



LATAM COVID-19 TASK FORCE

Actions Affecting Energy and Infrastructure Projects in Latin America

April 9, 2020

AUTHORS

Maria-Leticia Ossa Daza | **Jorge H. Kamine** | **Maria Isabel Nieto**

The outbreak of COVID-19 is causing disruption across the world. Willkie has been endeavoring to provide our clients, colleagues and friends with current information, insights and analysis of the challenges and issues that companies are facing globally. As part of those efforts, we have asked our colleagues at law firms in Latin America to join us in creating a **LATAM COVID-19 Task Force** to help us provide current information, insights and analysis on a range of issues facing companies navigating this crisis in Latin America and Spain and to share their thoughts and views on it.

Introduction

The LATAM COVID-19 Task Force has assembled a series of questions addressing the following topics that we hope provide useful information about the countries included in this client alert:

- (a) actions taken by governments and private parties in the covered countries in response to the COVID-19 crisis which may, directly or indirectly, affect energy and infrastructure projects in those countries;
- (b) the status of markets in the covered countries which may be of particular relevance to energy and infrastructure projects; and
- (c) measures adopted by governments in the covered countries which may provide energy and infrastructure projects some relief or compensation for the adverse impacts of the COVID-19 crisis.

Actions Affecting Energy and Infrastructure Projects in Latin America

The questions and responses from the members of the LATAM COVID-19 Task Force have been organized in accordance with the categories below. Both the questions and the responses can be accessed by scrolling down to the relevant section of the memo or by selecting the title of each category below.¹

- A. Government Measures and the Effect of the COVID-19 Crisis on Government Functions**
- B. Status of Markets and Current Market Problems**
- C. Force Majeure and Excused Non-Performance**
- D. Prospective Developments**
- E. Brief Observations of the Willkie Latin America Team**

Since we have asked the same questions about events and developments in multiple countries in the region, we hope that the collective feedback will provide some basis for comparison across the region and some insight into potentially developing trends in responses and actions.

Future Updates to this Client Alert

The LATAM COVID-19 Task Force plan to update the responses periodically to reflect the evolving situation. We also expect future updates to include contributions from LATAM COVID-19 Task Force members in Panama, Uruguay and other countries in Central America. You can access all of Willkie's COVID-19 publications at our [COVID-19 Resource Center](#).

¹ NOTE: The responses to these questions may include hyperlinks to certain websites that may be blocked by your company's network and may require that you access the link from a separate system.

Actions Affecting Energy and Infrastructure Projects in Latin America

Questions and Feedback

We look forward to having an active conversation with you and hearing about any concerns and questions you may have which you can direct to LATAMCovid19@willkie.com.



[Maria-Leticia Ossa Daza](#)



[Jorge H. Kamine](#)



[Maria Isabel Nieto](#)

LATAM COVID-19 Task Force Members

The following law firms participated in this client alert of the LATAM COVID-19 Task Force:

<u>Country</u>	<u>Law Firm</u>	<u>Point(s)-of-Contact</u>
Argentina	Marval O'Farrell Mairal	<u>Hernán Slemenson</u> , <u>Pablo S. Cerejido</u>
Brazil	Lefosse Advogados	<u>Gonçalo Godinho</u> , <u>Carlos Barbosa Mello</u>
Chile	Barros & Errázuriz	<u>Francisco De la Barra Gili</u> , <u>Pablo Guerrero Valenzuela</u>
Colombia	Brigard Urrutia	<u>Jaime Robledo Vásquez</u> , <u>Sergio Michelsen Jaramillo</u>
Costa Rica	BLP Legal	<u>Julio Castellanos</u>
Ecuador	Pérez Bustamante & Ponce	<u>Juan Manuel Marchán</u> , <u>Diego Pérez-Ordoñez</u>
Mexico	Mijares, Angoitia, Cortés y Fuentes, S.C.	<u>Martín Sánchez</u> , <u>Horacio M. De Uriarte</u> , <u>Patricio Trad Cepeda</u> , <u>Francisco Lascurain</u>
Peru	Rebaza, Alcázar & De Las Casas	<u>Felipe Boisset</u> , <u>Alberto Rebaza</u> , <u>Luis Miguel Elias</u> , <u>Ana María Sánchez</u>
Spain	Pérez-Llorca	<u>Ivan Delgado</u> , <u>Fausto Romero-Miura</u>
Venezuela	D'Empaire	<u>Fulvio Italiani</u>

