferença entre projetado e real (em pontos %)	Diferença acumulada entre projetado e real (em pontos %)
2012	5,00%	1,90%	-3,10%	-3,10%
2013	5,50%	3,00%	-2,50%	-5,82%
2014	5,50%	0,50%	-5,00%	-11,39%
2015	4,41%	-3,80%	-8,21%	-20,55%
2016	4,30%	-3,60%	-7,90%	-29,45%

# Why VCP filed for judicial reorganization?

- ▶ Economic and financial imbalances in the concession agreement
  - VCP invested BRL 3,277 bi in Infrastructure
  - But there is still a price to pay (best price offer) = Initial offer of BRL 3,8 bi (159,75% higher)
  - BRL 127.366 mi/year + up to 7,5% of gross revenue
  - And investment not based on an “revenue trigger”
  - 30 year–concession starting as of 2012



# Why VCP filed for judicial reorganization?

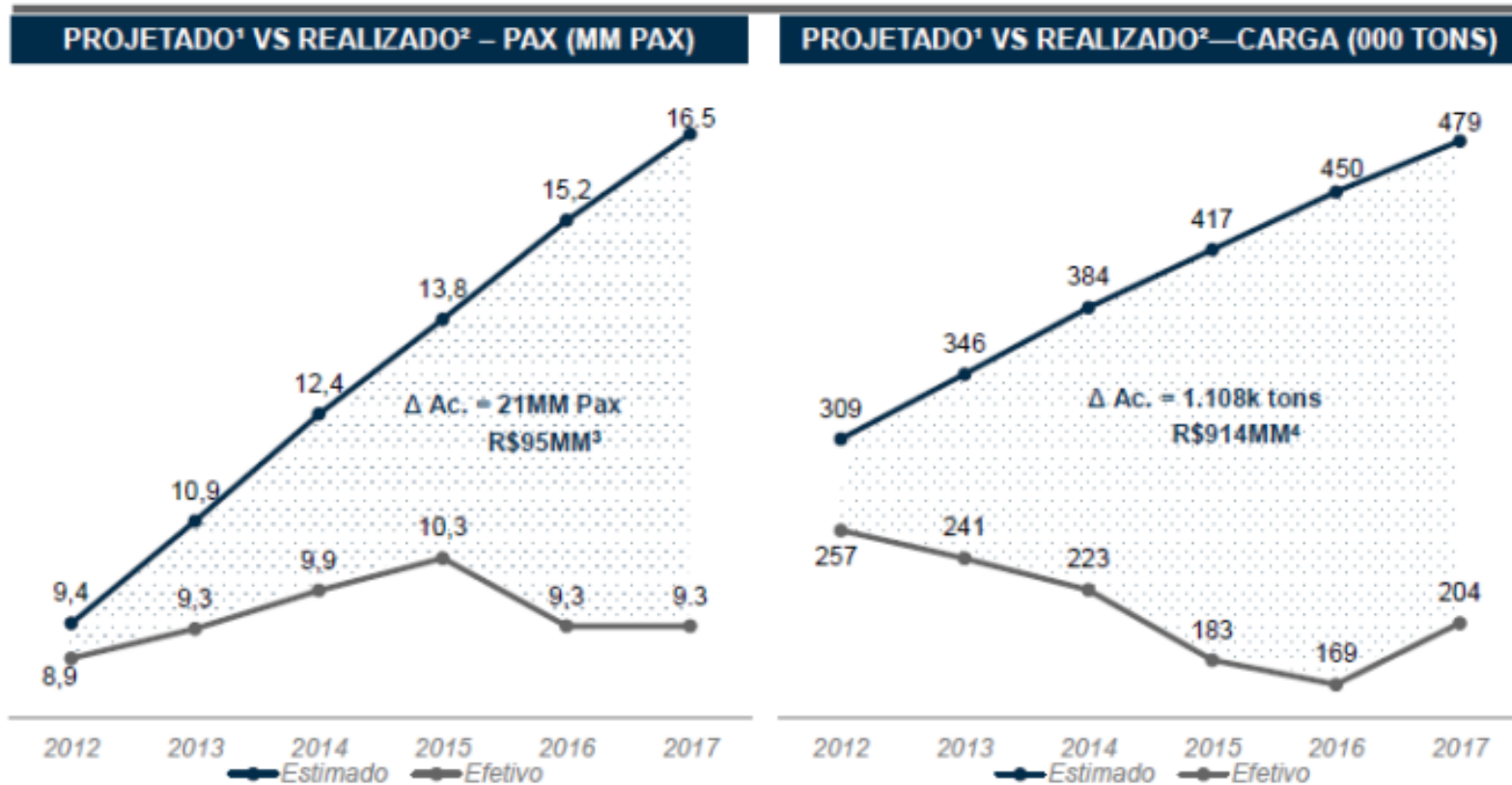
- ▶ Economic and financial imbalances in the concession agreement
  - Financial difficulties arising from the frustration of revenues > BRL 3,2 bi
  - Six different claims for rebalancing filed before ANAC sums 72% of VCP's tender price
  - Project finance → collection and bank account attachment

