

NEWSLETTER
LATAM FOCUS GROUP
N. 1/2023

This newsletter provides a selection of regulatory news and comments from LATAM legal experts on interesting policy developments, recent case law, and new regulatory directions of major industry practices. The aim is to provide an up-to-date tool for quick and easy consultation on the most current and important topics at a LATAM level.

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Argentina

International Trade

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The EU and its relationship with Argentina and Mercosur

Within the framework of the lengthy negotiations for the conclusion of an agreement between Mercosur and the EU, two relevant events have occurred.

On the one hand, on June 13th, 2023, the 1st Business Forum of the European Union (EU) was held in Buenos Aires with the presence of the President of the European Commission, Ursula von der Leyen.

The Forum was organized by the EU Delegation in Argentina in collaboration with the European Parliament that integrates, among others, the Italian Chamber of Commerce in Argentina in which Grimaldi Alliance actively participates, and had a special focus on promoting the digital, energy, and ecological transition, and especially the presentation of projects linked to the Global Gateway initiative, which the EU launched at the end of 2021. President Von der Leyen highlighted “the possibility of Europe becoming more actively involved in adding value to the production of lithium through the production of batteries, in the exploitation of copper and green hydrogen, and in the implementation of gas liquefaction plants”.

Likewise, von der Leyen, explained that in the bilateral meeting they discussed “how to make the economic association prosper, and the first topic discussed was the flourishing commercial relationship. The European Union has 40% of foreign investment in Argentina, and we think we can go even further.” Thus, von der Leyen highlighted the signing of the Strategic Association Memorandum of Understanding on Sustainable Value Chains in Raw Materials and described it as “an important step that will be of mutual benefit, for example on lithium, to see how we can develop new value chains that go beyond mere extraction, because we think it is crucial that the value added in the transformation chain be that in the region, since this is how jobs and business opportunities are created in Argentina”.

Regarding the MERCOSUR-EU agreement, the diplomat assured that both blocs share “the same values (...) and we are economic partners that we can trust each other.” Thus, he explained that the EU strategy for Latin America includes “increasing investment through a global Gateway strategy, an infrastructure investment plan through which the bloc will invest 10,000 million euros

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in Latin America and the Caribbean, which will be completed with additional contributions from member states and private sector investors.”

On the other hand, the Summit of the Heads of State and Government of the European Union (EU) and the Community of Latin American and Caribbean States (Celac) was held in Brussels on July 17 and 18, 2023. 5

Among other relevant issues, within the framework of the digital and energy transition, it became evident that Latin America and the Caribbean appear as a relevant region in two senses. On the one hand, as a supplier of resources, such as lithium and green hydrogen, which facilitate European leadership in the configuration of a productive structure based on renewable energies. On the other, as a “receiver” region of the energy paradigm promoted by the Global North.

As part of the renewed European interest in Latin America, the President of the European Commission, Ursula Von der Leyen, announced an investment of 45,000 million euros, within the framework of the Global Gateway, an investment platform of the European Union aimed at projects such as the promotion of renewable energies and digital services. Indeed, more than 70% of the Global Gateway projects for Latin America and the Caribbean focus on issues such as the development of minerals such as lithium and copper, the promotion of clean hydrogen and the implementation of green bonds.

Data Protection

New Bill

On June 30th, 2023, the Executive Branch sent message 87/2023 to the National Congress with the Personal Data Protection Bill (“Bill”), the purpose of which is to modify the current regime enacted in 2000 through the Personal Data Protection Law No. 25,326 (“LPDP”), subsequently regulated by Decree No. 1558/2001 and various resolutions, provisions, and others. standards issued by the Agency for Access to Public Information (“AAIP”). Although no substantial modifications have been made to the text of the LPDP since its promulgation in 2000, Argentina has adhered to the following international instruments:

- Convention No. 108 for the Protection of People with Regard to the Automated Processing of Personal Data of the Council of Europe.
- Convention 108+ (that is, the protocol that modernizes Convention 108), also of the Council of Europe, which was ratified by Argentina in April of this year.

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According to the postulates of the AAIP, updating the LPDP, a norm that has been in force for more than 20 years, it is necessary to strengthen state capacities for regulation and management of public policies in order to face the new challenges imposed by technological transformation and development in a context of globalized digital economy, and in turn contribute to the harmonization of regional and international standards on the protection of personal data, from a Human Rights approach and from a situated and sovereign perspective. 6

Changes incorporated in the reform:

The Bill follows the provisions of the European Union General Data Protection Regulation (“GDPR”). The main changes introduced in the Project, in comparison with the LPDP currently in force, are the following:

- *Data owner*

Unlike the LPDP, the Bill only contemplates the personal data of natural persons, excluding the information of legal persons.

- *Territorial scope*

Following the GDPR and other similar regulations such as the Brazilian General Data Protection Law, the Bill will apply to organizations outside of Argentina if they offer goods or services or monitor the behavior of people in Argentina, among other things.

- *Legal base*

The Bill establishes that the processing of personal data will be lawful when one of the six reasons occurs, among which is legitimate interest. Under the LPDP, the only legal basis is consent (with a limited number of exceptions to the consent rule).

- *Sensitive data*

Additional legal bases for the processing of sensitive personal data are introduced. The Bill includes the criteria of reinforced responsibility in the treatment of this type of information.

- *Security incidents*

The Bill imposes the obligation to report data breaches to the AAIP without undue delay and within 72 hours of becoming aware that the breach is likely to pose a risk to the rights of the data subjects. Data subjects must also be informed of the violation if it is likely to result in a high risk to their rights.

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- *Cross-border data transfer*

The Bill clarifies the provisions on international data transfer that will be allowed when:

- the third country guarantees an adequate level of protection of personal data, as determined by the AAIP;
- the exporter provides adequate guarantees on the data processing conditions (such as in the case of model contractual clauses, binding corporate rules or certification mechanisms); either
- a transfer falls under one of the exceptions for specific situations (including consent).

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- *Rights of the interested party*

New rights are added to the current list provided for in the LPDP (including the right to information, access, rectification, updating, deletion, confidential treatment as well as revoking consent), among which are the right to:

- data portability;
- not be subject to automated decision making (or profiling); and
- obtain the limitation of the treatment.

The deadline to respond to an interested party's request is 10 business days.

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- Obtain the limitation of the treatment.

The deadline to respond to an interested party's request is 10 business days.

- *Data Protection Impact Assessment*

When the person in charge is considering carrying out a type of data processing that, depending on the nature, scope, context, and purposes, is likely to result in a greater risk to the rights of the interested parties, an impact assessment must be carried out prior to its implementation. Like the GDPR, the Bill lists the cases in which said evaluation is mandatory and establishes the minimum content that it must contain. Prior consultation with the AAIP is mandatory if the result of the evaluation reveals a high risk to the rights of the interested parties.

