

# Year to Come, Year in Review

## Latin American Law

December 2021



# Year to Come

## Latin American Law in 2022

“Activity in M&A and capital markets, while initially affected, managed to stage a remarkable recovery in the region. Uncertainty resulting from the 2022 presidential elections in Brazil is likely to delay certain investment decisions, but the expectation is that most market participants will want to take advantage of the overall “re-start” mode of all economies.”

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### Argentina

#### Economic prospects:

In September 2021, the consumer price index registered a monthly increase of 3.5% and a year-on-year increase of 52.5%. This indicates that the year-on-year increase rate will remain around 50% for the rest of 2021 and will close with an approximate rise of 48% in 2021. Expected inflation for 2022 stands at 33%.

According to the 2022 national budget, Argentine GDP will grow 4% in 2022, although it will take the economy at least until 2023 to recover from the loss caused by the Covid-19 pandemic. While the restructuring of the sovereign debt is promising, the current administration must reach fiscal surplus sufficient for the purchase of the amounts in foreign currency needed to repay debt or roll-over such debt maturities in order to honor those commitments.

#### Mid-term legislative elections:

Midterm legislative elections were held on November 14, 2021. The opposition party "*Juntos por el Cambio*" obtained 42.38% of the votes, while the ruling party front "*Frente de Todos*" obtained 32.93% of the votes. As a result, the ruling party lost its control of the Senate and of the first minority in the House of Representative. The elected deputies and senators will take office on December 10, 2021.

#### Hydrocarbons bill:

In September 2021, President Alberto Fernandez submitted the Hydrocarbon Investment Promotion bill. The bill intends to promote hydrocarbon production and, ultimately, the flow of funds into the country. The bill takes into account the economic reality of each province and focuses on the development of small- and medium-sized businesses.

#### Food products price freeze:

The Argentine Government has announced a price freeze on certain food products and other mass consumption items for 90 calendar days from October 27, 2021. This measure seeks to decelerate inflation but has met resistance from business sectors and the effects of this measure remain uncertain.

### Brazil

#### Overview:

Despite the efforts to get the economy back on track, the lasting effects of the Covid-19 pandemic and the continuing rise of inflation are obstacles that will require constant focus from the Brazilian authorities. Currency depreciation, high unemployment rates and the surge in commodity prices are challenges the country is also facing. According to the IMF, the Brazilian economy is expected to expand by 1.5% in 2022.

#### General elections:

The general elections are scheduled for October 2022. Brazil will elect the President, all members of the House of Representatives and one third of the members of the Senate. In addition, there will also be elections for State Governors and State Legislative Representatives in 2022.

#### Tax reform:

The proposal for simplification of the federal tax system has been reviewed by the Federal Government. To expedite approval procedures, the tax reform has been divided into different projects, which shall be analyzed separately by the representatives. That said, despite these efforts, due to the upcoming 2022 general elections, the tax reform is not expected to be concluded or implemented in 2022.

#### Mergers and acquisitions:

The M&A industry shows no signs of slowing down in Brazil. The depreciation of the Brazilian Real continues to make deals attractive to international players despite the inflation, rising interest rates and the upcoming elections. Privatizations and infrastructure deals are expected to be the key drivers for the high volume of transactions.

### 2022 highlights

Brazil will elect the President, all members of the House of Representatives and one third of the members of the Senate.

### 2022 highlights

Chile expects to hold a referendum on a yet-to-be proposed updated Constitution.

### 2022 highlights

Political instability and new limits on presidential powers will make material reforms in Peru unlikely.

## Chile

### Political developments:

A proposal for a new constitution is expected in 2022, which will be subject to a referendum. If rejected, the current text will remain unchanged. A pension reform is likely to be passed in 2022 as well. The extent of this reform may depend on the presidential election results. A significant increase in mandatory contributions and relevant changes to some of the current cornerstones of the system should be anticipated.

### FinTech bill:

Congress will likely finalize a comprehensive legal framework for FinTech companies, which was submitted by the Government in 2021. The bill aims to establish a regulatory perimeter for certain types of services such as crowdfunding platforms, alternative transaction systems, credit and investment advisory services, custody of financial instruments, and order routers and financial instrument intermediaries.

## Colombia

### Political prospects:

Presidential elections are scheduled for May for the 2022-2026 term. For the second half of 2022, the political, regulatory and commercial agenda will depend greatly on who is elected President. Candidacy lists are incomplete and current voting intentions may be swayed by the results of the national vaccination plan and certain social movements in response to reforms coming into play. Economic reactivation or geopolitical events could shift security concerns or even sway political positions and affiliations of public figures.

### Economic prospects:

According to the World Bank, the Colombian economy is expected to grow next year at a rate of 4.2% and return to pre-pandemic levels. Household consumption, increasing employment rates and a higher rate of total investment will contribute to this growth.

