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Latin America EMI Talks

Stabilizing operations in Latin America: restructuring and divestments strategies in the energy and mining sectors

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Decreased demand and distressed assets: challenges and opportunities after the turmoil

- Energy and mining companies are still facing several difficulties due to COVID-19 and the mandatory lockdown implemented by different jurisdictions. Depending on the industry and the stage of the project, the consequences might be different.
- Companies that have had projects in a development stage have faced delays obtaining permits and licenses. Companies whose projects are under construction have suffered delays with the supply chain and lockdown has affected the construction works.
- In the power sector, the strictness of the confiding measures affected consumption as well as prices. Likewise, final consumers are facing financial difficulties, so defaulting payments has had an impact on the entire sector.
- Regarding the Oil & Gas sector, COVID-19 arrived in the middle of a price war between the biggest producers in the world. Therefore, prices were severally affected. They are also facing defaulting payments from final users, which means many companies interested in new projects are either holding off whenever a billing offer has not yet been presented or cancelling new investments at least for a while.
- Despite Oil & Gas companies being able to operate, regular operations are not in full steam. This is because health and safety protocols have led to disruption in the supply chain and of course, transit restrictions have been introduced.
- In most LATAM countries, mining companies continue to operate, as they were considered essential. However, it has been very difficult for them to operate in a context where health and safety protocols had to be implemented. There were challenges regarding the importation and exportation of products, so even when mining companies were able to produce, they have not been able to deliver the product.
- Companies within these sectors are reviewing their contracts, working intensely on cost reduction and finding new strategies to terminate contracts. Many companies across these sectors are decreasing capital expenditure.
- When it comes to restructuring in LATAM, most jurisdictions have updated legislations and there have been several recent developments evidencing that local governments are keen to develop alternatives for companies in distress.
- Many companies facing difficulties regarding restructuring with creditors and financial institutions are being involved in these discussions. Getting proper advice from a specialist team in the relevant jurisdictions with a holistic approach early in the process might be key. A professional team that has navigated these issues in

the past with experience in the relevant jurisdictions will certainly be better positioned to anticipate the challenges and the changes in legislation.

- One of the effects of the pandemic is that there is no shame in reaching out to creditors' financial institutions — we are all in this together.
- Small and mid-sized companies are seeking protection against creditors. It is also a good opportunity for buyers with an appetite for some risk and those able to act quickly in this type of deal and enter into a transaction in which post-closing protection resources are limited.
- In terms of valuation, the sellers should also maximize the certainty of the transaction. This is necessary in this type of transaction, and arrangements such as earn-outs are not attractive at all.

Recovery strategies: repurposing the assets for the new scenario

- Energy and Mining in Latin America are highly regulated industries and, as such, any decision regarding new financing needs to be carefully reviewed from a regulatory point of view.
- Companies need to be aware of antitrust regulation. It is critical to verify if the transaction would require any prior approval from the corresponding antitrust agency and take all necessary measures to obtain such approval, bearing in mind that this will defer the closing and the payment to the seller.
- Companies should carefully evaluate if the divestment would be done through an asset deal or a share deal. This kind of project usually involves a great number of permits and licenses, and not all of them are transferrable to third parties.
- In a resilient phase, companies used to deal with little demand, restrictions and economic and political crisis, but in a specific region or in certain jurisdictions at a time and always with a balanced portfolio of projects. However, in the recovery phase, a proactive approach by those players involved will certainly assist them to get a clear walkout, or a clear solution, depending of the jurisdiction.
- Players are having different conversations in order to have an organized evolution of a clear solution that will keep those projects afloat.
- There is specific legal consideration — a key for sellers under financial distress. The pressure on sellers in acting quickly and working in an accelerated timetable can determine the success and continuation of business.
- Sellers should also worry about sensitive and confidential information, and only consider sharing strategic information. They also need to put effort into controlling the timeline of the due diligence, focusing on the relevant information. The important message is to avoid long-lasting due diligence with multiple interactions.

Executing the deal

- The resilience stage is being handled and companies are already analyzing recovery strategies. There are more players involved in the process and less money to go around.
- Many projects depend on local cash flows and the fluctuation of local currency has a role to play.
- It is recommendable to place all the issues on the table as soon as companies get on board and get a closing mindset from the very beginning of the process. There might be sweeteners for those key players in the game.
- A distressed M&A deal has many particularities. These types of transactions can carry a certain level of risk that should be considered by buyers, who need to have an appetite for valuation risks in limited indemnity and warranties.
- Sellers will push to limit the representations to include only the essential ones.

- Buyers need to have high level of tolerance to be able to follow the timetable and negotiate the risk allocation for potential success liability contingencies.
- Sellers have a mindset focused on liquidity, and the deal must be closed as soon as possible. So there's no time for long negotiations.
- In this scenario, buyers must be prepared to wisely calculate the purchase price and its own risk assessment as well.

Conclusions

- Even though energy and mining companies have been affected by COVID-19, ensuring that they are the first to recover from this crisis is an important role for the development of their countries.
- Governments across LATAM are deploying several measures to help the economy overcome COVID-19's effects. Policymakers will keep collaborating with companies during their recovery process and promoting new investments.
- Time is of the essence and companies need to be extremely proactive and keeping focus on the positive side. There are many challenges but there are also ways out and good opportunities. This will eventually pass and companies will be able to continue their businesses. Soon this situation will settle down and companies will be back on track.

Contacts

Jaime Trujillo
Chair of the Latin America Region
Partner, Bogota
Mergers & Acquisitions
+57 1 634 1570
jaime.trujillo@bakermckenzie.com

Ines Vazquez
Partner, Lima
Projects
+51 1 618 8562
ines.vazquez@bakermckenzie.com

Gabriel Gomez-Giglio
Latin America Chair & Partner, Buenos Aires
Banking & Finance
+54 11 4310 2248
gabriel.gomez-giglio@bakermckenzie.com

Monica Pereira-Cavalcanti*
Partner, Rio de Janeiro
Mergers & Acquisitions
+55 21 2206 4916
monica.pereira-cavalcanti@trenchrossi.com

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

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