- *Data Protection Officer*

The appointment of a data protection officer is mandatory in certain situations and voluntary in the remaining cases. The Bill describes the position, qualifications, requirements, and tasks for this position. A group of companies may designate a single data protection officer. The role can be covered by an employee of the person in charge or within the framework of a contract for the provision of services.

- *Representative*

In accordance with the GDPR, a representative must be appointed by foreign managers and managers who are covered by the provisions of Argentine law considering the rules of territorial scope.

- *National Register*

Those responsible and managers who must designate a data protection delegate, as well as those who must designate a representative, must be registered with the AAIP. It will no longer be necessary to register the databases.

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- *Fines*

The Project modifies the way of calculating fines for violations of the data protection regime, taking for this purpose the mobile unit, which is established at an initial value of Argentine Pesos 10,000 and which will be updated annually using the variation of the Consumer Price Index (CPI) published by the National Institute of Statistics and Censuses (INDEC) or the official indicator that replaces it in the future. The fines are thus established from 5 mobile units to 1,000,000 mobile units or, from two percent (2%) to four percent (4%) of the total annual global billing of the previous financial year.

- *Legitimate interest*

The Project includes criteria to substantiate the existence of a legitimate interest, which must be considered through a detailed, prior and documented analysis, including the context, circumstances in which the treatment will be carried out and the level of risk involved. In the use of this legal basis, respect for the principle of data minimization must be reinforced and delimited on the basis of express criteria of proportionality and reasonableness.

- *Data processing for statistical purposes*

The processing of sensitive data for statistical or scientific purposes is permitted, provided that the owner of the data cannot be identified.

However, regarding the principle of personal data security, the reference to the procedure under which personal data, sensitive or not, may be processed for statistical and scientific purposes, was eliminated. The previous version included the obligation to carry out said studies and statistical and scientific research exclusively within the organization, in a controlled and safe environment, in accordance with the security practices provided by law and that included whenever possible the anonymization or pseudonymization of the data.

Natural Resources

Lithium legal framework in Argentina and its potential

Of the countries with the most lithium resources in Latin America, Chile and Argentina stand out as those that have made the most progress in its exploration and exploitation.

With the largest certified mineral reserves in the world and which was positioned as the first producer until a few years ago, Chile, with 39,000 metric tons, came to occupy second place in the ranking, in 2022, after Australia (61,000 MT). In third place was China, with 19,000 MT, according

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to data from Statista. Argentina, with 6,200 metric tons, reached fourth place as the world's largest producer of the mineral.

Argentina treats lithium like any other mineral -it is not considered strategic-, which means that it can be exploited in the same way as others. For at least 20 years, the resource has been explored in the country, the third with the largest certified reserves after Chile and Australia. 10

The business is governed by the Mining Code and applied by the Provinces. This and the regulations of each Province apply when it comes to the environmental impact of the activities to be carried out as part of the projects. Citizen participation procedures must also be followed to make them known to the population, as provided for in the Escazú Agreement and local law.

It is possible to ask the Province for a permit on the area where they believe they can find lithium, with the facility of requesting term exploration permits (up to a maximum of three years, depending on the surface) and concessions, which are perpetual as long as a series of requirements are met for them to remain in force.

When the mine enters the exploitation stage, the provinces, owners of the mining resource, are paid royalties of 3% of the mine mouth value, which is the value of the mineral upon leaving the mine, deducting costs such as transportation, processing, refining, and export taxes.

Most of the lithium prospects and projects are located in the north of the country, in the provinces of Salta, Jujuy, and Catamarca, and private companies are especially involved in the business.

Although greater lithium resources have been discovered in these provinces and this is where most of the investment is concentrated, exploration is currently being carried out in San Juan and La Rioja. The latter has confiscated private property and is trying, through its state company, to partner with private parties to explore it.

As of today, there are three projects in production and throughout 2024 three or four more will enter that stage. Most of the companies are foreign (from the United States, Canada, Australia, and China, among other countries), and two or three locals that work in the early stages of exploration.

The provincial states of Catamarca and Jujuy have mining companies, with some properties and partner with private companies to develop them, and those in Salta give option contracts to private companies to explore the properties.

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Argentina oil and gas resources business opportunities. Vaca Muerta

The country has proven to be a large reserve of oil (worldwide 4th largest unconventional resources 27 bill bbls, “Vaca Muerta”) and gas (worldwide 2nd largest unconventional resources with 802 tcf), divided in 3 basins: 1) Neuquén (70%), 2) San Jorge Gulf and, 3) Austral. Almost unexplored offshore reserves.

Prices and demand will change favoring investments in the country as the result of the energy transition (replacement of coal power generated by natural gas) and geopolitical changes (replacing from Russian oil and gas offer).

Main international oil and gas players and services providers have operations in Argentina.

Potential output will exceed local demand, which, in turn, has supply priority (Law 17,319, section 6).

Efficiency gained in the exploitation of unconventional oil and gas resources reaching equivalent international production costs (Permian basin).

Onshore and offshore exploration and production:

- Onshore unconventional (8.65Bn acres): 4% in development phase, 23% unconventional concession granted and, 73% not granted.
- Offshore conventional: Austral basin represents 20% of the gas production (23MMm3/d):
 - large unexplored areas (500M km2), limited infrastructure, competitive legal framework (5% royalties, well drilled is not required in the first 4-year exploration period,
 - 13-year exploration period before deciding on commercialization,
 - in which case the concessionaire is entitled to the free availability of 60% of the hydrocarbons produced from wells drilled in the Exploitation Concession in locations where the average water depth exceeds 90 m, and 20% of the hydrocarbons produced in locations where the average depth of the water does not exceed 90 m, as well as the free availability of 100% of the foreign exchange originated in the export of said hydrocarbons. in which case the concessionaire is entitled to the free availability of 60% of the hydrocarbons produced from wells drilled in the Exploitation Concession in locations where the average water depth exceeds 90 m, and 20% of the hydrocarbons produced in locations where the

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average depth of the water does not exceed 90 m, as well as the free availability of 100% of the foreign exchange originated in the export of said hydrocarbons.

- The export of freely available hydrocarbons in accordance with this article will not be subject to export duties.

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Argentina has an extended network of natural gas transportation and distribution, with strong knowledge in its construction and operation (28,900 km of pipelines).

LNG plants and export facilities. Advantages: 1) positive seasonal dynamic with Asian markets (Japan, China, and Korea), 2) gas breakeven below 3U\$\$/MMBTU, 3) gas production incentive plan: stability and competitive prices.

Bearing in mind the said business opportunities, the Italian Chamber of Commerce in Argentina, within the framework of the Pan American Energy (PAE) Value Chain Internationalization Program, and with the support of the Italian Embassy in Argentina, the Adeneu SME Center, will bring to Argentina a group of Italian businessmen from the Oil & Gas sector to set foot in Vaca Muerta this September.