**LATIN AMERICAN ENERGY & INFRASTRUCTURE PROJECTS
COVID-19 ACTIONS TRACKER**

A. Government Measures and the Effect of the COVID-19 Crisis on Government Functions

1. Are you seeing government emergency decrees and other measures requiring the temporary suspension, delay or other disruption in the start or continuation of construction of energy and infrastructure projects or in the operation of existing projects?

Country	Answer
Argentina	The Argentine Executive ordered a general lockdown, currently in place until April 12. Energy projects (including, oil, gas and electricity) were considered “essential”, and thus excluded from the general lockdown.
Brazil	No. We have seen general governmental measures that are affecting several businesses, including infrastructure projects (e.g. quarantine). However, we have not seen any measure targeting specifically energy and infrastructure projects.
Chile	No, there have been some measures approved but not directly related to energy and infrastructure projects. However, we are currently under a nationwide Constitutional Emergency State of Disaster where certain rights and liberties can be limited by local authorities (including mobility and business operations). As a result, there have been specific actions taken in different areas of the country, such as prohibitions on gatherings of more than 50 persons in the same place, limitations on transit through districts and having mandatory quarantines in certain areas, which have disrupted the normal operation or construction of energy and infrastructure projects.
Colombia	Yes. On March 17, 2020, through Decree 417 of 2020, the Colombian President declared a 30 calendar day State of Emergency ² throughout the national territory amid the COVID-19 crisis (the “Emergency Decree”). The implemented measures can delay the start of pending infrastructure and energy projects which are not yet operational and are not directly related to the continuous operation of the electric energy public utilities (new generation facilities and transmission lines). In addition, in the case of transportation infrastructure several government agencies have issued resolutions or other instructions suspending certain activities under the contracts those government agencies have signed and invited the contractor to negotiate the scope of the suspension. For further details, please refer to the following link: more information
Costa Rica	No specific energy and/or infrastructure government emergency decrees have been adopted by the Costa Rican government. However a disruption in the start, continuation and operation of construction of energy and infrastructure projects could be caused by the National Emergency Decree and further quarantine regulations.
Ecuador	Not yet, although certain operational and mobility restrictions have been approved, these limitations do not directly apply to the so-called strategic sectors, which include: energy, main infrastructures, electricity, water resources, telecommunications, mining, oil, and basic industries such as forest resources and the petrochemical industry. However, the general transit restrictions approved may indirectly impact the key energy and infrastructure projects in the coming weeks.

² The State of Emergency is one of the three so-called “States of Exception” in Colombia (along with Internal Commotion and External War).

Actions Affecting Energy and Infrastructure Projects in Latin America

<p>Mexico</p>	<p>Yes. On March 30, 2020, the Mexican General Health Council enacted a decree declaring a national health emergency and issued certain sanitary measures including, among others, the immediate suspension, from March 30 to April 30, 2020, of any “non-essential activities” in the public, private and social sectors.</p> <p>Within the description of “essential activities”, there is a list of sectors considered essential for the fundamental functioning of the economy as well as activities whose suspension may have irreversible effects on the economy, among which there are some related to infrastructure and energy. If (i) the activities to be carried out in connection with the energy or infrastructure projects fall within the “essential activities” description , or (ii) the suspension of such activities may result in irreversible? Per the above; such activities are permitted to continue.</p> <p>Also, activities related to the “conservation and maintenance of critical infrastructure that ensures the production and distribution of essential services” are permitted to continue.</p>
<p>Peru</p>	<p>Yes. Certain emergency decrees have been enacted in the last three weeks. Please note, however, that the production and provision of energy is considered an essential activity since it is linked to a public utility and, therefore, the Peruvian government guarantees the generation, transmission and distribution of energy to all customers. For further information, please refer to the links below:</p> <ul style="list-style-type: none"> • Urgency Decrees https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-estado-de-emergencia-nacional-po-decreto-supremo-n-044-2020-pcm-1864948-2/ • Ministry of Energy and Mining’s Resolution https://cdn.www.gob.pe/uploads/document/file/569045/RVM_001-2020_VME.pdf
<p>Spain</p>	<p>Yes. There have already been measures imposing the temporary suspension of the business activities in general, except for the so-called essential activities. Within such essential activities we find, amongst others, energy activities. Consequently, the operation of existing projects is not currently suspended, but the construction works of energy and infrastructure projects are suspended as a consequence of such general interruption.</p>
<p>Venezuela</p>	<p>Yes. A decree declaring a state of emergency (the “State of Emergency Decree”) and a nationwide quarantine was ordered by the government, which has suspended most business activities, except for certain essential sectors.</p> <p>The list of essential sectors does not expressly include construction of energy and infrastructure projects and thus suspensions, delays or disruptions are likely to happen.</p> <p>The Covid-19 presidential commission announced that workers in the hydrocarbon, gas and petrochemical industries were not subject to the quarantine, and we understand that those industries are operating.</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