# Why VCP filed for judicial reorganization?

- ▶ Financial difficulties arising from the frustration of revenues
  - Non-attainment of the demand of flow of passengers and cargo at the airport.
  - ANAC provided the calculation – “EVTEA”
  - New PAX Terminal 6x bigger but 65% of unused capacity
  - ANAC delivered 12km<sup>2</sup> of the 27km<sup>2</sup> contracted area.
  - Less real-state and commercial revenue > BRL 2,4 bi

# Why VCP filed for judicial reorganization?

- ▶ Reduced flow of passengers and cargo



# Why VCP filed for judicial reorganization?

- ▶ Reduced area = Delivered  Not delivered 



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# Why VCP filed for judicial reorganization?



# Why VCP filed for judicial reorganization?

## ▶ Currently

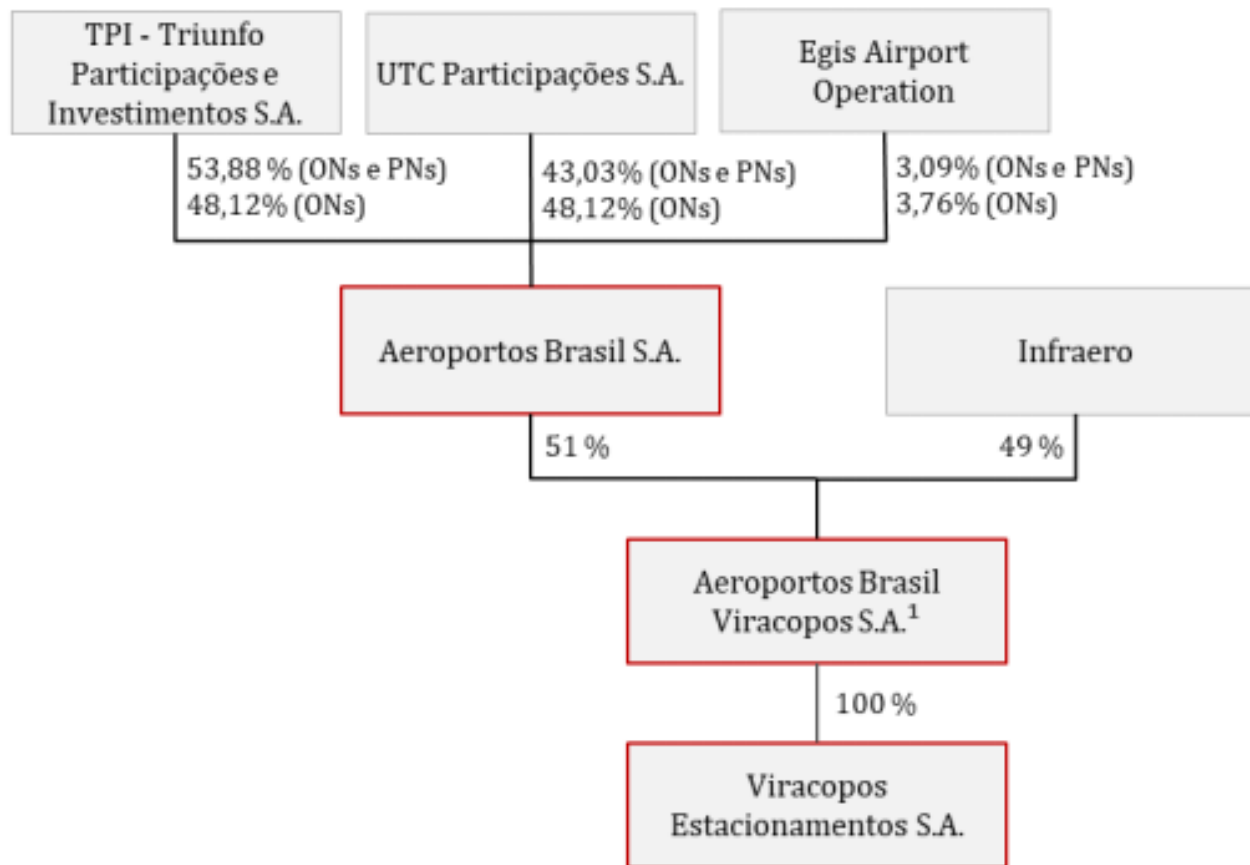
- Administrative claims before ANAC (rebalancing)
- Court cases (rebalancing)
- A new Tender of the new airport?
- Termination by default > Bankruptcy
- Bankruptcy > Concession agreement termination
- PPI Law nr. 13.448/2017 = offsetting the Price and the Imbalance claims

