



Latin America Update 2024-Q1

1. Brazil

1.1. Tax reform

After almost 30 years of discussion Brazil's Congress has recently approved a new tax reform which will still take years ahead to be fully implemented. The future tax system shall be easier as the one today. There are currently three levels of taxation, federal, state, and municipal. The objective of the reform is to simplify, enhance transparency and stimulate the economy. Some kinds of taxes shall be replaced, and rates progressively adapted so that the total tax burden shall be reduced thus, enabling a more friendly competition environment and assuring economic growth.



Another ongoing change in the Brazilian legal system is its Supreme Court composition and functioning specially regarding the term of justices. The Senate's President Mr. Rodrigo Pacheco set it on the agenda for

the next weeks. Currently a member of the Supreme Court can remain serving there up to the age of 75 years. The ongoing proposal suggests a reduction to a fixed mandate of no more than 8 years. The number of Justices would remain 11 (eleven) anyway.

2. Argentina

2.1. Government

Last December, Javier Milei was elected as the new president for a four (4) year term, ending 20 years of ruling by the Peronist Party (Kirschner family). Amidst a sky rocketing inflation and record poverty, the Executive Power has launched a frontal attack to change the existing conditions that are commonly identified as responsible for that decay process. Among them are the following:

2.2. Emergency Decree 70/2023

The so-called “DNU” issued by the Executive Branch right after taking office, declared the public emergency in the economic, financial, tax, administrative, social security, public services rates, health and social matters until December 31st, 2025. It set forth deep, broad and numerous reforms seeking for market, industry and service deregulation.

Among many other, the DNU provides the following: (i) Derogation of Law N° 26.992 which created the Price Observatory; (ii) Derogation of Market Shelves Law N° 27.545; (iii) Derogation of Goods and Services Supply Law N° 20.680; (iv) Derogation of certain sections of “Buy National” Law N° 27.437; (v) Derogation of the Commercial Promotion



Law N° 18.425 and Industrial Promotion Law N° 21.608; (v) Derogation of Law N° 27.221; (vi) Modernization of the labor regime, by -among others- facilitating labor registration and derogating labor fines and severances provided under Laws N° 24.013, 25.013, 25.345 and 25.323 regarding

unregistered employment; (vii) Amendments to the National Customs Code; (viii) Derogation of the Rural Land Law N° 26.737 which limited and prevented certain acquisitions by foreigners; (ix) Derogation of Import Law N° 25.626 which prohibited imports of certain products; (x) Derogation of Law N° 24.523 which created the National Mining Trade System and Law N° 24.695 which created the Mining Information Bank; (xi) Liberalization of the legal regime applicable to the wine sector by derogation of Laws N° 18.600, 18.905 and 22.667; (xii) Implementation of the “open skies” policy regarding air transportation; (xiii) Amendments to the Civil and Commercial National Code providing, among others, that obligations established in foreign currency must be paid in such same currency, etc. In addition, the DNU also abrogates several laws regarding public national state composition/organization and provides amendments regarding energy, credit cards, foreign commerce, bioeconomy, air commerce, justice, health, tourism, labor, tele-working, etc. The Decree is valid as of December 29th, 2023.

According to the National Constitution, DNUs must be revised by a Permanent Congress Committee with powers to repeal it by the positive vote of both chambers. There are no previous antecedents of the Congress declaring invalid a DNU despite hundreds of them enacted by the previous administrations. So far, only the Senate has repealed it, which means that the DNU remains effective meanwhile. Some isolated court injunctions have been ordered suspending certain specific provisions (i.e., labor laws’ amendments).

2.3. Decree N° 55/23 – National Energy Emergency

By means of this decree the Executive Branch declares the National Energy Emergency regarding generation, transportation and distribution of electric power and

transportation and distribution of natural gas until December 31st, 2024. The Decree establishes the beginning of the proceeding of revision of prices, which results shall become effective no later than December 31st, 2024

2.4. Decree N° 8/23 – Public Office Reorganization

By means of this Decree, the Executive Branch amended the Law of Ministries providing, among others, a reduction of National Ministries to nine.

2.5. Decree N° 8/23 – Public Office Reorganization Decree N° 84/23 – Termination of Public Employee’s Contracts

By means of this Decree the Executive Branch set forth that all service contracts of public employees – with the exceptions provided therein- executed after January 1st, 2023 and expiring before January 1st, 2024, shall not be renewed.

2.6. International Treaty – FATCA

On March 13th, 2024, it was approved the International Treaty executed on December 5th, 2022, by Argentina and the United States of America regarding the improvement of international tax compliance based on mutual assistance and automatic exchange of tax information, and implementation of “FATCA” (Foreign Accounts Tax Compliance Law).

2.7. Law 27.739 – Amendment to Criminal Law regarding Money Laundering

The Law amends the National Criminal Code regarding money laundering and financing of terrorist acts. Among others, the Law aggravates criminal consequences, includes digital assets, set forth a long list of subjects obliged to report to the Financial Information Unit (UIF) and creates a unified public registry for ultimate beneficial owners under the scope of Tax Authority (AFIP).

2.8. Resolutions 42/24, 48/24 and 49/24 – Information Obligations regarding Money Laundering

By means of these Resolutions the UIF set forth the minimum requirements for the identification, evaluation, monitoring, administration and mitigation of money laundry risks to be adopted and applied by attorneys, accountants and notaries acting on behalf of their clients within the transactions provided therein.

