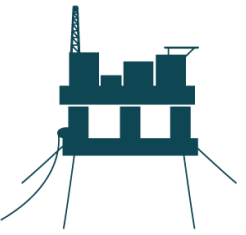


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Ship Finance: Local Security Package – Bottlenecks, Challenges & Opportunities

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Summary

I - Introduction: general overview on ship finance in Brazil

II – Ship Finance Regulatory Framework

III – Security Package – Brazil

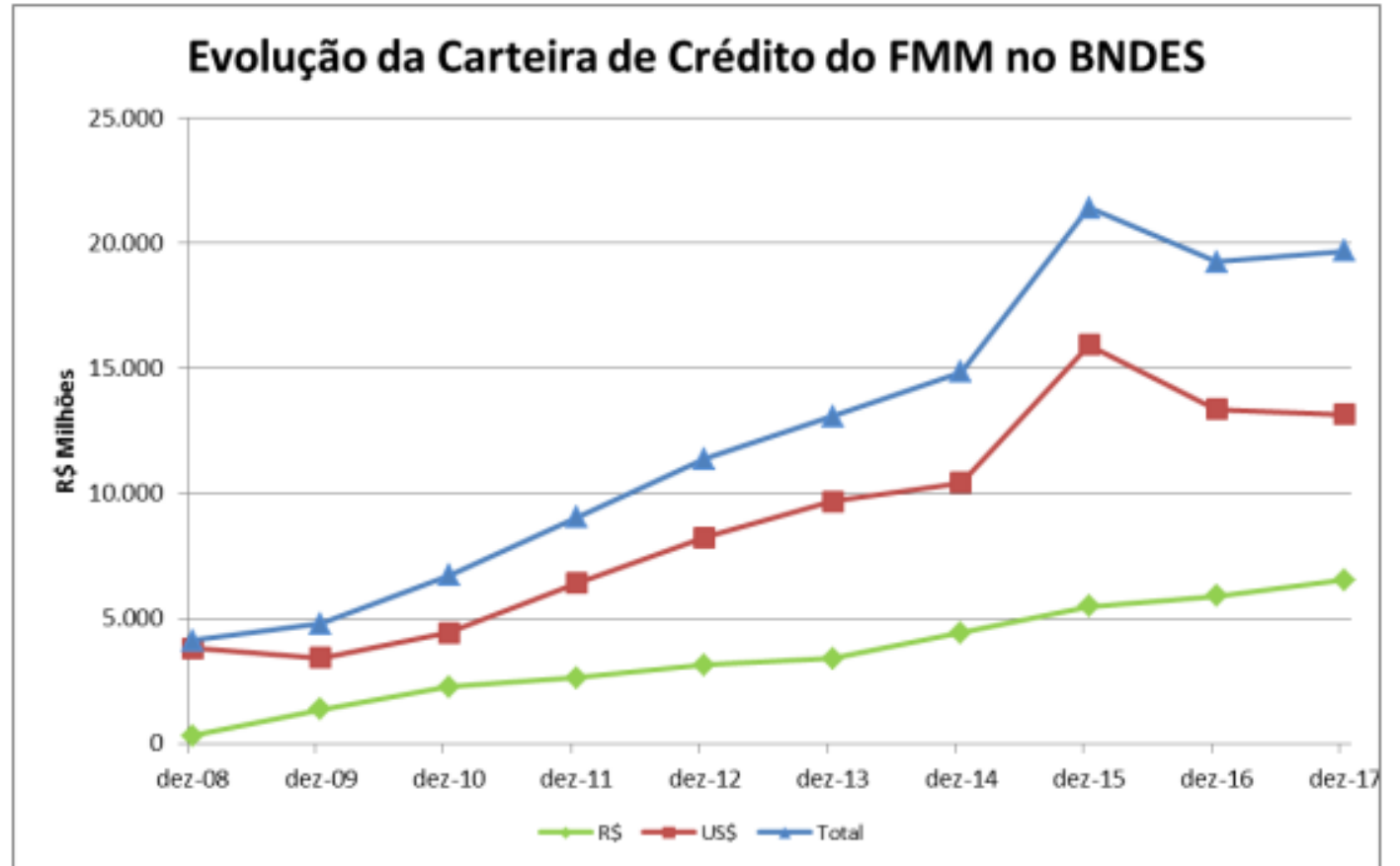
IV – Challenges and Bottlenecks

V – Opportunities



I - Introduction: General overview on ship finance in Brazil

- Merchant Marine Fund – FMM;
 - Ministry of Defense
 - Interest rates vary from 3 to 7%
 - Funds for the development of the Merchant Navy and the Brazilian shipbuilding and repair industry.
 - Financial agents:
 - BNDES;
 - Banco do Brasil;
 - Caixa Econômica Federal;
 - Banco do Nordeste;
 - Banco da Amazônia.



