

COVID-19 BRIEF

Bankruptcy

Changes to Colombia's bankruptcy regime have been implemented in response to the crisis. These include a special liquidation process for companies with 5.000 monthly wages in assets or less and a 2-year transitional bankruptcy proceeding that grants debtors input in the restructuring of debts and allows for debtor-in-possession financing.

Capital Markets

In order to facilitate access to capital, the Colombian Government has allowed simplified stock corporations to register securities on the National Registry of Securities and Issuers and issue securities on the stock exchange for up to five years. In addition, such issuance may be guaranteed by the National Guarantee Fund (*Fondo Nacional de Garantías*), allowing these companies to obtain resources through the issuance of debt securities that can be traded in the public stock market.

Competition Law

The Colombian competition authority has introduced new considerations and requirements to determine the viability of collaboration agreements between competitors for matters related to the crisis or as a result of the downturn in the economy. Additionally, in order to prevent excessive pricing, the competition authority has carried out virtual "dawn raids" and testimony proceedings on mainly public services, agrochemical and pharmaceutical companies to verify their compliance with competition rules and corroborate prices at which their products are marketed.

Considering that the crisis has affected a number of businesses and the economy as a whole, it is likely that certain financially distressed companies will seek to improve their condition by merging with healthier competitors under the argument of "failing firm defense", which allows mergers that could pose restrictions, to be approved when one or both parties are experiencing financial turmoil.

Consumer Protection Law

The consumer authority has been actively monitoring the type of information and advertisement being shared by companies in order to guarantee compliance with obligations related to minimum information and misleading advertisement are being followed. In this regard, the authority has conducted certain investigations to companies located in different market industries to ensure compliance with consumer protection laws and issued administrative orders and information requests in order to prevent damage or harm to end users.

Corporate

Corporate obligations have been deferred or temporarily amended to account for the crisis and the temporary lockdown. Some of these measures include the deferment of the

submission of companies' financial information to the Superintendence of Companies and the annual shareholders meeting.

Corporate Criminal Law

As a result of the Covid-19 outbreak and to limit the effects of the crisis, the Colombian authorities stayed the procedural deadlines throughout the country, from March 15 to July 1, 2020. This measure stayed public hearings in criminal courts, except for constitutional actions, inmates' hearings, among others. Once the stay was lifted, several measures were adopted to protect the health of employees, attorneys, and the public, including holding virtual hearings as a general rule, banning face-to-face interaction in criminal courts, work at home for judicial authorities, among others.

Data Protection Law

Colombian data protection regulation requires data controllers to secure prior, explicit and informed consent from data subjects in order to process their personal data. However, among other exceptions, data protection regulation establishes such obligation will not be necessary in cases of medical or health emergencies. Based on the previous exception, the data protection authority has published general guidelines for the collection and processing of personal data without prior consent with the specific purpose of preventing, treating and/or mitigating the effects of the crisis.

Dispute Resolution

From March 16, 2020 to July 1, 2020 courts closed and terms in judicial proceedings as well as statute of limitations were stayed, although courts continued working remotely on a limited scope of matters. Currently court proceedings are being carried out remotely via video conference, email and other technological means.

In general, arbitration and alternative dispute resolution mechanisms have continued working without interruptions, although regulation has been enacted to ease certain formalities to facilitate remote proceedings, including those related to granting powers of attorney and notices.

Energy, Mining and Natural Resources

Electric Energy and Natural Gas

The Colombian Government and market agents have sought to curve the impact of the crisis by subsidizing public utilities for low income households, deferring the payment of public utilities, allowing traders to in turn defer the payment to producers, and allowing natural gas traders, producers and shippers to renegotiate the terms of the existing contracts, which was restricted before. Although these measures have proven successful, the enforceability and long-term impact of these measures is still unknown.

Oil and Mining

The Covid crisis and the drop in the price of oil and other commodities had already affected the oil and mining sector. In response to the downturn, the Colombian Government temporarily deferred the payment of oil and mining concessions and has allowed investments executed between June 2020 and December 2021 to be considered for a tax reimbursement certificate to be used for the payment of taxes or traded in the market.

Similar to the energy and gas sector mining and oil upstream companies have had to deal with force majeure events and so forth. Therefore, the performance of the operations and its underlying agreements will be prone to disputes for breach of contract or amendments to the agreements due to the crisis. , including the new terms agreed because of the pandemic, as it will happen throughout the extractive industry.

Food and Drug Regulation

Given the importance of the sanitary and regulatory issues arising from the crisis, INVIMA, (the Colombian food and drug regulator) has been working online despite of the lockdown. This has allowed INVIMA to continue granting, modifying and renewing health registrations and conduction online inspections and similar proceedings.

In addition, the Colombian Government has allowed INVIMA to expand the list of non-available vital products that can be used to prevent and treat Covid, allowing them to expedite the analysis of these products and the granting of the necessary health registrations or authorizations.

Health and Safety

According to the Ministry of Labor, employees which certificate to work at heights expire during the Sanitary Emergency can work without this certificate for three months since July 2020. This means that employees must have their certificate to work at heights in October 2020.