The objective of the Commercial Mission is to generate “business integration between companies”. The program seeks for Italian SMEs to find a strategic partner in the national territory that provides solidity and competitiveness to the energy value chain in Neuquén. In this program, joint ventures, and technology transfer between companies from both countries are the key to improving the competitiveness of the sector.

Italy, an economy highly recognized for the economic value provided by its SMEs, seeks to deepen these ties and transmit all its technical knowledge to the oil and gas sector.

As part of the mission’s agenda, the companies will hold meetings with provincial authorities, will generate a technical visit to Linderero Atravesado, will have B2B meetings framed in business rounds, and will have the opportunity to understand and visualize first-hand the development of the Neuquén basin.

The delegation of Italian companies is made up of SSE SIRIO, NUOVA SIMAT, ASCOT, CMC, TESI & BELELLI. They represent maintenance items for gas machines & compressors, turbines for gas compression stations, bolting and shrinkage adjustments, engineering in feasibility studies and conceptual design, oil and gas treatment, among other items.

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Tax

Transfer Price relevant Supreme Court decision

C.S.J.N. “Vicentin SAIC” sentence of May 3rd, 2023. The Supreme Court of Justice of the Nation confirmed the unconstitutionality of the so-called “sixth method” of application in terms of transfer pricing for the fiscal period 2003, for suffering from a serious defect of origin and being contrary to the principle of reserve of law when trying to modify the tax base of the income tax without a formal law emanating from the National Congress. 13

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Bolivia

Corporate/M&A

14

Disclosing duties

Bolivia has regulations to transparently disclose information and identify the holders of bearer shares. Official Gazette, April 5th, 2023. - With the purpose of disclosing information transparently and identifying the holders of bearer shares, this Supreme Decree aims at requiring commercial companies with bearer shares to submit information to the Authority for Business Supervision - AEMP. The companies must report current and future shareholders through an *affidavit* by the company's legal representative. Non-compliance may result in fines and other legal actions.

Commercial Registry

Before April 1st, 2022, the commercial service registry was carried out in Bolivia by the Foundation for Business Development. The latter has been replaced by the Plurinational Service of Commercial Registry or *Seprec*. However, registration for merger operations were enabled in the *Seprec* only after January 16th, 2023, while the registration for spin-offs is still suspended until further notice.

Tax

Gold Law

Law No. 1503 of May 5th, 2023, authorized the Bolivian Central Bank to purchase gold in the domestic market to strengthen the international reserves. The law provides tax exemptions, including Value Added Tax (VAT), for gold transactions.

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Brazil

Foreign Exchange

15

Brazilian Foreign Exchange Rules Simplified

Brazilian Federal Law No. 14.286/21 entered into force on December 30th, 2022, and established a new legal framework for the Brazilian foreign exchange market.

The legal provisions aim to modernize, simplify, and consolidate the legislation of the foreign exchange and international capital market in Brazil, promoting the development of the business environment and making foreign exchange operations less bureaucratic.

With the purposes of reducing barriers to exports and imports of goods and services and to promoting the free movement of capital, Law No. 14.286/21 and the Resolutions published by the Brazilian Central Bank to regulate the Law brought significant changes in the operational aspects of the Brazilian exchange market, such as:

- The execution of exchange agreements is no longer required for the closing of FX transactions, which may be carried out by any means such as telephone call, WhatsApp or e-mail.
- Bank accounts held by residents and non-residents in Brazil shall be granted equal treatment.
- Brazilian bank accounts may now be held in foreign currencies. We note that this rule still needs to be regulated by the Central Bank of Brazil so that it becomes available for personnel accounts. So far, this possibility is only available for brokerage houses, insurance companies and credit managers.
- Remittances abroad by way of profits, dividends, interests no longer need to be registered with the Brazilian Central Bank.
- Individuals are now allowed to trade foreign currency in kind provided that such transactions are carried out occasionally and not professionally and do not exceed the US\$500 cap per transaction.
- The list of transactions which set forth obligations enforceable in Brazil that can be paid in foreign currency was expanded.

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- Private compensation of credits and debits between residents and non-residents through simple accounting entries are now permitted.
- The external interest indicator was updated due to the extinction of LIBOR.

The legal changes make foreign capital more attractive, both for investments in the financial and capital markets as well as for direct investment in long-term opportunities such as companies and infrastructure projects and concessions.

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The Law will contribute to make transactions in Brazil involving foreign currency simpler, more agile, and competitive for individuals and companies, making the exchange market more accessible for those who send or receive funds from abroad.

For more information about Law No. 14.286/21, please check our website:

✓ [Link](#)

Investment Funds

Resolution 175 CVM: Investment Funds Compilation of Rules and Modernization

The Resolution 175 issued by the Brazilian Securities Commission (CVM) was published in the end of 2022 for the purposes of regulating the constitution, operation, and disclosure of information of investment funds, as well as the rendering of services for such funds. The Resolution replaces 38 existing rules on the subject and consolidates the rules on investment funds in a single normative act.

In addition to disciplining important concepts about funds already introduced by the “Economic Freedom Law” of 2019 (Law No. 13,874/2019), the Resolution formalizes practices already adopted by the market and seeks to align the local industry with international standards, increasing the attractiveness for foreign investors and the access from local investors to more diversified and sophisticated investment opportunities.

In this sense, Resolution 175 details how “classes” and “subclasses” of quotas/shares can be created.

Moreover, the law establishes that shareholders’ liability may be limited to the value of the acquired shares. It may not seem like an important change, but until then, if an investment fund assumed a leveraged position, for example, which resulted in losses to the point of its net worth becoming

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negative, the shareholders could be called upon to contribute additional capital. According to the Resolution, funds need to define, in regulations, what type of liabilities shareholders will have before the fund.

It is believed that the new structure of division of funds into classes and subclasses, with limited and unlimited liability, will allow the creation of several layers, simplifying, in the medium and long terms, the operation of investment funds. 17

Another point raised by the new rule was the distribution of risks and responsibilities among the agents involved. Currently, within the universe of funds, there are four major roles: manager, administrator, custodian, and distributor. Before the Resolution, the custodian and the administrator were responsible for most of the obligations and, consequently, were responsible for most of the risks. However, the manager was entitled to most part of the remuneration. CVM updates brought more transparency to investors regarding service providers fees, and more balance to fund managers responsibilities.

The Resolution was scheduled to come into force in April 2023, but it was postponed to October 2023. Implementation will take place gradually, and the entire industry shall be adapted by the end of 2024.

For more information about Resolution 175 CVM, please check our website:

✓ [Link](#)

Tax

Provisional Measure No. 1,171/2023: Innovations to the tax regime for assets abroad held by individuals residing in Brazil.