2.9. Resolution 56/42 – Suspicious and Unusual Operations regarding Money Laundering

By means of this Resolution N° 56/2024, the UIF amends previous resolutions by replacing the definition previously provided to the terms “Suspicious Operations” and “Unusual Operations” regarding money laundry and report obligations. The Resolution also amends previous content, extent and deadline regarding “Suspicious Operations” and “Unusual Operations” report obligations.

2.10. Resolution 10/24 – Amendments to the Registration of Foreign Companies

By means of this Resolution, the Superintendence of Corporations (“IGJ”) abrogates previous resolutions which provided a strict regime to be complied by foreign companies registered within the City of Buenos Aires.

2.11. Baseline Bill

The first bill was sent by the Executive Branch to Congress by year end for its treatment. It contained more than 600 provisions. Since it failed approval *in totum*, the Executive Branch withdrew said bill and started political negotiation with the Unions and the Province seeking approval. Right now, a revised bill half as long is at National Congress. It is expected to obtain approval. The most important aspect of the bill are the fiscal provisions aimed at reducing the fiscal deficit.

2.12. End words

After more than 100 days in government and the radical and deep changes proposed by the Milei administration, the polls show an increase in the public’s approval. Inflation rates have been reduced from more than 20% a month to almost a one-digit rate expected for April. In addition, the fiscal deficit - the main cause of the inflation- was eliminated during the last quarter.

The administration had cleared aligned its foreign policy towards the Western countries. Close ties have been set with the U.S., prove of which has been the visit of the U.S. Secretariat of State, the director of the CIA and the SOUTHCOM General Commander late this summer.

3. Chile

3.1. Constitutional process

The majority rejection of the new constitutional proposal last December and the consequent ratification of the validity of the Political Constitution of 1980 only reflects a disinterest in citizens regarding this issue. There is a consensus that there have been no winners in this constitutional process and this month the Government has called to the opposition to reach more agreements on security and economic matters. The truth is that during the current government another process will not be opened but, anyway, the Constitution has now a bit lower chance of quorum to be modified through Congress.

3.2. Commercial Crimes Law

Last August Law No. 21,595 was published, and it introduced new regulations on this matter, modifying several legal bodies, among others, the Penal Code, elevating much non-compliance to the category of crimes, economic, environmental, among others. This law contemplates criminal liability of the company and natural persons (directors, executives, employees, and external advisors), if the commission of the crime had as its objective the economic or also other benefit for the company. It is vitally important that medium and large companies effectively implement a Crime Prevention Policy, given that this can exempt them from liability, especially considering that some types even have custodial sentences.

3.3. Agreement CODELCO-SQM

Just last December 27, after more than six months of negotiations, CODELCO and SQM announced that they had reached an agreement (MOU) to create a company where the state-owned company will have 50% plus one share and SQM the difference. The new company will be able to “jointly explore, exploit and commerce lithium and other mineral substances present in the “Salar de Atacama” from January, 2025 until 2060.



Bustamante Sinn
Abogados

From 2025 to 2030, SQM will manage the business, but from 2031 CODELCO will do it. With this, Chile will retain its position as one of the leaders in the world in the field. In short, for CODELCO it means expanding into another area apart from copper, with the consequent advantages in income, sustainability, and brand value; for SQM, it means increasing extraction in the Salar de Atacama by a third and maintaining a business that represents 80% of its annual income. However, a minority political party is opposing to the agreement.

In the following weeks the binding agreement should be signed, but the association process will culminate by the end of the year due to indigenous consultations and other legal requirements. Finally, this is seen as a significant step in public-private partnerships.

3.4. No Double Taxation Agreement (USA)

The very recent approval and entry into force of the No Double Taxation Agreement between the United States of America and Chile, added to the Free Trade Agreement signed 20 years ago between the two countries, promotes trade and investment.

3.5. Advance Framework Agreement

On December 9, 2023, the European Union and Chile concluded negotiations on the EU-Chile Advanced Framework Agreement to strengthen political dialogue and cooperation, as well as to promote trade and investment. The above, on common basis of human rights and sustainability. Better access conditions and sustainable investment in critical raw materials such as lithium will help drive the path towards a cleaner planet. In 2002, the EU and Chile concluded an Association Agreement, which includes a global trade agreement that entered the following year and covers trade relations between both parties. Now, it has been agreed to modernize the Association Agreement and replace it with the new generation Advanced Framework Agreement that deepens their bilateral relationship.

4. Peru

The Peruvian Constitution, as is usual in democratic governments, regulates the due process of law, and within this principle the right to the double instance. There is also the remedy of cassation, which is an extraordinary remedy to provide authoritative interpretation of the law by the Supreme Court of Justice. Although the legislation established certain parameters for appealing through the cassation of judgment before the Supreme Court, litigants have abused filing this petition, as if it were a third instance. As a consequence of this procedural malpractice, judicial proceedings ended up taking 2 to 3 years more or even longer. The Law No. 31591 seeks to shorten the terms of litigation and impose stricter requirements to access the cassation appeal. Law No. 31591 establishes that the cassation appeal will be declared inadmissible when the second instance sentence confirms the first instance sentence.



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