

# RIDING THE COVID-19 TURBULENCE IN LATAM

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# PRESENTERS



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# WEBINAR AGENDA AND RULES

## AGENDA

- Introduction 3 min
- Presentations 40 min
- Q&A 15 min

## RULES



Turn camera off



Turn mic off



Put cell in airplane mode



Submit your questions in writing



Participate!

# COVID-19 IN MEXICO

- **March 11, 2020:** World Health Organization (WHO) catalogued covid19 as pandemic.
- **March 19, 2020:** Mexican Federal Government recognized Covid-19 as an immediate attention severe illness.
- **March 22, 2020:** Mexico City´s local government suspended public and private non-essential activities (50+ people) and recommended the suspension of activities with less than 50 people. Temporary closure of museums, gyms, churches, cinemas, theatres, zoos, bars/nightclubs and other public spaces.
- **March 24, 2020:** Mexican Federal Government issued preventive measures to mitigate risk of spread of Covid-19.
  - Temporary suspension of activities in public and private sectors (involve physical concentration/transit or displacement of people);
  - Recommended to keep safe distance (National Healthy Distance Policy);
  - Recommended that the following persons do not attend work or open spaces:
    - ✓ People 65+ years old;
    - ✓ Pregnant or breastfeeding women;
    - ✓ Disabled;
    - ✓ People with chronic non-transmissible diseases (e.g. diabetes);
  - Recommended payment of whole salary;
  - Recommended to avoid gathering of groups of over 100 people.



# COVID-19 IN MEXICO

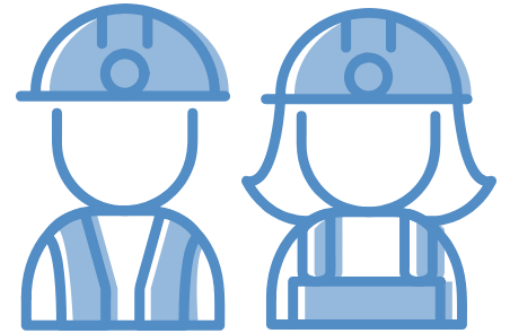
- **March 31, 2020:** Mexican Federal Government issued decree recognized extraordinary sanitary emergency:
  - Immediate suspension of **non-essential** activities (ambiguous)
  - No gathering of groups of over 50 people
  - Keep safe distance
  - Recommended home office (“remote work”)
- **April 1, 2020 :** Mexico City government issued decree recommending extraordinary measures to attend “sanitary emergency caused by force majeure”:
  - Immediate suspension of non-essential activities (April 1<sup>st</sup> to April 30<sup>th</sup>)
  - Included list of activities that should be suspended (ambiguous)





# MEXICAN LABOR ASPECTS:

- Payment of whole salary
- Inspections to offices and plants to check:
  - If salary is paid in whole
  - If the activities performed are essential
- Federal Labor Law requires the recognition of “sanitary contingency” (article 42Bis, 427 – VII and 429-IV)
  - If sanitary contingency is recognized, employers have to pay the minimum wage for up to 30 days



# ACT OF GOD OR FORCE MAJORE



- **Release from the fulfillment of the obligations by an act of God/force majeure:**
  - Total or partial release of performance of obligations
- **Applicability of the theory of unpredictability or *rebus sic stantibus* clause**
  - Restore the balance between the obligation of the parties or termination of the agreement
- **Lease agreements**
  - Suspend payment of rents
  - Reduce amount of rents
  - Termination

# COVID-19 IN ARGENTINA

- Public Health Emergency
- Lockdown and Sanitary Measures
- Public Health prevails over Business and Economy
- Administration, Congress and Courts in recess
- Administrative and tax proceedings, as well as judicial terms, have been suspended





# LABOR & TAX CONSEQUENCES

- Labor Issues

Refrain to go to workplace / work remotely

Right to collect usual remuneration

Prohibition of dismissals for 60 days

“Day After Quarantine”: new paradigm

- Tax Issues

No significant effect on regular tax obligations

Deferment in payment of certain personal taxes and social security burdens



# FINANCIAL & CONTRACTUAL CONSEQUENCES

## Financial:

External: aggressive debt restructuring offer

Local: bank activity very limited / refinancing of outstanding loans / low interest rates for new loans

## Corporate & Contractual:

- Remote board and shareholders' meetings
- Force majeure & unpredictability
- Review the contractual clauses thoroughly and consider facts in each case



# COVID-19 IN CHILE

## Constitutional Restrictions:

- The Ministry of Interior issued on March 18, 2020, a Decree declaring the state of catastrophe which provide the national authorities to limit de right of reunion in public places, impose restrictive measures to people, close businesses, quarantines, curfew, call the Armed Forces and police for enforcement. It also closed the national borders to foreigners to enter or exit the country.
- The Ministry of Public Health has taking control as national authority due to the Pandemia of COVID-19, ordering the sanitary customs along the country's ports of entry and requiring mandatory quarantines to different zones and/or boroughs of certain cities. It also instructed that nationals returning from Iran, China, Germany, France, Spain, Italy, South Korea, Japan, Argentina, Bolivia and Perú must be isolated for 14 days. It also prohibited the entry of cruise ships in all Chilean Ports until the end of September.