On April 30, 2023, the Brazilian Federal Government published Provisional Measure (“MP”) No. 1.173/2023 providing for a new tax regime for income received abroad. Among other aspects, the new rule aims to institute the automatic taxation of income tax on income earned by individuals with residence in Brazil from financial investments, controlled entities, and trusts abroad.

According to Article 2 of the MP, this income must be reported in the Annual Tax Return and separated from other income and capital gains, observing the following progressive table:

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Total Income	Rate
Up to R\$ 6,000.00	0%
From R\$ 6,000.001 to R\$ 50,000.00	15%
Above R\$ 50,000.00	22,50%

Offshore entities: Members of offshores will be highly impacted by the new rule. The main impact is the end of *deferral*, a tax instrument widely used by people who invest in offshore entities. The members of these offshore companies were only taxed when the resources of these companies were distributed. With the new MP, the profits and capital gain obtained abroad will be taxed regardless of distribution and in proportion to the interest held by the members in the offshores capital stock or equivalent.

Trusts: Foreign trusts will also be impacted by the rule. Assets and rights under foreign trusts will be considered as remaining under the settlor's ownership even after the creation of the trust for purposes of taxation. Thus, the income and capital gains relating to the assets and rights held by the trust will be taxed as if they were under the settlor's titularity.

The MP does not have automatic application and needs to be approved by the Brazilian National Congress and converted into law within 60 days (extended for another 60 days) to take effect as of January 2024. If approved, it is expected that the text will undergo changes.

For more information about the MP No. 1,171/2023, please check our website:

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Colombia

Energy

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Renewable Energy

Currently, several renewable – clean energy projects are in progress in Colombia, including the following:

- Auction for “Offshore Wind Generation” projects, that would be developed in the Department of Atlántico and would be the first “granted offshore in Colombia and Latin America”. The government intends to generate investments in the country of up to US \$ 27,000 million, and the auction specifications will be ready in August.
- Green Hydrogen. The Colombian Government is structuring with the European Union and the Colombian Hydrogen Association an investment program for the green hydrogen industry in Colombia and is expected that the first group of benefited projects will come out on the second half of this year.
- White Hydrogen. The Colombian government has explored the possibility of using existing oil infrastructure to extract white hydrogen. The National Hydrocarbons Agency (ANH) has reported that \$ 170,000 million will be intended to the search for this vector in the country.
- The selection of an investor for the provision of the Liquefied Natural Gas storage service, regasification, natural gas transportation and associated services of the Pacific Gas Import Infrastructure. Offers will be received from interested parties until July 6th.

Infrastructure

Airports modernization

In 2024, different modernization projects of the main airports of the country will be awarded. The Government, through the National Infrastructure Agency, will invest more than USD12.2 billion in the airports of San Andrés; Cali; Cartagena and Bogotá. The construction of a new airport in Cartagena is also planned.

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Regulatory

Law projects

Important bills are currently under way in the Congress of the Republic, such as:

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- Bill by which cryptoasset platforms are recognized and the regulatory framework is created. The main goal is that platforms dedicated to the digital economy with the use of cryptocurrencies such as Bitcoin (and others) enter the formal market of Colombia.
- Draft Law of “Hydrogen Economy”. With this important initiative Colombia advance towards the energy transition, seeking to position itself as a major supplier of hydrogen worldwide.

Bill that creates the National Agency for Digital Security, this initiative aims to fight and chase cybercrime. The Agency will be responsible for establishing strategies and public policies on digital security and cyber defense, in coordination with government entities and private companies.

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Costa Rica

Foreign Investment

21

Simplified immigration and customs procedures for foreign investors

The government has announced that, by regulating Law N9996 it will simplify the immigration and customs procedures for foreign investors who meet certain criteria. These criteria include being classified as a rentier resident, pensioner resident, or investor, and having an investment of at least \$150,000.

The simplified procedures include the establishment of preferential service windows for applications, and the ability of immigration authorities to consult public databases to verify investment information and other requirements.

This is a welcome development for foreign investors, as it will make it easier and faster for them to enter and stay in the country. It is also a sign that the government is committed to attracting foreign investment.

Here is a more detailed breakdown of the simplified procedures:

- Preferential service windows: There will be dedicated service windows at immigration offices for foreign investors who meet the criteria. This will allow them to get through the application process more quickly.
- Public database consultation: Immigration authorities will be able to consult public databases to verify investment information and other requirements. This will help to speed up the process and reduce the amount of paperwork required.

Nearshoring: Costa Rica's strength against global layoffs

Costa Rica is well-positioned to benefit from the global trend of nearshoring, which is the practice of moving business processes to countries that are close to the target market. This is because Costa Rica has a highly skilled workforce, a stable political environment, and a favorable tax regime.

In recent years, there have been a number of high-profile multinational layoffs, particularly in the technology sector. This has led to concerns about the impact on Costa Rica's economy. However, nearshoring could help to mitigate these effects.

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Nearshoring can provide a number of advantages for businesses, including lower labor costs, shorter delivery times, and better cultural understanding. This is why many businesses are considering nearshoring their operations to Costa Rica.

The Central Bank of Costa Rica and the Costa Rican Coalition for Development Initiatives (CINDE) have both identified nearshoring as a key factor in reducing the impacts of multinational layoffs and investment cuts in the country.

In addition to nearshoring, the dynamism of the service sector is another factor that could help Costa Rica weather the storm of global layoffs. The service sector is already a major contributor to the Costa Rican economy, and it is expected to continue to grow in the years to come.

Overall, Costa Rica is well-positioned to benefit from the global trend of nearshoring. This could help to mitigate the effects of multinational layoffs and investment cuts, and it could also boost the country's economy.

International Trade

MLI Costa Rica and Spain

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) has come into effect between Costa Rica and Spain, starting January 1st, 2023. This means that there have been certain modifications and clarifications made to the Double Taxation Avoidance Agreement (DTA) between the two countries.

The MLI is an international treaty that aims to prevent tax avoidance and evasion. It does this by introducing measures, such as the following:

- Preventing treaty shopping: This means preventing companies from using the DTA to avoid paying taxes in their home country.
- Resolving conflicts of interpretation: This means clarifying the meaning of certain provisions in the DTA to prevent disputes between the two countries.
- Addressing base erosion and profit shifting (BEPS): This means preventing companies from shifting profits to low-tax jurisdictions to avoid paying taxes.

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Dominican Republic

Dispute Resolution

23

Reduced time deadlines for judicial proceedings in the Dominican Republic

In 2023, laws were approved and submitted to the National Congress of the Dominican Republic that seek to reduce deadlines and make the judicial system more efficient, for the benefit of citizens and the rights of people. These laws are still pending final approval.

One of these laws is Law 2-23 on Cassation Appeals before the Supreme Court of Justice. This law reduces the deadline to exercise the appeal from 30 days to 20 days. In cases of *referimiento*¹ judgments, which address urgent issues, as well as in matters of real estate seizures, the deadline to appeal will be 10 days.

