

## COVID-19 | Latin America Energy, Mining and Infrastructure Podcast Series

### Latin America Oil & Gas amid COVID-19

April 27, 2020

---

COVID-19 has put Latin America in a challenging situation. The energy, mining and infrastructure sectors, which are facing new government regulations, amending private and public contracts, and reshaping their strategy and continuity plans due to this outbreak.

Now that we are dealing with this crisis, can we anticipate what would be the new normal in our sectors? We invite you to listen to our Latin America Energy, Mining and Infrastructure Podcast Series in which we aim to explain and facilitate discussions about what we are seeing in each sector and what trends we can anticipate for the steadiness of our businesses.

#### What is the current regulatory landscape in Latin America in the Oil & Gas sector?

##### ARGENTINA



- Before the COVID-19 outbreak, the Argentine government had been evaluating a series of measures to reduce the production and export cost of oil and gas from the *Vaca Muerta* basin.
  - On March 19, the Argentine government set forth a mandatory isolation regime allowing only activities considered as "essential" for the economy to continue to function. The O&G sector suffered the impact of this measure since only the minimum personnel necessary to ensure the operation and maintenance of O&G wells, transport and treatment plants was allowed.
  - This sector is highly regulated, and the national government issues the main regulations, such as the National Hydrocarbon Law No. 17,319 ("NHL"). Nevertheless, since the national constitution provides that the provinces are the owners of their hydrocarbon assets and have jurisdiction over the same, most provinces have enacted their own regulations on hydrocarbon activities that are complementary to the NHL. Private parties are entitled to receive exploration permits and exploitation concessions. Provided that companies make the mandatory investments and offer to continue to invest, they can maintain a concession for their entire productive life.
  - Some provinces, such as Neuquén, have enacted their own hydrocarbon laws based on the provisions of the NHL. Provincial regulations generally impose minimum investment and local hire obligations in order to obtain and maintain an O&G exploration permit or an exploitation concession.
-

# LATIN AMERICA OIL & GAS AMID COVID-19

## BRAZIL



Before the COVID-19 outbreak, Brazil's Oil & Gas sector was going through an investment-prone scenario, with new bidding rounds being launched every year as well as the Petrobras Divestment Plan through which NOC Petrobras is offering several upstream, midstream and downstream assets to the market. Specifically for the gas sector the government had been engaged in implementing the so-called New Brazilian Gas Market, a structural review of the legislation and regulation to end Petrobras's de facto monopoly in the gas sector.

However, given the unprecedented collapse in the price of oil resulting not only from COVID-19 pandemic but also from its unfortunate combination with the price war between Saudi and Russia, many companies interested in new projects in Brazil are either holding off, whenever a binding offer has not yet been presented, or cancelling new investments at least for a while.

In Brazil, the numbers of COVID-19 cases and deaths are still increasing. Local governments at state and municipal levels are imposing different lockdown measures; depending on the specific region, different levels of restrictions will apply. Most local governments are renewing restrictions (i.e., quarantine or isolation) at least until the end of April. The lockdown restrictions affect mainly non-essential activities such as local shops, malls and restaurants, and only in some specific cases apply to industrial activities.

The federal government defines oil and gas production, as well as the production, distribution and marketing of fuels, gas and other oil by-products, as "essential activities". This means that any measures the competent authorities may adopt for the containment of the COVID-19 pandemic, such as social isolation and quarantine, should not restrict the development of such activities. In this context, ancillary activities, support activities and the supply chain required for the performance and operation of essential activities must also be preserved.

The National Petroleum, Natural Gas and Biofuels Agency (ANP) has also been taking measures vis-à-vis the crisis. Although we have observed that the administrative procedures within the ANP are still ongoing, including the issuance of decisions by the ANP during the course of the COVID-19 crisis, the ANP has suspended the deadlines of all administrative proceedings until April 30, 2020.