On October 6, 2021, the World Bank recommended "urgent reforms" to overcome the crisis caused by the Covid-19 pandemic. Despite signs of recovery, the great challenges of poverty and inequality have increased in the past year.

## Mexico

### Energy:

In 2021, the President proposed a constitutional energy reform (as defined below) relating to the power and hydrocarbons industries. If approved in the proposed terms, the country's electricity supply could increase in cost but decrease in quality which would affect the country's economy, environment, existing investments, production chains, development of economic activities, exchange rates, creation of jobs and the international commitments assumed by Mexico in environmental and investment protection matters. This measure could affect the prestige and trust of Mexico as a trading partner as it could cause diplomatic tensions and economic claims under different trade and investment protection treaties exposing Mexico to owing billions of dollars in compensation for lost investments. As of December 2021, the legislative discussion of this energy reform has been postponed until, at least, June 2022.

### Antitrust:

Antitrust litigation, particularly in the energy industry as well as other regulated markets, is expected to continue insofar as the Federal Government continues to push for certain legal amendments and the relevant regulators continue cancelling or avoiding granting relevant permits and authorizations to private parties. The Federal Judiciary added one additional specialized court in antitrust matters to keep up with increasing demand. The Federal Competition Commission (COFECE) will likely continue not having quorum to make decisions since the Executive Branch has refrained from filling board member vacancies.

### Labor and employment:

In 2022, the labor, social security and tax authorities will inspect and audit companies from all industrial sectors to verify compliance with the Labor Subcontracting Reform (as defined below).

Following recent court precedents in European and other Latin-American countries, Federal Labor law may be reformed to take into account the specific needs of workers on digital platforms and apps.

### International trade and customs:

If the energy reform is approved in the proposed terms, it could trigger international trade sanctions against Mexico under the U.S.-Mexico-Canada Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, such as the loss of preferential trade tariffs on exported goods which could affect multiple sectors, including multiple supply chains. Mexico will join the World Logistics Passport program, facilitating the trade of goods and opening up the market for exporting Mexican goods to Asia, Africa and the Middle East.

### Tax:

From 1 January 2022, businesses will have to evidence their business substance in order to qualify for tax-exempt corporate reorganizations, mergers and spin-offs and back-to-back loans. Reduced withholding tax rates on interest paid on cross-border financing transactions between related parties or paid by multiple purpose financial entities (SOFOMEs) will also be restricted and more stringent requirements will apply to the deductibility of bad debt. The tax reform will also introduce a simplified individual and corporate tax scheme.

### Banking and finance:

Development banks are expected to have an active role in the financing of strategic industries and government sponsored projects. Additional regulation and supervision by financial authorities could result in an increase in regulatory audit procedures and economic sanctions for financial entities. M&A activity by financial entities could take place following the consolidation trend. We will continue to see debt restructurings, particularly in the industries most affected by the Covid-19 pandemic.

### Health:

The National Health System in Mexico is expected to continue struggling to supply the basic healthcare needs for the population, including chemotherapies for kids and important medication for chronic diseases.

## Peru

### Political and economic prospects:

The current Government is not likely to be able to implement the populist policies integral to President Castillo's campaign platform, such as strengthening the role of the State in the economy and the nationalization of certain natural resources.

The tensions between the Executive and Legislative Branches and the weakened position and diminished approval of President Castillo's Government indicate that political instability will continue throughout 2022. Moreover, in October 2021, Congress enacted a law limiting the power of the President to dissolve Congress in certain circumstances. Due to the current instability and the position of the Peruvian Government, it will be difficult to implement any material or radical legal reforms in 2022. Regional and municipal elections for the 2023-2026 term are scheduled for October 2022. It is expected that Peru's economy will return to pre-pandemic levels by the end of 2021. This year's GDP growth forecast is 10%. This gradual recovery of the Peruvian economy is expected to continue in 2022.

### Tax:

The Government has announced potential amendments to the current tax regime applicable to certain industries, such as the mining industry, with the intention of increasing the tax burden on such industries. The amendments have not yet been presented to Congress.

### Concession agreements and legal stability agreements:

The Government plans to review and renegotiate concession and legal stability agreements with foreign investors, in order to better position the Peruvian Government. The Executive Branch has not yet submitted specific proposals on the matter.



# Year in Review

## Latin American Law in 2021

The Governments' actions to address the impact of Covid-19 largely succeeded in stimulating economic growth in most countries in the region.

A number of countries, despite the pandemic, were able to enact changes to their legal framework in areas such as electronic payment, antitrust and taxation.