The law also limits and better defines the reasons on which the appeal can be admitted, to avoid appeals that are filed for dilatory purposes.

Previously, the cassation appeal automatically suspended the execution of the appealed judgment. However, under the new law, the appeal will no longer be suspensive. This means that a separate petition must be filed to suspend the execution of the judgment. The petition will be heard by the same Chamber of the Supreme Court that will hear the main appeal.

Another law that is currently going through Congress is a new rental law. This law aims to update the regulations to current times, since the current legislation dates back to the 20th and 19th centuries. Among other things, the law expedites the eviction processes of tenants due to non-payment or breach of the lease agreement. It establishes 30-day deadlines for cases to be known within that period in the first instance and the same deadline for appeals. The appeal judgment will be enforceable notwithstanding any challenging petition against it and public force for eviction will be granted for it.

¹ Translator's Note: Under Dominican law, "*referimiento*" is an emergency petition through which a court is empowered to urgently order, through an ordinance lacking the authority of *res judicata*, provisional measures without deciding on the merits of the matter.

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These laws are a step in the right direction towards making the judicial system in the Dominican Republic more efficient and responsive to the needs of citizens. They will help to ensure that justice is served more quickly and fairly.

Tax

24

Fiscal Amnesty Law

The National Congress of the Dominican Republic has approved a tax amnesty law that benefits taxpayers with tax debts generated prior to 2015. Under this law, taxpayers will have the opportunity to settle their debts by paying 70% of the outstanding tax, exonerating the payment of interest and penalties.

For other cases defined by the law, the payment will be 100% of the tax without interest and penalties. The law will be in effect for the year 2023.

The government hopes that the law will increase the projection of tax collection during 2023.

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Ecuador

Tax

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New Tax Reform in Effect

The tax reform came into effect on June 20, 2023, modifying matters related to the payment of income tax, deductible expenses, and value-added tax. Some of the key changes include:

Increased deductible expenses: The tax reform increases the amount of expenses that households can deduct from income tax. Individuals can now deduct up to US\$15,294 per year for personal expenses, based on the number of family responsibilities they have. The maximum number of family responsibilities is five.

Therefore, a person with five dependents could deduct multiple expenses and receive the largest reduction in income tax payments, which is US\$2,753 per year. Finally, those who have no family responsibilities, on the other hand, benefit from a reduction in their income tax payment of US\$964 per year.

New income tax table: The new law regulates the income tax rate from 5% to 37%, but it makes it easier for beneficiaries to determine their payment rate. This means a reduction in tax payable.

Changes for popular businesses and microentrepreneurs: Popular businesses previously paid a single income tax of US\$60 per year. The new tax reform establishes a progressive payment table, which means that popular businesses with less than US\$2,500 in annual income are exempt from income tax. This benefits 340,000 producers. The new reform also establishes a rate of 0% value-added tax for these businesses and excludes 500,000 artisans from the Simplified Regime for Entrepreneurs and Popular Businesses. Taxpayers with sales between US\$2,500 and US\$20,000 per year will pay between US\$5 and US\$60 per year in tax.

Environmental

Ministry of the Environment strengthens wildlife protection

The Ministry of the Environment has officially launched the Ecuadorian Biodiversity Information System (BIS-EC), which is designed to be an information system for supporting the control and management of biodiversity in the country. BIS-EC provides connection services that enable access

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and use of information and collaboration on specialist topics using state-of-the-art technologies. This collaborative approach aims to improve access to biodiversity data and information while helping to improve research, exploitation, monitoring, control, traceability, and decision-making processes. BIS-EC is an important part of the Single Environmental Information System led by the Ministry of Environment, Water Ecology and Transition, in response to the need for updated data and statistics that reflect the management and protection of natural heritage objects from Ecuador.

Data Protection

The Personal Data Protection Law enters the Penalty Regime

The new regulation focuses on broadly protecting personal data, ensuring its security and confidentiality. Additionally, it establishes a system of sanctions that applies to both national and foreign companies operating in Ecuador. In this way, the objective of guaranteeing the exercise of the right to the protection of personal data is fulfilled, which includes access and decision-making regarding information and data of this nature.

The recently enacted regulation includes a system of sanctions for those who fail to comply with the provisions regarding the use and processing of personal data. These companies are obligated to implement data protection programs and systems that enable data subjects to exercise their rights. Among the sanctions, fines ranging from 0.1% to 1% of the total sales of the last annual billing exercise are established for companies that fail to responsibly handle user data, depending on the type of violation. Also, the public entities will be subject to fines of up to 20 minimum wages.

In the case of recurring or serious violations or misuse of personal data, the temporary or permanent closure of the offending entity is also contemplated, in addition to the possibility of suing those who misuse data, both within and outside Ecuador. The severity of the infringement and the type of sanction depend on its intentionality, recurrence, nature, and repetitiveness.

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Honduras

International Trade

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China and Honduras negotiate free trade agreement

After establishing diplomatic relations in March 2023, representatives from the Republic of Honduras and the Republic of China have started this past July 4th negotiating a free trade agreement that, as authorities state, is expected to boost bilateral trade and strengthen relations between the two countries.

Tax

Project to reform the tax regime

The Honduran government submitted a draft law to the National Congress of Honduras containing significant reforms to the current tax regime. The draft law has not been approved and is still pending discussion at the National Congress. Among the most important matters covered by the draft law is included the transformation of the tax system to a worldwide regime instead of a territorial regime which is currently in place. The draft law also seeks to repeal 14 special tax regimes that granted exemptions of different kinds, such as the current Free Trade Zone Regime (ZOLI) and exemptions to the energy, tourism, and BPO/Call center sectors. Instead, the draft law creates two new tax incentive regimes that would be available for future beneficiaries. If the law is enacted, beneficiaries of the existing tax exemption regimes would continue enjoying the corresponding exemptions until their original terms expire, but no new applications to the regimes would be considered.

Finance

Finance and Cybersecurity

The National Banking and Insurance Commission approved the minimum guidelines that supervised banking and other institutions must follow to prevent and mitigate the occurrence of fraud and cyber scams against financial users. The guidelines impose new security measures that banks must implement mainly in relation to their digital channels, such as online banking.

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Fintech Ecosystem

After the Central Bank approved the Rules for Electronic Payment Services last year, entities regulated by such rules were recently granted a deadline extension of 60 business days to complete registration with the Central Bank in order to continue operating. The aforementioned rules seek to regulate national or foreign entities that, through the use of financial technologies, offer electronic payment and transfer services but do not carry out the activity of converting physical money to electronic money and vice versa, and that are not regulated by the Financial System Law or the Cooperatives Law.