Source: BNDES

I - Introduction: General overview on ship finance in Brazil

- Recent recovery in the Maritime Ownership registry rate, which reflects the revitalization of the naval industry.



Source: The Admiralty Court

I - Introduction: general overview on ship finance in Brazil

Main certificates issued by the Admiralty Court over the last five years:

Year	Ownership Registry	Vessel Owner Certificate	Lien Certificate	pre-REB	REB	TOTAL
2014	428	120	58	328	216	1150
2015	349	118	72	177	154	870
2016	256	81	48	176	225	786
2017	227	82	33	119	140	601
2018	258	66	40	65	173	602
TOTAL	1.518	467	251	865	908	4.009

Source: The Admiralty Court



Source: BNDES



II – Ship Finance Regulatory Framework

Law 2.180/1954 - The Admiralty Court

- Independent entity of the Brazilian Ministry of Defense
- Linked to the Navy Command
- Jurisdiction over the national territory
- Competent authority to maintain and manage the registration of maritime property and of liens over vessels
- Registry exclusive for Brazilian vessels



Law 7.652/98 - Sets forth further formalities and requirements for registration of maritime property

- Purchase/Sale of vessels, naval mortgages or fiduciary sale to be recorded with the Maritime Notary

II – Ship Finance Regulatory Framework

Law 10.893/2004 - The Merchant Marine Fund Law (FMM)

- *“The FMM is an accounting fund designed to fund the development of the Brazilian merchant marine and the industry of naval repair and construction.” - Art. 22*
- General Goal of the FMM: to provide resources for construction and modernization of vessels in Brazilian shipyards, as well as for construction, expansion or modernization of shipyards.
- Funds of the MMF are available to:
 - (i) Brazilian Navigation Companies – “EBNs” - legal entities authorized to operate by ANTAQ
 - (ii) Brazilian Shipyards - incorporated and headquartered in Brazil