2. If you are seeing such disruptions, is there a regime in place for obtaining permission to operate and move employees, equipment and goods?

Country	Answer
Argentina	Yes, there is a specific certificate for employees that carry out “essential” activities.
Brazil	Not yet. However, this is currently under discussion and initiatives will likely be issued in the coming weeks.
Chile	Yes. There are several mechanisms to obtain temporary permissions to operate and move employees, equipment and goods. Additionally, there are certain special considerations being taken in order to maintain essential basic services in place for the population, such as energy services.
Colombia	Certain events are exempt from the otherwise mandatory preventive isolation but there is no regime to obtain permits or approvals in that regard. Therefore, police may verify the compliance with exemptions on a case-by-case basis. However, note that employees of public utilities only need to bring a justification for their exempt activities. No further government permission is needed.
Costa Rica	Yes. Such permission can be obtained in order to operate and move employees, equipment and goods.
Ecuador	We have not seen any disruption so far.
Mexico	No.
Peru	<p>Yes. The Peruvian government issued a list of companies allowed to continue operations. Such companies and their employees have to obtain a special permit to move personnel, equipment and goods. For further information, please refer to the links below:</p> <ul style="list-style-type: none"> Proceeding to obtain special permits to operate and to move employees: https://www.gob.pe/institucion/mindef/noticias/111627-el-1-de-abril-entra-en-vigencia-nuevo-pase-laboral-para-trabajadores-esenciales-que-deban-movilizarse https://www.gob.pe/paselaboral/request_new https://www.gob.pe/institucion/minem/informes-publicaciones/462266-listado-de-empresas-electricas-a-que-hace-referencia-el-articulo-7-de-la-rvm-n-001-2020-minem-vme RAD Blog relating to labor measures adopted by the Peruvian government: http://rebaza-alcazar.com/blog/alerta-laboral-du-covid-19/

Actions Affecting Energy and Infrastructure Projects in Latin America

	https://rebaza-alcazar.com/blog/alerta-laboral-publican-protocolo-para-transitar-durante-el-periodo-de-aislamiento-social-obligatorio/
Spain	In general, the movement of employees, equipment and goods is not allowed as restrictions to mobility are in force. However, if the activity is considered as an essential activity (meaning that the activity has not been suspended), then the government has approved measures to allow the movement of essential employees, goods and equipment.
Venezuela	Under the State of Emergency Decree, activities of employees, goods, and equipment related to essential activities remain allowed. There is no regime in place for obtaining special permissions, but certain state and municipal authorities have issued local laws providing certain rules on the matter.

Actions Affecting Energy and Infrastructure Projects in Latin America

3. Have national, regional and local governments adopted measures or responses to protect or assist energy and infrastructure projects either in operation or under construction? For example: (a) Has there been any exemption or relief from regulatory or legal requirements or restrictions applying to projects (e.g., general permitting requirements or environmental, health and safety requirements)? (b) Has any tax relief been proposed either in terms of tax filing and reporting or tax payments?