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Mexico

International Investment

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Nearshoring in Mexico: Most Attractive Destination to Do Business in Latin America

Mexico has arguably emerged as the most attractive destination to do business in Latin America, surpassing Brazil, according to the KPMG 2023 M&A in Latin America Survey. Additionally, the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) reports that Mexico has now captured 17% of foreign direct investment (FDI) to the region in 2022.

One of the key drivers behind this trend is Asian investment, as companies seek to relocate their supply chains closer to the US market amid the ongoing trade war between China and the United States.

The phenomenon known as nearshoring is gaining momentum, and experts predict that it will continue to deepen in 2023. In fact, data from the Mexican Association of Private Industrial Parks (AMPIP) reveals that 63% of projects aimed at bringing production closer to the US market originate from Asian economies. China is the leading investor (49%), followed by Italy, Germany, South Korea, and Taiwan. The northern border region, including cities such as Monterrey, Ciudad Juarez, Saltillo, and Tijuana, has emerged as the most attractive area for companies, particularly in the automotive sector. Other dynamic industrial markets in non-border states include the Bajío, Mexico City, and Guadalajara.

The services and manufacturing sectors have been the primary beneficiaries of FDI, with the automotive sector, including parts and components, accounting for a significant portion of new investment in 2022. For example, Tesla recently announced that it will build the largest Tesla Gigafactory in the world in Nuevo Leon, Mexico, with an investment reaching 5 billion dollars.

Mexico's favorable investment climate, skilled labor force, and geographical proximity to North America is expected continue to attract significant FDI. However, to maximize this opportunity, certain areas need improvement, such as energy policy, water supply, and crime reduction, according to BBVA analysts.

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Dispute Resolution

Introduction of the New National Code of Civil and Family Procedures

On June 7th, 2023, the new National Code of Civil and Family Procedures was published, with the objective of standardizing procedures across the country, replacing all existing civil procedure codes. 30

The adoption of the new National Code will take place gradually, encompassing both federal and local governments, and is expected to be fully implemented by April 1st, 2027.

This comprehensive Code will have a significant impact on court procedures, due to this Code serving as supplementary law for many legislations, including the *Amparo* and administrative procedures.

It aims to reduce judicial overload, expand the protection of human rights and vulnerable individuals, ensure fair and efficient access to justice, promote oral proceedings, and combat corruption.

Key changes introduced by the new code include:

- a. Introduction of Summary Oral Proceedings: This fast-track approach allows for the completion of the entire legal process within a month. Hearings are recorded instead of maintaining physical files, enabling easy access to information. Only the final judgment can be appealed in these proceedings.
- b. Special trials: Special oral trials are established to expedite matters such as insolvency, mortgages, real estate leases, and judicial registration of real estate.
- c. Prioritization of alternative justice: The use of alternative dispute resolution methods, such as mediation and conciliation, is strongly encouraged.
- d. Recognition of social changes: For example, uncontested divorce is now permitted nationwide, enabling couples to dissolve their marriage without justification in court.
- e. Increased participation of Notary Publics: Notary Publics are expected to play a more active role in numerous procedures, particularly those related to voluntary jurisdiction, divorce proceedings, and inheritance trials.

To implement these changes effectively, the new code places great emphasis on the use of information technology in judicial proceedings. While some states had already begun adopting new technologies, the new Code now enables the recording of hearings, issuance of summons via email,

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collection of testimonial evidence, use of technology as evidence, video recording of procedures, and obtaining testimonies from minors.

Natural Resources

31

Mining Reform

On May 8th, 2023, a comprehensive mining reform, modifying various laws such as the Mining Law, National Water Law, General Law of Ecological Balance and Environmental Protection, and General Law for the Prevention and Comprehensive Management of Waste was published.

Its primary objective is to address the unsustainable exploitation of resources and labor in the mining sector, while reestablishing state control and safeguarding human rights, the environment, and indigenous territories.

Key changes introduced by the reform include:

- a. **Elimination of Preferential Treatment:** The reform abolishes preferential treatment for mining activities, ensuring a level playing field for all participants in the sector.
- b. **Prohibition of Underwater Mining and Mining in Protected Areas:** Under the new legislation, underwater mining and mining activities in protected areas are strictly prohibited to preserve the integrity of these vital ecosystems.
- c. **Removal of the Concept of “Free Land”:** The concept of “free land” has been eliminated. Mining concessions, now limited to 30 years, will now be granted through public tenders. Additionally, a 25-year extension may be possible under certain circumstances.
- d. **Alignment of Water Concessions:** Water concessions are now aligned with mining concessions. Moreover, there is an obligation to prioritize water supply for human consumption, ensuring the protection of this invaluable resource.
- e. **Recycling Obligations:** Concessionaires are now required to recycle a minimum of 60% of the water granted for their mining activities. This measure aims to promote responsible water management and conservation efforts.
- f. **Social Impact Assessments and Indigenous Consultations:** The reform introduces social impact assessments and indigenous consultations as mandatory prerequisites before commencing mining operations. These assessments will help mitigate the potential negative consequences of mining activities and ensure the involvement and protection of local communities and indigenous territories.
- g. **Criminal Offenses:** The reform establishes criminal offenses for mining companies, providing a robust legal framework to hold them accountable for any violations.

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- h. Mine Closure Mechanisms: Mechanisms for orderly mine closure are introduced to ensure proper rehabilitation of mining sites once operations conclude.

Labor and Employment

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Labor Reform: Senior Citizen Affirmative Action

On March 14th, 2023, the Senate (upper house) passed a bill that, pending approval by the House of Deputies, would modify the Federal Labor Law. The proposed change would require companies with over 20 employees to take affirmative action by hiring at least 5 percent of adults over the age of 60.

The proposed reform specifically addresses the discrimination and challenges faced by older adults in the labor market. Historically, they encounter difficulties in finding decent work opportunities and pensions, which often leads many to accept informal and precarious jobs, exacerbating the vulnerability of this group.

From approximately 15 million senior citizens in Mexico, 40% are economically active, and 70% of which work in the informal sector or are self-employed, hindering their access to social protection systems. In addition, close to 85 thousand are believed to be in active search of employment.

The proposed changes align with the Mexican Constitution's recognition of dignified work and protection of the rights of this vulnerable group, as it aims to create better job opportunities for older adults.

At the earliest, the bill would be discussed by the lower chamber in September. However, it's important to note that the proposed reform does not include a transitional period for implementing the changes, and as it stands, would depend on the interpretation of the Department of Labor.

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Paraguay

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Tax

Agreement between Paraguay and Spain to avoid double taxation submitted to Paraguayan Congress

On July 4th, 2023, the Executive Branch submitted to the Senate the bill “which approves the Agreement between the Republic of Paraguay and the Kingdom of Spain to avoid double taxation and to prevent tax evasion or avoidance on income taxes”, signed in Santo Domingo, Dominican Republic, on March 25th, 2023.

