

Brazilian Ex-Billionaire Eike Batista Facing Criminal Charges Including Insider Trading

By Renzo Lima, LL.M. Candidate 2015 | October 1, 2014

Two and a half years ago he was the seventh wealthiest man in the world, worth an estimated \$30 billion. Now with a net worth of less than \$300 million, Eike Batista's [empire has crumbled](#) before his eyes.

Batista's biggest creation, the oil company OGX, which acquired offshore oil exploration blocks from the Brazilian government, went public in one of Brazil's largest IPOs. Optimistic investors who believed in Batista's innovative ideas and economic power fueled the company's initial success.

But things began to sour for OGX in 2012, when the price of oil dropped from \$125 to \$94 per barrel. As the global economic situation worsened, OGX started to have [problems](#) delivering the expected production of barrels per day. The resulting confidence crisis began to [melt the price of OGX shares](#).

OGX's problems deepened in 2013 when, after promising exceptional exploration blocks, OGX had to [announce](#) that the oil findings at Campos Bay (*Tubarão Areia*, *Tubarão Gato* and *Tubarão Tigre*) were not commercially viable. In addition, OGX had to downgrade the potential of the *Tubarão Azul* exploration block. OGX shares, once traded at R\$23, are [now worth a mere R\\$0.17](#). In a vicious cycle, OGX's woes spread to Batista's other companies such as OSX, a publicly-held shipbuilding company that relied on several contracts with OGX. Both OGX and OSX sought protection under Brazilian bankruptcy law in 2013.

With his empire collapsing around him, Batista himself has begun to face intense public scrutiny. On September 14, 2014, Rio de Janeiro's public prosecutor's office [accused](#) Batista of manipulating financial markets and insider trading.

Prosecutors point to Batista's announcement of a put option during the 2012 confidence crisis that, if exercised by OGX's board, would have made him contribute \$1 billion to the company. But when the board executed this option in 2013 Batista [refused to pay](#), causing OGX to default on \$5.8 billion worth of bonds, which led to OGX's bankruptcy filing. Prosecutors allege that Batista never expected to make such a payment to OGX so his announcement was made in bad faith, which amounts to fraud.

The insider trading charge dates back to 2013, when Batista [sold 126 million OGX shares](#) just a few days before OGX's ominous Campos Bay announcement, which predictably toppled share prices. Since then, Brazilian securities regulator C.V.M has also conducted a similar investigation. In his defense, Batista asserts that he only sold the shares he was required to and that those shares were connected to creditor payments.

In addition, on September 15, 2014, federal prosecutors in São Paulo piled on [another insider trading charge](#) based on Batista's April 2013 decision to sell 10 million OSX shares a few days before the company's executives announced their decision to slash investment and scale back OSX's plans. Batista contends that the sale was executed in order to comply with Brazilian securities rules requiring companies to maintain a certain volume of shares available to the public.

Further, on September 23, 2014, federal prosecutors in São Paulo [charged](#) Batista and seven of his former OGX executives with "inducing thousand of investors to error by announcing false information" about OGX's potential oil reserves. The accusations are of misrepresentation, inducing investors to error, and forming a conspiracy.

[According](#) to São Paulo federal prosecutor Karen Louise Jeanette Kahn, from 2009 to 2013 OGX made 55 public statements based on untrue information. It seems that, since 2011, OGX had access to studies proving that the oil exploration of several blocks was not commercially or technologically possible.

The public should expect a long judicial battle. However, since [no one](#) has ever spent time in jail for insider trading in Brazil, Batista's fate remains in question. Will the Brazilian courts seek to deter future would-be financial criminals by making an example of him through actual jail time? Or will he, like so many before him, dodge the accusations in court? Only time will tell.