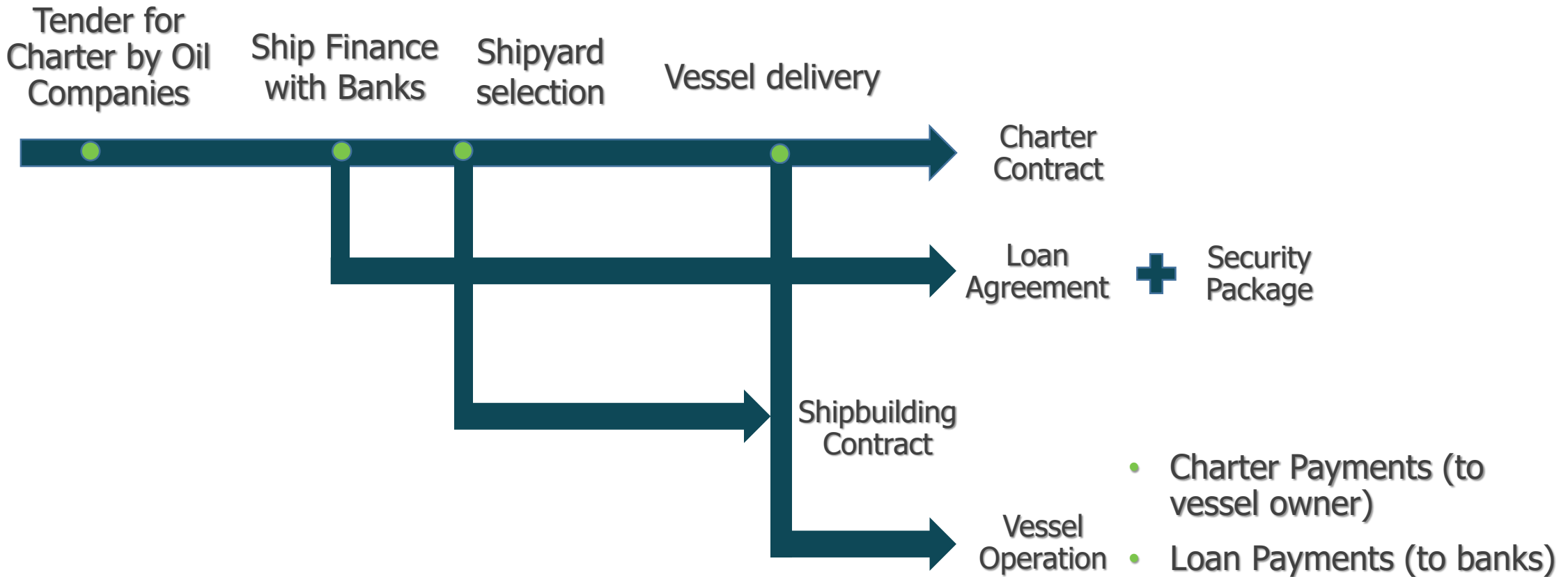
II – Ship Finance Regulatory Framework

Guarantees under a MMF-financed transaction

- Art. 27 provides that the MMF funding may comprise guarantees such as chattel mortgage (“*Alienação Fiduciária*”), mortgage over the funded vessel (or over other vessels owned by the applicant), bank guarantee and a guarantee provided by the “Shipbuilding Guarantee Fund”.
- The financing agent at its discretion may accept other types of guarantees.
- Depending on issues such as the percentage of local content and type of vessel (cargo vessel, offshore support vessel, passenger vessel, etc.), the projects’ funding may achieve:
 - up to 90% of the total project’s amount ;
 - grace period of up to 4 years;
 - repayment period of up to 20 years;
 - interest rates between 2% and 8.5% per year.

III – Security Package – Brazil

Timeline under the perspective of the Vessel Owner (Borrower):



III – Security Package – Brazil vs. International Practice

✓ Security packages required in Brazil are similar to international practice, including:

- mortgage over the ship (main collateral)
- security over the vessel's proceeds: **earnings** and **insurances**.
- pledge over the owner's **accounts** receiving earnings arising from the **charter contracts**.
- pledge of the **shares** of the owner of the ship (and/or a parent guarantee, when appropriate).

✓ Differences:

- *In rem* guarantees in Brazil include fiduciary assignment (aka. “chattel mortgage” as an alternative to the naval mortgage).
- *In rem* guarantee contracts are considered ancillary contracts: if the main loan agreement is no longer considered valid, the guarantee has the same fate.

III – Security Package – Brazil vs. International Practice

- Marine Merchant Fund Law - Established the Vessel Chattel Mortgage (“*Alienação Fiduciária de Embarcação*”)
 - transfer of fiduciary property to of the asset to the Lender;
 - debtor remains only with the direct possession;
 - property possession recovery and its sale: less bureaucratic than the judicial proceedings;
 - asset does not take part in bankrupt estate;
 - more efficient execution of the guarantee;
 - does not allow 2nd or 3rd priority guarantees (as opposed to mortgages);

IV – Challenges and Bottlenecks

- Costs vs. efficiency (cost to register a mortgage):
 - Admiralty Court: R\$1.001,60 - **average of 3 months**
 - Maritime Notary: Up to **R\$214.262,72** - from 5 to 7 days
- Enforcement:
 - Ship arrest is subject to both Brazilian law and the 1926 Brussels Convention;
 - Arrest *in rem*: privileged credit;
 - Arrest *in personam*: success on the merits + irreparable harm;
 - Judicial action (court claims)
 - Forced sale: public auction
 - Sale out of court: private auction
 - Adjudication
 - Prices considered as too low – i.e., less than 50% of the appraised value – are not allowed.