The agreed document observes OECD standards and includes measures to prevent tax base erosion and profit shifting (BEPS), affecting to Personal and Company income taxes in both countries (including income taxes for non-residents), which must now be ratified by the respective Congresses for its entry into force.

In Paraguay, with the assumption of the new Congress last July and afterwards the recently elected President Santiago Peña that must take office next August 15th, 2023, it is expected that such Agreement can be passed into law during 2.024.

Banking and Finance

Regulation of Credit Information Bureaus (BIC) and Protection of Personal Credit Information

On February 21st, 2023, the Board of Directors of the Central Bank of Paraguay (BCP) issued Resolution No. 3, by virtue of which the Regulation of Credit Information Bureaus (BIC) and Protection of Personal Credit Information is approved within the Framework of Law No. 6534/2020 on Protection of Personal Credit Data.

The Regulation entered into force on June 1st, 2023, a subject of broad public interest for citizens and a key normative for compliance on Protection of Personal Credit Data to which Credit information bureau and financial entities must adhere subject to heavy fines in case of violation of personal data rights.

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Regulation of operation in the Foreign Currency Forward Market

On January 12th, 2023, the Board of Directors of the Central Bank of Paraguay (BCP) issued Resolution No. 18, which approves the Forward Currency Market Operations Regulations. The new regulation replaces Resolutions No. 8 and 11/2013 and 15/2018.

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Antitrust

CONACOM issues new regulations to apply sanctions for non-compliance with the duty of collaboration

Through Resolution D/AD 103/2022 dated November 1st, 2022, the CONACOM Board approved the Regulations for the application of sanctions for breach of the duty to collaborate with CONACOM. Such resolution replaces Resolution D/AD 61/2022 dated June 22nd, 2022.

In that context, recognized companies from various sectors were penalized for not providing information in a timely manner.

Through Resolutions D/AL 80, 82 and 83, dated October 5th, 2022, CONACOM sanctioned for the first time three firms that did not respond to information requests received in the framework of a concentration operation related to the supermarket market. The fines amounted in certain cases to one hundred and fifty minimum daily wages (approximately G. 15,000,000 or the equivalent of USD 2,000).

Attorneys from LEGALCORP participated in the draft bill of the Competition Law enacted in 2013 and were member of the public private Commission enacted by the Ministry of Trade and Commerce for the drafting of the regulation of such Law approved by Decree Nr. 1490/2013.

Environment

Carbon Credits Market

On March 16th, 2023, a draft bill on Carbon Credits was presented to the Senate, which aims to establish a regulatory framework to define -among other things- the ownership of reduced carbon - avoided and/or captured - and the carbon credits that are generated through projects developed in Paraguay. In addition, it is intended to create a national carbon registry.

By June 30th, 2023, and ad hoc technical Committee formed by public private stakeholders within the Commission of Industry and Trade of the Senate finished its first review of the draft bill introducing some amendments and modifications to improve such legal framework.

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With the assumption of the new Congress last July 1st and the Executive Branch which will take office next August 15th, 2023, such technical committee must resume works including the new authorities of the Ministry of Environment and Sustainable Development.

Presentation of progress in the process of Regulation of the Water Resources Law

On March 29th, 2023, the Ministry of the Environment and Sustainable Development (MADES) presented the progress in the regulatory process of Law No. 3239/2007 “On Paraguayan Water Resources” with the participation of representatives of the public and private sectors and civil society.

According to the planification of the General Directorate for the Protection and Conservation of Water Resources, such Direction will be in charge of preparing the draft of 32 resolutions that regulate the Law to be submitted to the general public to receive comments to issue the final wording. Such regulations must set the standards to the legal title for right usages (permits and concessions) and the fee for said usages, as well as technical criteria for each type of usages (commercial, industrial, agriculture, etc)

Our member of LEGALCORP Attorney Jorge Figueredo Klein is taking part on the cited two works representing the Paraguayan Industrial Guild (UIP).

Energy and Infrastructure

Enactment of the new law that will regulate the independent production of electrical energy from non-conventional renewable sources

On January 26th, 2023, the Executive enacted Law 6977/2023 Regulating Development, Generation, Production, Development and Use of Electrical Energy from Non-Conventional Non-Hydraulic Renewable Energy Sources (Law 6977).

Law 6977 partially replaces Law 3006/09 “On the Production and Independent Transmission of Electric Energy” and its objective is to encourage private investment in the energy sector: its success is essential to guarantee the diversification and energy security of the country, since according to estimates by the National Electricity Administration (ANDE) itself, the state owned sole utility, by the year 2030 there will be a confluence between demand and supply of energy; this will result in Paraguay consuming 100 % of the energy that corresponds to it from its hydroelectric plants, Itaipu (second largest in the world together with Brazil), Yasyretá (together with Argentina) and Acaray.

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Finishing of new bridge “Heroes of Chaco War” connecting the Capital with the Western Region or Chaco

On past July 22nd, the President of the Republic, Mario Abdo Benítez, carried out a verification of the works of the Héroes del Chaco bridge, when he was the protagonist of the first vehicular passage through the new structure that unites the capital of the country with the Western Region or Chaco. 36

The bridge worth USD 136 million is 603 meters long and 32 meters wide and its constitute a new icon, not only because of its strategic location but also because of its avant-garde design designed for the future, with 2 lanes in each direction, a bike lane and a pedestrian sidewalk, with 7 km of roads if we add all of its components from the Costanera North to the Remanso-Falcón junction. Once finalized, will serve for the passage of about 10,000 vehicles per day to and from Asunción from the Chaco region (neighbouring with the Argentinean border), decompressing the traffic that is currently on the Remanso bridge, officially inaugurated 45 years ago. Meanwhile, complementary works continue on various fronts in order to have the entire road network ready and enabled in the coming months (by the end of 2023).

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Spain

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Data Protection

Users' right not to receive unsolicited commercial calls

The Spanish Data Protection Agency (AEPD) has issued a circular clarifying some parts of the content of the General Telecommunications Law. First of all, the law, in accordance with the protection of personal data and privacy, prohibits commercial communications that have not been authorised by the user, generating great controversy as companies have continued to send commercial communications. The AEPD has stated that this law has a period of one year to enter into force from the time it is published in the Official State Journal.

This new regulation implies a substantial change with respect to the legal regime applicable under the derogated General Telecommunications Law, article 48.1.b. of which recognised the right of end users “to oppose receiving unwanted calls for commercial communication purposes that are made by means of systems other than those established in the previous letter and to be informed of this right”, giving priority to the right of end users not to receive such calls and the consequent obligation of those responsible not to make them, unless they can prove the existence of any of the exceptions contemplated in the law.

Real Estate

Law 12/2023 of 24 May on the right to housing

The new Housing Law in Spain establishes significant changes in the real estate sector, such as the obligation of the landlord to pay brokerage fees, the creation of a database of rental contracts, and the possibility of declaring “stressed residential market areas”. It also introduces tax incentives for landlords who rent out their properties and establishes penalties for unoccupied properties.

