

# DOING BUSINESS IN LATIN AMERICA IN THE AGE OF COVID-19

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# Mexico

# Doing Business in Mexico in the Age of COVID-19

- Determine what Activities Are Permitted
- Determine what Rules Apply
  - Federal
    - “Traffic Light” System
    - Extensive Rules for the Workplace
      - DOF 5/29/20
  - State
  - Local

# Doing Business in Mexico in the Age of COVID-19

- **Businesses Must Be Flexible and Creative**
  - **Contracts**
    - Fortuitous Event (Acts of God) and Force Majeure
      - Elements: Impossibility, Unpredictability, Generality
    - Future Contracts
  - **Economic Realities**
    - Which Side Do You Fall On?

# Doing Business in Mexico in the Age of COVID-19

- Businesses Must Be Flexible and Creative
  - Labor and Employment
    - Negotiated Arrangements
      - Social security contributions
    - Union vs. Non-Union

# Doing Business in Mexico in the Age of COVID-19

- Foreign Trade / Supply Chain
  - No Restrictions Thus Far
  - Mexico Is Likely to Become a More Strategic Partner of the United States

# Doing Business in Mexico in the Age of COVID-19

- Regulatory Issues
  - Permits, Licenses and Filings in General Are Taking Longer

# Doing Business in Mexico in the Age of COVID-19

- Taxes
  - Stricter Compliance
    - Suspension of Digital Seal
    - New Informational Filings
  - VAT Refunds Issues
  - More Aggressive Tax Planning



# Doing Business in Mexico in the Age of COVID-19

- State Requirements Have Become Relevant
  - Many States Have Issued Their Own Rules
  - Likely to Spill Over other Areas

# Doing Business in Mexico in the Age of COVID-19

- May Need to Be More Aggressive on Planning and Decision Making
- DO NOT BREAK THE RULES

# Brazil

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# Contractual Issues

- Reneging on deals
  - Force Majeure
  - Termination for insolvency
  - Failure to meet obligations
- Renegotiating deals
  - Price
  - Warranties and warranty periods
  - Remedies for breach
- Recourse to dispute resolution

# Governmental Issues

- Movement of goods
  - Customs
  - Export controls and export licenses
- Movement of individuals
  - Immigration
- Movement of employees
  - Labor approvals

# Government Issues (cont'd)

- Approvals from government ministries
  - Technology transfers
  - Patents
  - Joint ventures
  - Central Bank of Brazil

# Economic Issues

- Capitalization requirements
- Loans
- Labor protection measures

# Colombia



# U.S. Colombia Trade

- Colombia ranked No. 27 in total trade value through April 2020 with a total of \$8.58 billion. Exports totaled \$4.87 billion and Imports totaled \$3.72 billion, a surplus of \$1.15 billion
- The U.S. Colombia Free Trade Agreement entered into force May 15, 2012, eliminating tariffs on virtually all consumer and industrial goods
- Colombia historically imports more than it exports on an annual basis
- Top U.S. exports to Colombia include mineral fuels, computers and electronics, machinery, organic chemicals, and cereals and ag products
- Peace settlement with the FARC in November 2016, but President Iván Duque opposed the deal. Fighting is being reignited in some areas and the government is cracking down on poppy production
- President Iván Duque's administration is estimating a 5.5% drop in growth for 2020

# Current Situation on the Ground

- Colombia reports 91,769 current Coronavirus cases, with 3,106 deaths
- On March 31, 2020, the U.S. Department of State issued a level 4 travel advisory, warning U.S. citizens not to travel to Colombia unless they were prepared to be quarantined for at least 14 days and possible not be able to return to the U.S. for an extended period of time
- Colombia has a national quarantine in place until July 15, 2020

# Current Situation on the Ground

- As of March 17, 2020, the Department of Labor ordered businesses to have all workers work from home, except those in essential industries
- The federal government initially ordered a country-wide stay-at-home order, but is now giving local mayors the ability to determine what quarantine measures are required in their cities. In the face of rising infections, Bogota Mayor Claudia López has just announced her desire to return the city (and the country) to more strict quarantine restrictions

# Restrictions - Essential Businesses

- The government has allowed essential manufacturing and construction businesses to operate, but with the condition that sanitary measures must be implemented and all personnel who can work remotely, do so
- Failure to implement sanitary and social distancing measures can result in criminal prosecution
- Restaurants and bars still have limited operations (i.e. take out), or in quarantine areas, are closed altogether
- Food markets and pharmacies are open, but require strict sanitary measures and social distancing. Some outdoor markets are being closed due to spikes in Coronavirus cases

# Transportation of People and Goods In and Out of the Country

- International passenger flights are not allowed. Domestic flights are severely restricted until July 1. There is an upcoming humanitarian flight from Bogota to Houston on July 1 through Avianca for stranded U.S. citizens
- International air freight is operating between U.S. and Colombia with a 30% to 40% reduction and with delays due to reduced personnel
- Ocean freight is operating normally, but expect delays in processing goods due to reduced personnel
- Cross border land freight is restricted with delays, but domestic land freight is generally operating normally. Borders closed with Venezuela and Ecuador, except for food and other essential items

# Contracts and Force Majeure

- The Colombian Civil Code, Article 1 of Law 95 of 1890, recognizes two concepts – force majeure and fortuitous events – that operate to limit a contracting parties’ liability if they are unable to perform because of the existence of either concept
- A force majeure event is one that affects everyone; whereas a fortuitous event is one that only affects one of the parties
- In order for an event of force majeure to excuse a party’s performance under a contract and limit its liability for failure to perform, the event must be:
  - External
  - Unpredictable
  - Irresistible
  - Examples include earthquakes, floods or mudslides
- Do not need to list every possible event that could constitute force majeure
- While it would seem to fit within the Civil Code and court interpretation of an event of force majeure, the Colombian Ministry of Labor has specifically said that the Coronavirus pandemic is not a force majeure event that excuses an employer from enacting mass layoffs

# Labor and Employment

- Ministry of Labor guidelines:
  - Employers have a duty to train employees on sanitary and social distancing practices
  - 14 day quarantine at home requirement if an employee is infected or with someone who is infected
  - Employers must notify Health Ministry of coronavirus infections in their businesses
  - Employers must implement flexible work hours to avoid large numbers of employees coming and going at the same time for shifts
  - Decrease face-to-face meetings
  - Provide disinfectant gel, PPE and plastic barriers

# Labor and Employment

- Employer-Implemented Quarantines, Temporary Suspension of Operations:
  - Under work from home guidance, employees' salary must continue to be paid. However, if the employer's operation shuts down temporarily or permanently, the employer may suspend the employment contracts based on implementation of "force majeure" or unforeseen event. Complex rules apply, including that the employer must obtain the approval of the Ministry of Labor. If a force majeure shutdown occurs, the employer is not obligated to pay salaries to the workers, but must pay social security contributions to the health and pension funds
- Layoffs:
  - If employers conducts layoffs, employees will be entitled to severance



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# Thank you!