### Argentina

#### Response to the Covid-19 pandemic:

Social isolation and closed border measures were maintained for most of 2021. Beginning on October 1, 2021, these measures were progressively lifted as a result of the progress made in the vaccination campaign. The use of face masks is no longer required outdoors, and full capacity is now permitted for all economic, cultural, social and professional activities. Borders were fully opened November 1, 2021. Mandatory isolation is no longer required for foreigners arriving in Argentina from any country.

#### Public debt restructuring:

On March 3, 2021, Law No. 27,612 on Strengthening the Sustainability of Public Debt came into effect. The law establishes that sovereign debt denominated in foreign currency or governed by foreign laws will need to be approved by the Argentine Congress before exceeding a given threshold percentage over sovereign debt. The law also applies to financing programs and public credit operations carried out with the IMF.

The Argentine Government is currently negotiating the restructuring of the US\$57.1 billion, 36-month Stand-By Arrangement with the IMF entered into in 2018. There is still uncertainty on how this process will develop.

On June 22, 2021, the Argentine Government reached a restructuring agreement with the Paris Club, requiring payment of the amounts due on May 31, 2021 in the third quarter of 2021 and the first quarter of 2022.

#### FX restrictions:

Controls on the access to the Foreign Exchange Market remained in place during 2021. Restricted payments include dividends to foreign shareholders, services rendered by non-resident affiliates, principal amounts of external financial debt and repayment of domestic securities denominated in a foreign currency. In October 2021, the Central Bank tightened controls on payments for imports of goods. The Central Bank and the Argentine Securities Commission (CNV) also strengthened the limitations on blue chip swap transactions, in particular with respect to the sale of securities with a settlement in a foreign currency and their transfer abroad.

### Brazil

#### Response to the Covid-19 pandemic:

The Government implemented a series of social and economic measures to boost the country's recovery from the Covid-19 pandemic. Programs to grant financial aid and facilitate access to credit have been broadly executed at the federal, state and municipal levels. Vaccination levels continue to increase significantly. More than 74% of the adult population in Brazil has received at least one dose of a Covid-19 vaccine.

#### International pharmaceutical partnerships:

The Federal Government entered into a partnership for the research and production of AstraZeneca/Oxford Covid-19 vaccines.

The State Government of São Paulo entered into a partnership with the Chinese biopharmaceutical company SinoVac for the local development of vaccines by the Brazilian Butantan Institute.

#### Instant Payments System (SPI):

In 2020, the Central Bank implemented the SPI for real-time financial transactions. In 2021, however, due to an increase in fraudulent transactions, the Central Bank set forth additional rules to regulate the system more efficiently. Additionally, in response, some financial institutions launched new insurance products to protect customers in cases of fraud, including those within the SPI.

#### Brazilian General Data Protection Law (LGPD):

The administrative sanctions set forth in the LGPD entered into force in August 2021, enabling its enforcement by the National Agency for Data Protection. Furthermore, the Brazilian Congress approved an amendment to the Constitution in order to include personal data protection and the right to digital privacy as fundamental rights.

#### Capital markets:

Political and economic instability caused Brazilian capital markets and related players to suffer during the second half of the year. Many Brazilian companies that were planning to carry out IPOs decided to pull out of the process. This volatility is expected to continue throughout 2022 due to the general elections and the impact of the Covid-19 pandemic.

### 2021 highlights

The Covid-19 pandemic largely shaped the region's political and economic agendas, resulting in an upswing in economic activity.

### 2021 highlights

Argentina restructured its sovereign debt, reached a payment agreement with the Paris Club and entered into negotiations with the IMF regarding their 2018 Stand-By Arrangement.

### 2021 highlights

Mexico significantly reformed its labor and tax laws in addition to regulatory changes in the antitrust and energy sectors.

## Chile

### Political developments:

In May, the country voted for a constitutional convention of 155 delegates to draft a new constitution with an election system guaranteeing gender parity and indigenous seats. The convention will have a year to deliver a proposal. The national curfew ended in September 2021. The Government extended the emergency family income, employment protection and support for small-to-medium enterprises programs until December 2021.

### Tax:

In January, a convention to avoid double taxation and prevent tax evasion was signed with the Netherlands (yet to be ratified by Congress). The Tax commission prepared a report recommending the elimination of several tax exemptions and special regimens. The Government incorporated them into a bill submitted to Congress seeking changes to the capital gains taxation of publicly traded stock, VAT and life insurance policies. The Government also seeks to extend tax benefits for donations to matters of public interest.

### Finance:

The Central Bank and the Financial Market Commission (FMC) eliminated the domicile requirement for foreigners to have checking accounts in Chilean pesos. Law No. 21,314 introduced transparency requirements and increased the responsibilities of market agents. It also subjects investment advisory services to FMC supervision. The Central Bank has authorized the settlement of several foreign exchange transactions in national currency. Chile has continued to issue public debt to fund the increasing Covid-19-related expenses with the help of Linklaters.