# CONSTITUTIONAL RESTRICTIONS

- The Ministry of Public Health ordered a dynamic lockdown determine that certain cities, zones or boroughs should be maintain under strict measures and sanitary customs. The measure is taking by the authority based on the number of cases reported, number of inhabitants and hospital facilities of the area, particularly on Emergency Treatment Units and respiratory ventilators available to patients with Covid-19.
- Mandatory curfew from 10 pm to 5 am in all national territory.
- Mandatory use of masks in all closed spaces, including public transportations, supermarkets and other places with 10 persons or more.
- Malls, restaurants, pub, bars and other not essential shopping places are ordered to be closed.

# CONSTITUTIONAL RESTRICTIONS

- Schools started to function on-line from the March 16, 2020 until April 12, but the Ministry of Education advanced the winter vacation to all schools in the country from April 13 to 23. However, there is mandatory extension to May 2020.
- No mass or sportive events are allowed.
- Public entities are working with prohibition for public employees over 65 years old, or who live with an elderly family member. Notaries, Registrars and the Courts are working in shifts and the Supreme Court has ruled that all procedural terms are now suspended for all civil cases. The Prosecutor's Office is working remotely and very slow.



# TAX LAWS AND REGULATIONS

- Law number 21,217, limits private agreements to make payments beyond the 30-day-term to Small Companies (“Pymes”)
- Law number 21,225, provides for financial support to poor families through a payment of a subsidy of CLP50,000 (USD60).
- Resolutions from the IRS:
- Sworn Affidavits for the Annual Filing has been extended until August 31, 2020.
- (ii) Tax Reimbursement from the Annual Tax Revenue Filing has been accelerated and will be made at the end of April and/or beginning of May 2020.
- (iii) Value Added Tax payment has been deferred for “Pymes” and medium size companies until July 2020, and be payable in 12 equal monthly instalments, but adjusted by inflation, if any.

# CONTRACTUAL EFFECTS

- **Force Majeure:** The issuance of different decrees and regulations that limit or restrict the movement of people or order the closing of several businesses or industries not considered essential for the production of certain goods or services, constitutes a typical case of force majeure described under article 45 of the Chilean Civil Code. Therefore, agreements or contracts may be suspended or terminated depending on the nature of the contract or service to be provided under their terms and conditions.
- **MAC Clauses:** These provisions are widely used in financing agreements in foreign currency denominations (i.e. loan, derivatives), M&A, MOU and/or letters of intent used by foreign investors and Chilean counterparts, but are not commonly used in local transactions or businesses.
- It remains to be seen the reaction of the courts when confronting to the allegation of Force Majeure or the occurrence of a Material Adverse Change due to Covid-19.

# COVID-19 IN BRAZIL

- **Quarantine and Sanitary Measures:**

Quarantine is the main sanitary measure. All non-essential services have been closed down in March/20 and home office policies have been implemented whenever possible. States have independency to define what are “essential services” as well as the duration of the quarantine. There are approximately 44.000 confirmed cases, with 3.000 deaths.

- **Economy in General:**

The forecast for COVID-19 impacts in Brazil are alarming: unemployment is expected to raise to 23,8% (12.6mm of people), while the Gross Domestic Product is expected to reduce 5% in 2020. Import and export are 20% below average for the first week of March/20.

# COVID-19 IN BRAZIL

- **Closure of International Borders and Impacts on International Trade:**

Brazil closed its international borders in March/20. There are only 7 airline companies operating (out of the usual 44). Ports are still operating with strict rules. China, Brazil's main trading partner, has paralyzed its shipments, negatively impacting Brazil's International Trade.

- **Labor and Tax Issues:**

Brazilian Government authorized alternatives to avoid dismissal of employees – the measures range from home office policies to the suspension of employment agreements or reduction of the worked hours and wages. The Government has also postponed several taxes that were due within the months of March, April and May.

# COVID-19 IN BRAZIL

- **Contractual Issues - Force Majeure:**

Force majeure is an exceptional event beyond the control of the parties, which cannot be predicted and which its occurrence is not attributable to the parties. According to this criteria, the COVID-19 pandemic could be considered a force majeure event. However, the application of this clause in contractual litigation is still unknown and will depend on the review of each agreement and the relevant facts, although there have been some decisions regarding the temporary suspension of commercial lease agreements.





# Q&A





THANK YOU