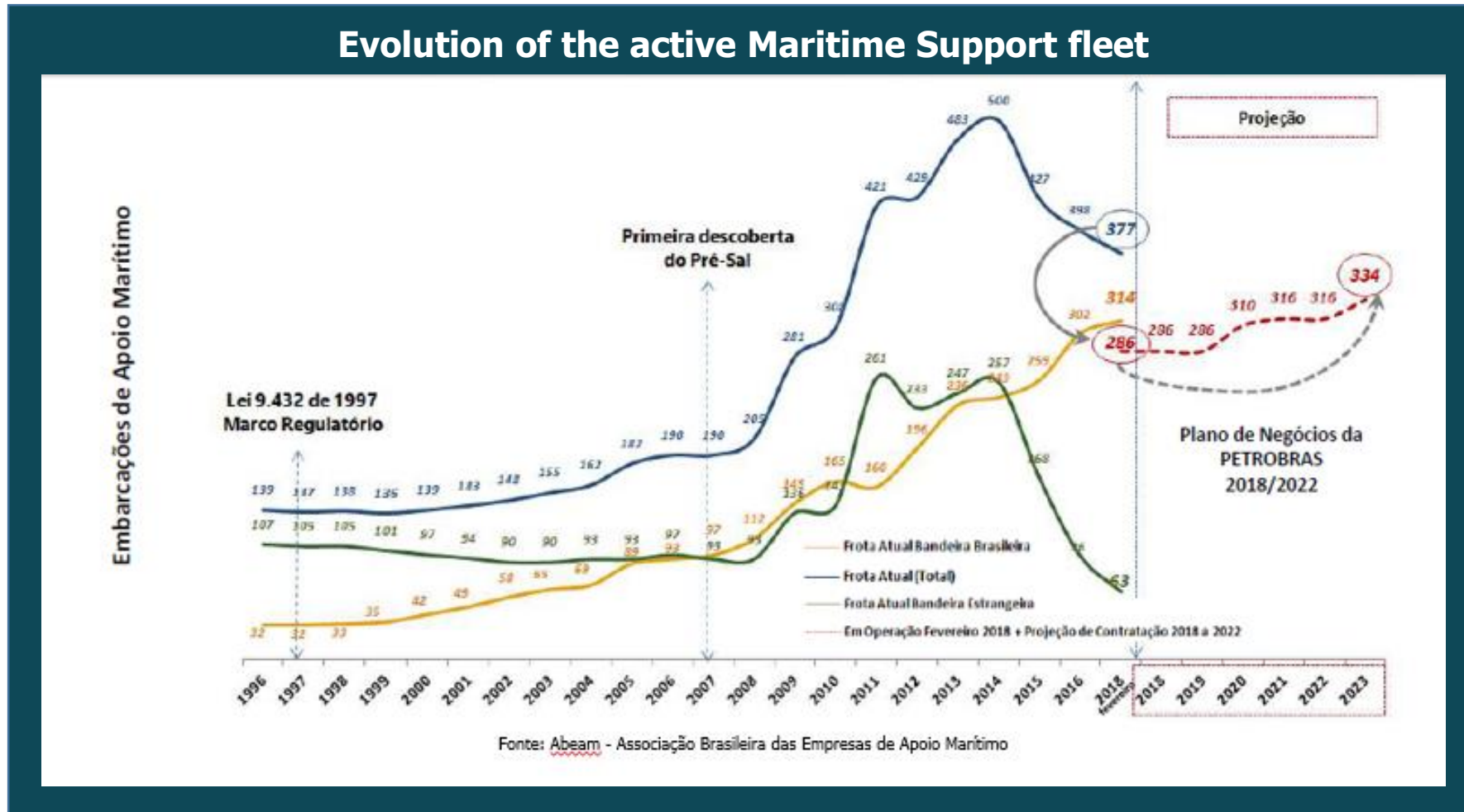
IV – Challenges and Bottlenecks

- Ship mortgages registered abroad: is there any risk?
- The OSX 3 Leasing B.V. case
- STJ:
 - “...it is the tradition of Brazilian law and foreign jurisdictions to admit mortgages for large size vessels, due to the significant amounts financed for their construction and maintenance. Instability and maritime dangers arising from constant transit are compensated by the stability of the registry at their ports of origin.”
- Maritime Notary proposal: the “mirror mortgage” – no legal provision – untested solution.



V – Opportunities

- Growing demand for vessels – recovery of the O&G sector



V – Opportunities

- New ANP Bid Rounds
- New E&P Operators
- Shipyard Infrastructure available
- BNDES expected to play a smaller role

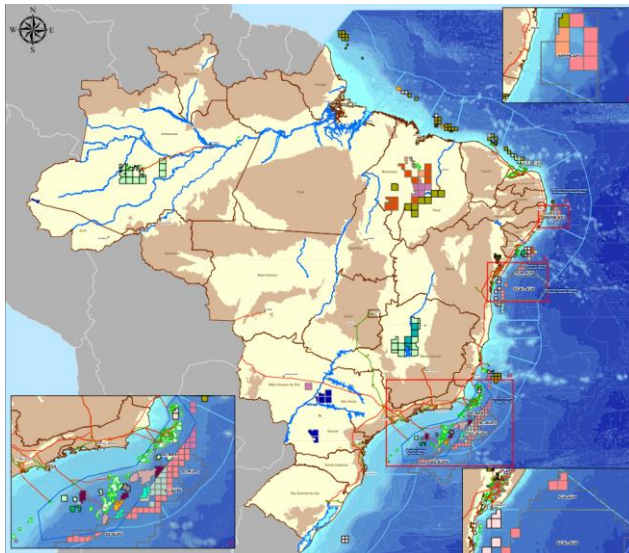


Table 1: Brazil Oil and Gas Bidding Rounds Calendar

YEAR	ROUND	REGIME	DATE	DESCRIPTION
2018	4 th	Production Sharing	May/18	Pre-salt blocks in the Campos and Santos Basins
	15 th	Concession	May/18	Ultra-deepwater and onshore blocks
	5 th	Production Sharing	Sep/18	Pre-salt blocks in the Campos and Santos Basins
2019	6 th	Production Sharing	Q3 2019	Pre-salt blocks Aram, Sudeste de Lula, Sul and Sudoeste de Jupiter
	16 th	Concession	Q3 2019	Ultra-deepwater and onshore blocks
2020	17 th	Concession	2020	Deepwater blocks
2021	18 th	Concession	2021	Offshore blocks

Source: CNPE (2017b, 2018).

Thank you!

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