## Colombia

### Economic growth:

Immediate and decisive responses to the Covid-19 pandemic have boosted economic activity. The economy has rapidly recovered, with a 13.2% growth in August 2021 compared to -9.8% in August 2020. Growth is consolidating despite a temporary contraction due to movement restrictions in April and social unrest in May. The World Bank predicts a 7.7% growth rate for the Colombian economy in 2021 – the highest since 1978 – and expects a return to 2019 levels before the end of the year. Investment is projected to rebound progressively in 2022.

### Tax reform package:

The Senate and the House of Representatives approved a fiscal reform on September 29, 2021, raising 15.2 trillion pesos (approximately US\$4 billion) to ensure the strength of public finances and economic reactivation.

### Innovative laws:

In August 2021, the Energy Transition law was passed, affirming the Government's commitment to reduce greenhouse gas emissions by 2030 and achieve carbon neutrality by 2050, in line with the Paris Agreement. The development of renewable energy sources and projects, as promoted by the law, will further stimulate the economy. First approved in December 2020, the Entrepreneurship law provides a modern regulatory framework for all entrepreneurs, regardless of the size of their business. Its purpose is to facilitate and nurture new ventures while encouraging employment.

## Mexico

### Tax, labor and employment:

The new labor, tax and social security laws (Labor Subcontracting Reform) brought major changes. The laws prohibit outsourcing personnel and limit subcontracting to specialized services which are not within the corporate purpose or main economic activities of the contracting party. The reform may result in fines and increased taxes as payments under non-permitted outsourcing schemes are non-deductible and the statutory profit-sharing payments have significantly increased.

### Antitrust:

Antitrust litigation has significantly increased because of the Federal Government's actions in the energy market and other regulated sectors. The Federal Economic Competition Commission (COFECE) has been very active in defending its free-market position against the Federal Government's actions. On the other hand, COFECE and the Federal Telecommunications Institute (IFT) are ensnared in litigation, trying to assert their relative powers over antitrust matters.

### Energy:

Mexico's current President and the Federal Government have been adopting different actions (including the attempt to introduce secondary regulation and amendments to the Electricity Industry law) to reinstate and broaden the powers of state-owned companies such as CFE and PEMEX and harm the private sector.

After several setbacks received from the Mexican courts, in October 2021, the President, considering the power industry as a strategic activity, submitted to Congress an initiative to modify the Mexican constitution (the energy reform), seeking to reinstate the electricity monopoly in all activities of the power industry and eliminate independent regulators such as the Energy Regulatory Commission (CRE) as well as the independent operator of the electric system, the National Energy Control Center (CENACE).

Furthermore, the energy reform also affects the hydrocarbon and mineral industries as it proposes to eliminate the National Hydrocarbons Commission (CNH) as an autonomous body and states that the exploitation of lithium and other minerals is an exclusive activity of the Mexican State.

### International Trade and Customs:

The Federal Government reformed the Hydrocarbons law to limit import permits for private entities in addition to making their suspension or cancellation easier. This implies barriers for such entities to continue growing and participating in the Mexican market which could trigger disputes against Mexico.

## Peru

### Political developments:

First-round presidential elections were held in Peru on April 11, 2021. In the June 6 run-off, Pedro Castillo was elected President for the 2021-2026 term. This administration has a populist agenda and is seeking to modify and reform the Peruvian Constitution. However, the Peruvian Congress is highly fragmented. At least ten political parties hold minority representation. A majority opposition is expected against policies and reforms proposed by the Executive branch. Political instability and confrontation between the Legislative and the Executive branches are expected to continue for the remainder of 2021.

### Antitrust:

A new merger control regime took effect in June 2021. This regime requires prior approval for business concentration operations that produce effects in Peru, including acts of concentration carried out abroad that link economic agents who carry out economic activities in Peru. The regulation details the types of operations and threshold requirements for qualifying as a concentration act. The National Institute for Antitrust and Intellectual property (INDECOP) is responsible for clearing or approving operations.

### Restrictions on interest rates:

In March 2021, Congress passed a law protecting financial services' consumers from usury (N° 31143). The law set maximum interest rates that financial entities may charge. It also grants authority to the Central Bank to determine the maximum compensatory and default interest rates that can be charged by financial institutions.

### Response to the Covid-19 pandemic:

The Government has continued to enact measures aimed at slowing the spread of Covid-19. Although the state of emergency remains in place since October 2021, restrictions in Peru are gradually being lifted, resulting in increased economic activity.

# What now?

## Your contacts

We hope that you have found this guide useful. Please contact your usual Linklaters contact if you would like to discuss any of these matters further.



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