



## Offshore cheat sheet: How to navigate LatAm's new regulatory minefield

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*Our columnist Rebecca Leon from law firm Baker McKenzie examines the regulatory changes across the region that could have significant consequences for US firms.*

As Latin American countries continue to struggle with the impact of the pandemic, new regulations are helping to shape the region's economies. The new rules could have serious consequences for US wealth and asset management firms doing business in Latin America, with fines and anti-money laundering violations possible for those who aren't up to speed with these changes.

With the end of the year fast approaching, we highlight some of the recent regulatory developments across Latin America and how they could impact US firms.

### Argentina

While Argentine investors seek US dollars and to move money to the US, American firms must be careful not to assist them in a manner that violates Argentine exchange control rules.

In an attempt to avoid further depreciation of the peso, the Argentine Central Bank (BCRA) has been active in revising foreign exchange controls. The BCRA recently issued regulations aimed at both increasing the supply of foreign exchange in the FX market and decreasing local demand for US dollars. The central bank has also allowed funds received for goods and services exports to be used to repay foreign debt or to repatriate direct investments from non-residents, provided additional requirements are satisfied.

Further amendments to the local foreign exchange regulatory framework are expected to be approved due to the volatility of the local peso and the deterioration of the local economy.

US firms assisting Argentine clients with these FX transactions must be aware of these new rules as their actions could create aiding and abetting liability in Argentina, which could incur fines. There is also the risk of being found guilty of US AML program deficiencies.

### Chile

Any US asset manager considering setting up portfolio managers in Chile or doing business with local managers should watch for additional regulations and requirements and understand the future compliance structure for such firms.

Portfolio manager registration has been around for a few years, requiring Chilean managers to register if certain thresholds are met in terms of the number of clients and assets under management. It was expected that additional specific regulations governing the conduct of managers would be proposed. For example, while portfolio managers must enter into written agreements with their clients, there is no current guidance on the provisions or disclosures that must be included in such agreements. Books and records requirements, application of AML program requirements and mandatory reporting that currently applies to other Chilean financial services providers could be in the pipeline.

The timing of such proposals is unclear, but this area is ripe for guidance as part of Chile's continued development of its financial services regulatory regime, which seeks to protect retail investors and local markets without overregulating the sector.

### Mexico

Opportunity abounds in Mexico, where there is significant growth potential for life insurance products with investment components. Insurance penetration in Mexico continues to be extremely low, with only 15% of Mexicans having private life insurance. Mexican investors are increasingly interested in acquiring insurance with investment components as a result of health risks created by Covid-19 and to diversify their investments in uncertain economic times.

These structures may also be used for long-term wealth planning. High net worth Mexicans have become interested in these products and we expect that to continue.

Although Mexican residents are permitted to acquire life insurance policies from foreign insurers, foreign firms offering such policies must be aware of the Mexican legal restrictions on their sales practices. Soliciting clients in Mexico to invest in life insurance policies can, in some circumstances, violate Mexican law, creating liability exposure for US firms selling such products to Mexican clients. This is a case of seller beware!

### Venezuela

Iran, Russia, China and secret documents – it must be Venezuela. In October, the Constitutional Anti-Blocking Law was approved. It contains wide-ranging provisions focused on a re-imagining of Venezuela's economic order to prioritize private investments from countries friendly to Venezuela, such as Iran, China and Russia. This is believed by many to be an attempt to circumvent sanctions by the US and EU on the state-owned economy.

US firms should consider the impact of the law, as well as AML concerns that may arise from any transactions with institutions in the country.

The law empowers President Nicolás Maduro to redesign the applicable legal framework around any transaction on an ad-hoc basis and to 'disengage' certain laws and regulations as they apply to a specific transaction if doing so would create wealth for the benefit of the people of Venezuela. The government can amend the basic framework of the oil, gas, mining, banking, financial and commercial sectors and increase private participation in these sectors.

Notably, the possibility of joint ventures with owners of assets that are subject to expropriation measures and state entities is now on the table. Information and documents about transactions concluded through the application of the law will be regarded as classified information, and therefore such transactions cannot be examined.

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