Baker McKenzie.

Latin America EMI Talks

Financial relief measures in Latin America's major projects: Government stimulus and intervention measures

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Conversation analyzes the impact of the COVID-19 situation, starting with an overview of a resilience stage on: (i) how major projects in Latin America have faced the shutdown of operations or consumption downturn due to the pandemic; and (ii) how federal and state governments are reacting to provide financial relief measures to distressed companies.

On a second and recovery stage, the discussion goes around (iii) the Re-Opening: the New Normal expectations; and (iv) how this new situation might affect the investment environment on major projects.

Impact of government measures in major projects

- Countries applied measures for the resumption of economic activities affected or paralyzed due to the COVID-19 pandemic.
- Most of the economic activities were halted because of the mandatory isolation measures adopted by the governments, allowing only the continuation of activities considered as essential, which are mainly related to health, acquisition of essential goods, and transport.
- In many countries, the rule is that each sector or economic activity has a specific biosecurity protocol with which to comply.
- At the local or regional level, additional measures have been established to regulate the reactivation of economic activities. In Brazil, these measures may be more rigid and less clear than the provisions of the national government, and they may generate the need for discussions with the local government or even judicial measures to keep essential activities in operation. In Colombia, in major cities such as Bogotá and Medellín, companies must obtain an economic reactivation permit from the mayor's office before resuming operations.

The new virtual environment of tax compliance and judicial procedures:

- In Mexico and Venezuela, municipal and state authorities have taken the lead and have granted extensions with regard to payment of local taxes.
- Other countries in the region have also granted extensions on tax compliance and payments, including for Value-added Tax, Income Tax, Special Contributions and Social Security, and local taxes.
- Tax authorities are encouraging the use of electronic communications and means and themselves have continued audit activities using electronic means. Lockdown measures, though, have limited regular field audits.

- Solutions for the statute of limitations of tax liabilities are split. In Argentina, Brazil, Chile and Venezuela, the statute of limitations continue as under normal circumstances. Colombia, Mexico and Peru have suspended the statute of limitations during the pandemic.

Companies in financial distress and government intervention

- Some jurisdictions have put in place measures to reform their insolvency regimes to help manage the anticipated increase of companies in financial distress situations–some on a temporary basis and others more permanently.
- Under the COVID-19 context, the reform of the insolvency regime is only being discussed or anticipated in some countries, such as Brazil, Chile and Peru.
- One of the common measures is the establishment of support programs to face the COVID-19 health emergency, at a local, federal or national level. These programs provide funding to companies to support their operations and employees, or aid employers to pay salaries at reduced rates. In most cases, medium and small businesses are the primary beneficiaries of the programs.
- The majority of rules for the adoption of agreements on liquidation and reorganization proceedings have become more flexible, allowing videoconferences or some other forms of recognized electronic voting.
- Countries in the region have approved tax exemptions, exonerations and reductions regarding the pandemic. None of those measures, however, is specially addressed to major infrastructure projects and, curiously, there have been no income tax exemptions so far.
- Governments have announced various measures to support companies' debt arrangements, including deferred payments, guaranteed credit facilities, and government-backed loans.
- A recurring measure is the increasing of financing lines to support companies, under a state guaranteed loans scheme, providing working capital to mitigate potential salary reductions during the pandemic, maintain and promote employment, and ensure funds for payments and compliance with obligations.
- These measures contribute to the liquidity and solvency of the companies, and therefore have the effect of avoiding the initiation of liquidation and reorganization proceedings.
- The most relevant expenses income taxpayers face during the pandemic are the deduction of gifts and donations, bad debt deductions and forgiveness of debts, exchanges losses, and the possibility of accelerated depreciation of fixed assets. Exchange losses are important for those companies leveraged in foreign currency. Except for Chile, the other six countries have not amended the rules for deduction of expenses to factor in the impacts of COVID-19.
- Unfortunately, there are no specific rules for accelerated depreciation of fixed assets due to COVID 19.
- Another important item in this category is the carryforward of Net Operating Losses generated during 2020 for offsetting them against taxable income in future years. The rules vary considerably in the region. All countries limit the number of carryforward years and impose caps on the NOLs taxpayers can offset.

Economies Re-opening: the New Normal

- In most countries, such as Argentina, Brazil and Chile, the execution of construction activities for public infrastructure projects continued despite the quarantine or isolation measures taken because of the COVID-19 outbreak. These activities were considered essential due to their importance and impact on the economy of countries. In other countries, such as Colombia, construction activities initially stopped with the isolation measures, but were soon resumed.
- Some measures we taken to maintain the economic and financial balance of the contracts. For example, In Peru, the government issued exceptional regulations to promote the resumption of public works that were

paralyzed during the State of National Emergency declared as consequence of the COVID-19 outbreak. These regulations recognize the right of the contractors' to deadline extensions, payments for the increase of costs for the works and for its execution which implies applying new sanitary measures that did not exist when the contracts were subscribed.

- The operation of public infrastructure projects, at least with regard to transportation infrastructure, has not stopped. However, traffic on highways, ports and airports decreased substantially, and in certain countries, such as Colombia and Peru, toll payments were suspended. By this time, most projects operate normally, with the exception of airports, which remain mostly closed and without national and international air operations, save for certain activities such as cargo transportation and authorized humanitarian flights.

Investment environment

- It cannot be anticipated all the consequences on the economy of all the countries. Governments are required to evaluate and consider the need for new measures or the modification of existing ones in order to keep supporting companies in distress, and to reduce the overall impact of the pandemic on their respective economies.
- The reception of foreign capitals will be a way of reactivating the economy, and certainly, countries are very interested in the resumption of major projects and the development of new ones to meet national objectives.
- Argentina created an Emergency Family Income, which involves the payment of AR$10,000 to a category of taxpayers called "Monotributistas (A/B)," unemployed people, employees of the informal economy, and domestic workers.
- In Colombia the national government authorized governors and local mayors to redirect or modify specific destination revenues derived from local taxes and to carry out any public debt operation needed to address the health emergency.
- Peru will grant a subsidy, on behalf of private entities, for each employee earning a maximum salary of approximately US$ 429. The subsidy may not exceed 35% of the monthly gross remuneration of each employee.
- In five of the countries, taxpayers can allege a force majeure exemption but is subject to evidence. The argument will only exempt the payment of fines and late payment interest, but not from the payment of the tax.

Contacts

Bruno Duarte*
Associate, São Paulo
Projects
+55 11 3048 6551
bruno.duarte@trenchrossi.com

Jose "Pepe" Barnola
Partner, Mexico City
Tax
+52 55 4335 6496
josep.barnolajr@bakermckenzie.com

Yoshie Concha
Associate, Lima
Public Law
+51 1 618 8409
yoshie.concha@bakermckenzie.com

*In cooperation agreement with Trench Rossi Watanabe, a Brazilian law firm.

www.bakermckenzie.com