As for new opportunities offered by the federal government in the upstream sector, the ANP has cancelled the 17th Bidding Round for exploration and production of oil and gas under the concession regime, which was originally planned for this year. The Energy Policy Council (CNPE) will define a new schedule for the bidding round. In addition, the ANP has issued two decisions easing the deadlines and other requirements for submission of oil and gas production reports and development plans by oil companies.

In the downstream sector, the ANP has set forth obligations for: (i) terminal and pipeline operators; and (ii) fuel and LPG distributors and automobile fuel stations to inform the agency about operational modifications that may partially or fully compromise the oil, oil by-products, natural gas and biofuels supply in Brazil, as well as the action plan to avoid it.

The ANP, together with other public entities, has issued a series of recommendations to operator/concessionaire companies in the Oil & Gas market as well as to service suppliers, mainly focused on manpower protection ([http://www.anp.gov.br/arquivos/atuacao/e&p/ssm/recomendacao\\_ouro\\_negro\\_coronavirus.pdf](http://www.anp.gov.br/arquivos/atuacao/e&p/ssm/recomendacao_ouro_negro_coronavirus.pdf)).

# LATIN AMERICA OIL & GAS AMID COVID-19

## CHILE



- On March 18, 2020, the president of the Republic of Chile declared a state of constitutional emergency of catastrophe, due to public calamity, in the territory of Chile, by virtue of Decree No. 104 of 2020 of the Ministry of the Interior. Article 5 of this decree establishes that, for the exercise of the faculties that are delivered there, "the Heads of the National Defense must take into consideration the sanitary measures arranged to avoid the propagation of the COVID-19, in administrative acts dictated by the Minister of Health". The state of emergency will last for 90 days (i.e., until June 19, 2020)
- Most Oil & Gas companies have their headquarters in counties on lockdown (*Vitacura, Las Condes*). However, people involved in gas distribution are expressly authorized to continue working. Personnel working in gas supply and gas distribution centers, as well people working in gas stations and fuel distributors, are also expressly authorized to work in lockdown territories to provide "public services".

## COLOMBIA



- The O&G sector in some countries in Latin America plays a significant role, to the point where some countries' balance of payments depends on O&G exports. Given this, the O&G regulatory landscape in Latin America is stable and most governments tend not to make significant changes in order to keep attracting investment.
- Colombia is experiencing difficult times due to the recent COVID-19 pandemic and declines in oil prices, which has forced the National Hydrocarbons Agency to issue an Accord whereby it grants certain reliefs and extensions in time for compliance with some obligations under the E&P contracts, in order to keep investment flowing despite these unusual times.

## MEXICO



- The Federal Government declared on March 30 2020 as national sanitary emergency for reasons of force majeure, to the epidemic generated by the COVID 19 virus.
- The Ministry of Health published the Federal Official Gazette the extraordinary actions to address the sanitary emergency.
- Among such actions, the Ministry of Health provided the immediate suspension from March 30 to April 30 (this last date was extended until May 18 to municipalities with low or null virus transmission and May 30 for the rest of the municipalities) of all the non-essential activities.
- The Ministry of Health published a list of the activities considered as essential which may continue operating. Nevertheless, all of the essential activities must follow certain sanitary regulations/recommendation.
- All of the activities related to the distribution and sale of gasoline, natural gas and further energy products as well as the conservation, maintenance and repair of the critical infrastructure which guarantees the production and distribution of essential products among them, power, natural gas, oil, gasoline, jet fuel, etc.
- Also all of main current presidential projects, such Dos Bocas Refinery, will not be suspended during the sanitary emergency.

## PERU



- There is a robust regulatory framework, which in the past years has affected the pace of project development, with many authorities involved and the charge to deal with it placed on companies. In recent years, PERUPETRO has adopted a proactive role and joined oil companies in untying regulatory curbs as well as dealing with the population and local authorities. As for environmental compliance, a specialized authority (SENACE) was created to reduce approval times for environmental impact assessments and serve as a 'single

attention window' for all procedures involved.

