



COVID-19 and the Legal Sector

Short term implications in Latin America



The rapid outbreak of the coronavirus is having a significant commercial impact which is being felt globally and across Latin America. During this time, it is critically important to position your business to be resilient in order to help navigate through uncharted territory. No matter the industry, COVID-19 (coronavirus) is having a direct impact on all contractual arrangements not only with clients and service providers, but also with a company's labor force.

During these unprecedented times, KPMG's Latin America Network of Legal Professionals can support your company or your in-house legal teams to navigate these challenging times to help anticipate and potentially help mitigate its impact on your organization.

KPMG's Approach/Checklist:

Phase I: Approaching the COVID-19 crisis

(the "Crisis"): general diagnosis of the immediate foreseeable legal aspects/challenges brought forth by the Crisis (the "Diagnosis") aiming to support in-house lawyers, operational, financial, and accounting departments in identifying and anticipating further difficulties relating to:

- a) Contracts, commercial and insolvency matters;
- b) M&A and greenfield projects;
- c) Insurance negotiations and claims;
- d) Labor and social security matters;
- e) Judicial and administrative proceedings;
- f) Foreign trade and foreign exchange hurdles; and
- g) Other legally sensitive matters.

Services during the Crisis would include daily monitoring of relevant legal and regulatory developments/changes and up to two weekly reports to clients during COVID-19 crisis.

Phase II: Managing/Resolving the Crisis: in line with the Diagnosis, KPMG's Latin America Network of Legal Professionals will help implement the legal strategy needed to manage:

a. Contracts, commercial and insolvency matters (either lender/customer or debtor/supplier side):

- Cross-border and local supply chain restructuring;
- Cross-border and local review of client and supplier relationships;

- Review of standstill, hardship, and force majeure terms and conditions with a regional/global and local approach;
- Negotiate with key clients and suppliers;
- Strengthen commercial relationships with special attention to agreements with the Public Administration and customers;
- Review of financial agreements;
- Advice on banking regulations, mandatory postponement and extension of payment terms, and credit-rating emergency regulations; and
- Legal advice in applying for potential insolvency procedures to anticipate or to tackle the consequences of the fragile state of some companies during these times of economic uncertainty and the significant decline of commercial activities including payment terms, restructuring/default on financial obligations, etc.

b. M&A and Greenfield matters

- Cross-border and local review of terms and conditions of ongoing M&A transactions;
- Impact of COVID-19 on due diligence processes as well as in pre-closing conditions and exit events from M&A deals;
- Impact of COVID-19 on closing and post-closing obligations including price adjustments/revisions, default events, postponement of signing and closing sessions, floating currency and exchange rates, review of specific risk allocation contract structure and trigger contractual solutions; and
- Impact of COVID-19 on cross-border transactions and distressed M&A opportunities.

c. Insurance matters

- Cross-border and local review of insurance policies to cover and maintain business continuity;
- Review unprotected risks and negotiate with insurance companies to update coverage under relevant insurance policies; and
- Review, advice, and representation of insureds in claims triggered by COVID-19 crisis.

d. Labor and social security matters

- Review of cross-border and local employment and immigration issues;
- Impact on future working models;
- Internal procedures of the organizational model on almost every aspects of the corporate activity including human resources, smart working, safety at work, etc.;
- Potential civil and criminal liability of top executives/officers in the context of the Crisis management vis-à-vis employees and subcontractors;
- Cross-border and local legal advice and representation in labor and social security reconfiguration and implementation measures;
- Advice on labor relationships, remunerated licenses, employment suspension without or reduced payment, remote services, and termination of labor contracts during COVID-19 crisis;
- Advice on health and occupational hazard during the COVID-19 crisis;
- Advice on health employee status in compliance with HIPPA regulations; and
- Review costs of indirect payroll contributions during the COVID-19 crisis.

e. Judicial and administrative proceedings

- Postponement of deadlines including possibility of oral arguments by video; Court judgments by video, submittal of electronic writs/briefs, and/or similar, etc.

f. Foreign trade and foreign exchange hurdles

- Legal advice on foreign trade developments, postponement of formal and substantive obligations and similar issues;
- Impact of governmental measures on shipments waiting for clearance during COVID-19 crisis and social isolation period; and
- Restrictions on access to foreign exchange markets during the COVID-19 crisis.

g. Other legally sensitive matters

- Data protection including review and enhancement of clients' data protection policies considering generalized home office/telework to comply with personal data protection regulations;
- Communications strategies including legal review and revision of clients' communications strategies during COVID-19 crisis; and
- Compliance including identifying the short-, medium- and long-term compliance obligations with local, state and federal authorities which may be affected by a possible interruption of operations caused by COVID-19 and drafting a work-plan to mitigate its impact.

For further guidance, please reach out to a corresponding legal professional.

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