# Why VCP filed for judicial reorganization?

## ▶ Economically viable

- Well rated – Airhelp, Air Cargo Excellence, OAG, ANAC...
- Offer from Zurich Airport + IG4 Capital Investment for the shareholding control
- Alvarez&Marsal
- Gross revenue BRL 801 mi
- EBITDA 2018 -> BRL 275 mi
- Saturation point = CGH (2020) and GRU (2022)

# How is the judicial reorganization going?



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# How is the judicial reorganization going?

- ▶ VCP judicial reorganization runs before Campinas (São Paulo) Bankruptcy Court.
- ▶ Debts of more than BRL 2,8 bi
- ▶ Most relevant creditors: ANAC, Project Finance (BNDES)
- ▶ Creditors have decided to stay the proceedings to better negotiate the terms of the payment plan.
- ▶ A settlement at the end of the tunnel
- ▶ Recent court decision

# How is the judicial reorganization going?

## ▶ Challenges:

- partial release of project finance guarantees
- the submission of public credits
- the modification of concession agreement obligations
- regulatory impacts and the relationship with ANAC

# How is the judicial reorganization going?

- ▶ Partial release of project finance guarantees
  - Project finance mechanism prevents VCP from using the resources of the concession
  - OPEX could be harmed
  - Brazilian concession law provides that receivables may be assigned up to a limit that does not compromise OPEX
  - Judicial dispute: today, banks can only appropriate revenue after payment of OPEX expenses

# How is the judicial reorganization going?

- ▶ The submission of public credits:
  - Can the State negotiate its credit?
  - Federal Attorney General Officer advises Agencies to fight for excluding their credits from judicial reorganization
  - Precedents from Oi S/A and Telecom Agency

# How is the judicial reorganization going?

- ▶ Amendment to the concession agreement :
  - Can the judicial reorganization Plan amend the concession agreement and change some obligations?
- ▶ Regulatory impacts:
  - Can ANAC treat VCP differently due to the judicial reorganization proceeding?
  - Third round of concessions -> better provisions to airport competitor

# How is the judicial reorganization going?

- ▶ Settlement? A new Tender of the new airport?
  - Initially, VCP sought the return of the concession to the Government.
  - Impossibility: lack of legal rules.
  - Recently, Federal Decree nr. 9.957 / 19.
  - ANAC and BNDES seem to prefer this output.
  - The parties have agreed that they will study the option and suspend further general meeting of creditors.

# How is the judicial reorganization going?

- ▶ A recent Court decision (October 1<sup>st</sup>, 2019)
  - The Tender Price disregarding the 159,75% gain
  - That is BRL 1,5 bi X 3,8 bi

À vista do exposto, acolhendo, em parte, o pedido subsidiário, **defiro a medida de urgência requerida para, nos moldes do item b.1 dos pedidos formulados em sede liminar, limitar o pagamento das outorgas fixas vencidas e não pagas e das outorgas fixas vincendas aos valores que seriam devidos desconsiderando o ágio de 159,75% pago sobre o preço mínimo de R\$ 1.471.000.000,00 (um bilhão, quatrocentos e setenta e um milhões de reais) previsto no item 4.24.2 do edital; e assegurar que os valores já pagos pela parte autora a título de outorgas fixas além do valor mínimo previsto no edital (descontado o ágio) até esta data sejam considerados nas outorgas não pagas, tudo no âmbito do Contrato de Concessão 003/ANAC/2012, até final julgamento da lide.**

# Thank you!

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