- Nonetheless, companies deal with strict authorities OSINERGMIN (hydrocarbons supervisor) and OEFA (environmental supervisor). In addition, OSINERGMIN has a predominant role in activities considered public utilities (e.g., natural gas distribution grids, and oil & gas transportation). Due to OSINERGMIN is undergoing a reorganization process to make it more agile and efficient, where recent public happenings triggered such a process.

## VENEZUELA



Oil and gas, now under state control, need investment and new technology. The industry therefore needs to be open to private participants. However, this requires a substantial change of policies and legislation.

## How are companies facing the issues related with public and private contracts and the relationship with suppliers, in particular, on force majeure, business delays, and other contractual and legal considerations?

## ARGENTINA



- Many local and multinational businesses are facing growing concerns with the performance of their contracts, and the consequences that these breaches will produce on other connected relationships.
- These changing circumstances trigger alternative courses of action that range from an immediate termination to a renegotiation of terms and conditions. Although conversations and negotiations between the parties were the rule at the very beginning of this crisis, controversy is growing fast while the consequences of those breaches and terminations are affecting businesses.

## BRAZIL



In Brazil, force majeure derives from the law, and E&P granting instruments also contain force majeure provisions giving the ANP the power to determine which obligations are to be waived or postponed as a result of force majeure. The crisis is still in its early stages, so we have not yet seen how the ANP and, where applicable, the judiciary branch will apply the contractual and legal provisions regarding force majeure. It is important to note, however, that companies essentially treat force majeure as a factual circumstance that needs to be evaluated on a case-by-case basis, so the company invoking it should be able to demonstrate the actual impossibility to comply with the contractual obligations, rather than just generally relying on the fact that there is a sanitary crisis going on. This is especially true for essential activities like oil and gas, since they are somehow protected by the legislation from shutdowns or other severe restrictions.

From a supply chain perspective, companies like Petrobras are renegotiating contract terms with suppliers, and others like Raízen, a downstream joint venture between Shell and Cosan, have already filed lawsuits in the courts to have the force majeure declared.

# LATIN AMERICA OIL & GAS AMID COVID-19

## CHILE



- COPEC announced that it will continue to operate fuel distribution points across the country.
  - State-owned ENAP created a "Crisis Committee" in order to guarantee continuity of supply and distribution.
  - Oil & Gas supply is considered a "public service" and expressly authorized to continue in lockdown areas.
- 

## COLOMBIA



- Companies are having a hard time dealing with suppliers due to the declaration of force majeure, both by the O&G companies in some cases and the suppliers, in other cases.
  - Colombia's particular case evidences that invoking force majeure is not that simple O&G companies are exempted from the national lockdown measures and provide a critical activity for the country. As such, O&G companies can continue to operate without restrictions, different from adopting all necessary safety and health measures to mitigate the COVID-19 pandemic.
  - Despite O&G companies being able to operate regularly, operations are not at full steam due to the preventive measures being taken, workers' concerns, lower oil prices, etc. The Colombian government forecasts that the country will reduce its production to around 100.000 barrels per day due to the pandemic and low oil prices.
- 

## MEXICO



Although the oil and gas activities are considered as essential, there are some activities within the oil and gas production, transportation and distribution chain that are not considered as essential activities. Therefore, the majority of such companies performing non-essential activities are trying to invoke force majeure under their contracts.

---

## PERU



- When the government declared the national state of emergency, activities related to the natural gas value chain and fuel commercialization were considered essential and hence, in theory, these activities should be able to continue. Yet one way or another, the limitations on complementary activities, the transit restrictions, and the risk of workers catching C-19 represent severe difficulties for companies to perform regularly. Moreover, even when activities are legally allowed to continue, the local demand for oil & gas has decreased dramatically, making companies rethink their operations.
  - Given the aforementioned, and to the extent that there is a causal link between a contractual breach and the state of emergency, PERUPETRO is accepting the force majeure invocations by companies (but only for the affected obligations). The same logic applies to agreements with suppliers and clients, where the legal framework established by the government supports force majeure requests by companies.
  - In the administrative field, all procedures and deadlines are on hold, by decree, until May 6.
- 

## VENEZUELA



The oil and gas industry continues to operate. Delays are mainly in respect of foreign suppliers and purchasers. General rules on force majeure apply.