Infrastructure and Projects

Long term concession agreements (PPPs, toll-roads, docks, railways and airport concessions) suffered serious economic adversities due to the pandemic. Among others, the Colombian Government temporarily ordered a strict lockdown, air travel ban and suspended tolls and other charges to users of infrastructure and the adoption of biosecurity protocols. Such measures resulted in loss of income and cost overruns. To compensate some of the referred economic impacts the Colombian Government issued various executive orders authorizing the amendment and extension of concession agreements, lifting the price and term limits under public procurement laws.

The Colombian Government has also authorized direct contracting/procurement (i.e., without bidding or tendering processes) for all Covid related goods, services and works required to address the health emergency caused by the crisis and all present and future agreements entered by public entities to address the health emergency may be amended without price or term limitations.

Insurance

The lockdown imposed by the crisis has had an impact on insurance premiums. In industries where the lockdown has reduced the risk exposure of certain business lines, the Colombian Government has ordered insurance companies to provide a relief to the policy holders in the form of a partial refund of their premiums. In addition, insurers must transfer to the Social Security and Health Resource Administrator the premiums of compulsory motor vehicle insurance covering the period of March 24, 2020 to May 25, 2020.

As many businesses are turning to their business interruption insurance policies, the Superintendence of Finance has urged insurers to analyze claims on a case-by-case basis and not assume that the Covid-19 crisis and the mandatory lockdown are force majeure events that exempt the parties from payment of damages due to contract default.

Intellectual Property

Due to the lockdown, the Colombian Patent and Trademark Office temporarily suspended the terms for filing renewals and meeting deadlines, including those related to enforcement proceedings such as trademark and patent infringement actions as well as unfair competition proceedings. However, as of May all proceedings before the Colombian Patent and Trademark Office have resumed in a remote manner.

Labor

One of the items the Colombian Government has tried to regulate the most is the cost of employment obligations and dates on which such obligations must be executed. To this end the Ministry of Labor has taken measures to postpone or reduce some employer's obligations.

Relief measures include the payment of legal bonuses due on June and December of every year in three instalments before December, 2020 and a subsidy program for the payment of the April – July payroll of up to \$351,000 Colombian pesos (US\$100 approx.) for each employee enrolled in the Social Security System. Also, if a company has debts with the UGPP (Pension and Benefits Unit), default interests between March and November 2020 have been reduced to that of the current bank interest and default interests for contributions to the Social Security System have been waived.

In addition, from the onset for the crisis the Ministry of Labor stated that employees may work from home and employers and employees may agree to temporary new schedules based on the work hours authorized by the Government, such schedules are (i) maximum 12 hours for day in four different days of the week and (ii) maximum 8 hours for day in 5 different days of the week.

Privatizations

In order to provide a temporary capital injection to companies affected by the crisis, the Colombian Government has regulated the purchase of private company shares through the FOME (special fund created to mitigate the effects of Covid). The measures introduced provide that the Colombian Government may impose a put option on the sellers for the

repurchase the shares and a drag along for the sale of the shares with the Colombian Government to allow a third party to acquire control.

The Colombian Government has also sought to regulate publicly traded companies in which it has an interest. Enacted regulation provides that (i) shares will be sold at their market price; (ii) if the Colombian Government decides to set a minimum price for sale, which is used to maximize the resources it expects to obtain, it may keep it confidential; (iii) the shares may be offered simultaneously to the solidarity sector and to the general public, but at the time of awarding them, members of the solidarity sector who have made an offer will be preferred, and then the remainder will be awarded to the other investors who have made offers; (iv) 100% of the proceeds from the sale will go exclusively to FOME, for the National Guarantee Fund, or to reduce the debt contracted by the National Government to face the crisis.

Real Estate, Urban Planning and Construction

The Colombian Government has adopted several measures regarding the real estate market, urban planning and construction, in order to suppress the effects of the crisis. With respect to commercial and residential lease contracts, annual rent readjustments do not apply between April 15 and June 30, 2020. Additionally, parties can renegotiate the payment of rent in such period and default interests, penalty or fines cannot apply. However, if the parties do not reach an agreement on the renegotiation of the rent, the tenant will have to pay the total rent amount plus interests (with a 50% discount). Tenants may also unilaterally terminate the agreements of some commercial premises (sports centers, cinemas, theatres, religious services, lodging and food services, among others) from June 5th to August 31, 2020.

From a regulatory standpoint, the Colombian government extended for 9 additional months the term of urban permits that were in force on March 12, 2020 and protection guidelines and biosafety measures have been imposed on construction projects during the crisis to prevent and mitigate the risk of infection.

Taxation

The Colombian Government has introduced a number of stimulus and benefit plants to soften the economic impact of the crisis. The statute of limitations of procedures before the tax authorities were temporarily stayed, the filing and payment of income and VAT taxes were temporarily postponed and interest and penalty payments on state taxes have been waived. In addition, the timing and process to request outstanding balances before the tax authorities has been accelerated so that taxpayers may receive an additional relief. From a local

As an economic recovery measure, the Colombian Government also ordered a temporary exception from VAT tax on the sale and import on certain health care products and introduced three VAT-free days to jump-start the economy and increase sales of certain goods.