Definition of large tenant

A definition of large tenant is established, and it is considered as such a person (natural or legal) owner of more than ten urban properties for residential use or owner of a built surface area of more than 1,500 m² for residential use. This excludes garages and storage rooms. The definition

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may be modified by the Autonomous Region and replaced by “owner of more than five properties”, when so motivated by the competent administration.

Database of rental contracts

A database of housing rental contracts will be created. This register will be formed with information from bond registers, property registers and other sources of information at state, regional or local level, which will allow the administration to have even more information on rentals and payments.

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Limits on rent

The competent administrations will be able to declare housing “stressed residential market areas”, those areas where there is a particular risk of insufficient housing supply. The duration of this declaration will be 3 years and may be extended annually. The declaration of a “stressed residential market area” will require the preparation of a justification report, indicating that one of the following circumstances exists: (i) the average mortgage or rent burden in the family unit plus supplies of the households in that area, exceeds 30% of incomings, (ii) the purchase or rental price of housing in the area has experienced in the last 5 years a percentage of growth of at least 3% more than the CPI (Consumer Price Index) of the autonomous region.

A penalty for owners of empty properties

The different administrations, by cross-referencing their data, will be able to check the use and destination of properties throughout their territorial scope. This collection of information is specially aimed at analyzing unoccupied properties. Local councils may impose a penalty of up to 50% of the IBI (Property tax) quota on residential properties that are permanently unoccupied. Properties will be considered permanently unoccupied if they remain unoccupied, continuously and without justified cause, for a period of more than two years, and belong to owners of, four or more properties destined for residential use, in addition to any other additional requirements that may be included in the municipal by-laws. The penalty that local councils may impose may be up to 100% when the period of inoccupation exceeds three years. They may even increase this penalty by a further 50% in the case of properties belonging to owners of two or more residential properties that are unoccupied in the same town.

Income tax incentives

The following tax benefits are granted to property owners who may be included in any of these situations:

- Deduction of 90% of the net rental income. This bonus applies to owners of properties in stressed areas who reduce the rental price by more than 5%.

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- Deduction of 70% of the net rental income. This bonus applies to owners who meet the following conditions:
 - Housing located in a stressed residential market area, which is rented for the first time and the tenant is between 18 and 35 years of age.
 - The tenant must be a public administration or non-profit organization and the property is destined for social renting with a monthly rent lower than that established in the rental subsidy program.
- Deduction of 60% of the net rental income. This applies when the home has been subject to renovation, and this has been completed in the two years prior to the conclusion of the contract.
- Deduction of 50% of the net rental income in other cases.

Business Law and M&A

Royal Decree-Law 5/2023

The “Royal Decree-Law 5/2023 of 28 June” sets out in its first book a completely new regime for structural modifications of commercial companies, both internal and cross-border, intra- and extra-European (i.e. outside the European Economic Area). This Royal Decree - Law not only complies with the transposition into Spanish law of the so-called Mobility Directive, but also repeals Law 3/2009 of 3 April and integrates the entire legal regime of structural modifications, both internal and cross-border, into a new regulation. The new regulation will enter into force one month after its publication in the Official State Journal, on July 29th, 2023, although a transitional regime is established for operations in progress before its entry into force, so that Law 3/2009 will apply to structural modifications whose projects have been approved by the companies involved before July 29th, 2023.

The new law has a structure that differs significantly from the previous standard. For example, it contains:

- Common provisions applicable to all structural modifications (whether internal or cross-border).
- Specific rules for each type of internal modification.
- General rules for cross-border structural changes for both intra-European and extra-European changes.

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Main new developments:*Protection mechanisms:*

With regards to the protection of creditors, one of the new features is the elimination of the traditional right of opposition. Instead, it is replaced by a system of appropriate safeguards. This new regime is based on the company's offer of guarantees in the draft, without making such an offer mandatory. Additionally, when an independent expert's report is present, it allows for an independent expert to provide an opinion on the adequacy of any security offered. However, it is not mandatory for the expert to give such an opinion. Furthermore, a procedure is established for creditors to exercise their right to obtain adequate security.

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The time limit for exercising this right is one month for internal transactions, and three months for cross-border transactions. The counting of this time limit starts from the publication of the draft terms, rather than from the publication of the merger resolution, as it was previously.

In mergers and split-offs, the possibility of opposing the merger based on discrepancies in the exchange ratio is eliminated. Instead, shareholders who do not vote in favor have the option to seek cash compensation through a court application. This change means that the previous article 38.II of Law 3/2009, which allowed for an expert to be involved in determining such compensation when specified in the bylaws or the resolution of the shareholders' meeting, is no longer applicable.

The new regulation consolidates various scenarios that previously granted the right of separation or similar mechanisms. It also includes the right for dissenting shareholders in such cases to sell their shares or holdings in exchange for appropriate compensation. If there is an independent expert's report available, it must provide an opinion on the adequacy of the compensation.

It's important to note that a disagreement with the offered compensation does not allow to contest the amendment itself. Instead, it enables the dissenting shareholder to request additional cash payment through legal means.

The employees, as is the case for creditors and shareholders, have granted the right to submit comments on the draft structural amendment, which must be taken into account by the board to submit comments on the draft structural amendment.

Main procedural developments

The general structure of the procedure is conserved, the documents required to carry out the operation are extended, with effects on the timing of the operations.

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Project:

- All structural modification operations, including transformation, will need the preparation of a structural modification project.
- The project needs to be accompanied by certificates that verify the company's compliance with its tax and Social Security obligations.
- The explicit mention is made regarding the board's ability to amend the structural modification project.

Preparatory Advertising:

Unless in the case of structural modifications adopted by unanimous universal meeting, moreover the project, an information notice must be published on the website or filed at the Commercial Trade Registry. This notice must be addressed to shareholders, creditors, and employee representatives (or employees if they do not exist) to inform them about the possibility of providing feedback to the company regarding the proposed operation. These observations can be submitted up to 5 business days prior to the general meeting.

Administrators' report:

The report of the administrators will include two sections, one for the shareholders and another for the employees. These sections can be presented as a single report or separately, depending on the addressee. However, if the shareholders of the participating companies agree, their section of the report may not be issued. The employees' section of the report will provide an explanation of the implications for labor relations, significant changes in employment terms and conditions, and any impact on the location of business premises, including how these changes affect the company's subsidiaries.

Independent expert's report:

Is a crucial component that should encompass the expert's assessment of the suitability of the cash compensation provided to shareholders. Additionally, upon the directors' request, the report may also include an evaluation of any guarantees offered to creditors.

As usual, is mandatory for all structural modification operations to ensure transparency and fairness.

However, specific exceptions may be applicable in certain circumstances, allowing for flexibility in the requirement.

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