---

## What are the continuity plans amid service interruptions? How are companies in the Oil & Gas sector dealing with COVID-19, and what are some practical solutions? Real life examples.

### ARGENTINA



- As a result of the above, major players in the O&G sector in Argentina, such as YPF S.A., have stopped activities that are not essential and critical in an attempt to comply with recent regulations and reduce costs during the pandemic.
- Whether addressing current impacts or readjusting to navigate during and after the pandemic, the industry will have to adapt and find balance in-house and with other stake holders to protect their value and, in some cases, fine-tune with regulatory measures that could be implemented.

### BRAZIL



Given the current combined scenario of a decline in the commodities prices, the potential economic recession triggered by the global COVID-19 pandemic, and the demand reduction caused by social isolation, Petrobras recently announced a series of measures, such as:

- overall reduction of its production to 200,000 barrels per day;
- hibernation of 62 platforms located in shallow waters fields with elevated extraction costs per barrel;
- reduction or postponement of personnel expenses, totaling R\$ 2.4 billion, including with reduction of work schedules and corresponding salaries;
- reduction of investments scheduled for 2020 (from R\$ 12 billion to 8.5 billion);
- revolving credit lines totaling up to USD 11.5 billion;
- postponement of payment of dividends.

From a labor standpoint, the federal government enacted Executive Order n. 936/2020, which authorizes actions by employers in Brazil to face employment issues resulting from COVID-19, as follows:

- reduce salaries and work schedules; and
- temporarily suspend employment agreements

### COLOMBIA



- The plan is for all companies to continue operating during the pandemic, with no major curtails in production. However, the reality has been different since there have been some disruptions in the supply chain and companies have had to adopt health and safety protocols in their operations, limiting the number of workers and encountering other difficulties.
- O&G companies are doing their best to retain personnel, as is the case with Ecopetrol, and retain their contractors. However, the reality is that production will slow down due to recent falls in oil prices and excess supply.
- Other O&G companies are looking to maintain their relationships with their communities by making donations, providing healthcare products, and fresh water, amongst others. It is also good to note that a large portion of the financial resources used by the Colombian government for bailouts, subsidies, etc., come from royalties paid from the O&G industry - an indirect yet important contribution to tackling the effects of COVID-19.

# LATIN AMERICA OIL & GAS AMID COVID-19



- To avoid the consequences of transit restrictions, Oil & Gas companies and their workers stationed in oilfields have agreed on work regime continuity solutions such as special bonuses and workday compensation.
- Work from home is currently a useful tool for keeping office workers productive. Still, its nature will change from a complementary tool to a permanent working condition for some within the organization.
- Companies have reinforced their health departments, adopted new HSE protocols, and ensured the supply of new COVID-19 security equipment for workers as standard measures.
- As demand has decreased, some maintenance works have been rescheduled for the time being. Certain non-critical programmed stoppages will not take place.



The oil and gas industry continues to operate. Delays are mainly in respect of foreign suppliers and purchasers. General rules on force majeure apply.

# LATIN AMERICA OIL & GAS AMID COVID-19

## Key Contacts



**Benjamín Torres-Barrón**

Partner, Mexico City

Projects

+52 55 5279 2979

[benjamin.torres-barron@bakermckenzie.com](mailto:benjamin.torres-barron@bakermckenzie.com)



**Danielle Valois\***

Partner, Rio de Janeiro

Projects

+55 21 2206-4912

[danielle.valois@trenchrossi.com](mailto:danielle.valois@trenchrossi.com)



**Rodrigo Diaz de Valdes**

Partner, Santiago

Dispute Resolution

+56 2 2367 7066

[rodrigo.diazdevaldes@bakermckenzie.com](mailto:rodrigo.diazdevaldes@bakermckenzie.com)

*\*Content prepared in cooperation with Trench Rossi Watanabe, a Brazilian law firm*

[www.bakermckenzie.com](http://www.bakermckenzie.com)

©2020 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.