Country	Answer
Argentina	(a) Not yet. (b) Not specifically with respect to energy or infrastructure projects.
Brazil	(a) Yes. There are measures specific to the aviation and airport sectors regarding payment obligations (ATC and concession grant fees), quality standards and grandfather rights for slots. From an environmental standpoint, many authorities have suspended procedural deadlines (e.g., to present evidence of compliance with certain environmental obligations (see item 4.c). (b) No. There have been some initiatives in connection with taxes, but none of them specifically target the energy and infrastructure sector.
Chile	(a) No. (b) No.
Colombia	(a) Yes. Regulations have been enacted providing for, among others, the suspension of toll collection, environmental time restriction for the operation of airstrips, and special authorizations to operate cargo for supply of first necessity goods in private and public service ports. In the case of the electric energy industry, environmental regulations and provisions issued during this state of emergency have been designed to postpone administrative and judicial deadlines and to inform the public how to submit requests via the internet, among others. None have exempted or provide relief for environmental licensing applications. (b) Yes. Both at the national and municipal/district level. For further details relating to local level, please refer to the following link: more information
Costa Rica	(a) No. (b) Yes. Regulations providing tax filing, reporting and payments relief have been adopted.
Ecuador	(a) No. (b) No. However, certain tax relief measures have been proposed for specific taxpayers/sectors, including, among others, airline operators. The government has recently announced the approval of tax relief measures in the coming days, which may impact the energy and infrastructure sectors.
Mexico	(a) Yes. Several federal governmental authorities have adopted measures whereby the suspension of terms and deadlines has been ordered in connection with acts and proceedings carried out before such governmental authorities, including the Energy Regulatory Commission (CRE), the Ministry of Energy (SENER), the Ministry of Environment and Natural Resources (SEMARNAT), the National Center of Energy Control (CENACE), the Federal Antitrust Commission (COFECCE) and the Federal Institute of Communications (IFT) . Please see below links to the corresponding client alerts prepared by our Firm: CRE and SENER:

Actions Affecting Energy and Infrastructure Projects in Latin America

	<p>http://www.macf.com.mx/en/covid-19/#tab-id-6</p> <p>SEMARNAT:</p> <p>http://www.macf.com.mx/en/covid-19/#tab-id-9</p> <p>COFECE AND IFT:</p> <p>http://www.macf.com.mx/en/covid-19/#tab-id-3</p> <p>CENACE:</p> <p>http://www.macf.com.mx/wp-content/uploads/2020/04/ClientAlert_energy0204_inglesPDF.pdf</p> <p>(b) As of today, no tax relief has been proposed. However, the government has mentioned that tax relief measures could be announced as early as April 5, 2020.</p>
Peru	<p>(a) No. (b) No. Extensions have been granted only for taxpayers with an income of less than US\$6.5 million. However, it is expected that the Peruvian government will enact new regulations and amendments to the current tax regime, in order to help companies to overcome the COVID-19 crisis. For further information relating to tax matters, please refer to the links below:</p> <ul style="list-style-type: none"> • RAD Blog relating to special tax measures adopted by the Peruvian government: <ul style="list-style-type: none"> http://mail.rebaza-alcazar.com.pe/uploadimages/files/BOLET%C3%8DN%20TRIBUTARIO_DJ.pdf http://rebaza-alcazar.com/blog/alerta-tributaria-modifican-cronograma-de-vencimientos-para-la-declaracion-jurada-anual-del-impuesto-la-renta-y-del-impuesto-las-transacciones-financieras-2/ http://rebaza-alcazar.com/blog/alerta-tributaria-vencimientos-de-declaraciones-tributarias-y-plazos-de-atraso-aplicables-libros-contables/ http://rebaza-alcazar.com/blog/alerta-tributaria-vencimientos-de-declaraciones-tributarias-y-plazos-de-atraso-aplicables-libros-contables/ http://rebaza-alcazar.com/blog/alerta-tributaria-se-adoptan-medidas-para-otorgar-liquidez-y-facilidades-deudores-tributarios-ante-la-declaratoria-de-emergencia-nacional/ http://mail.rebaza-alcazar.com.pe/uploadimages/files/BOLETIN_23_3_20%20%281%29.pdf
Spain	<p>(a) No. (b) Not in relation to national taxes – which account for the biggest part of the tax expense – but some regional and local authorities have passed some amendments allowing for the postponement of certain tax filings.</p>
Venezuela	<p>(a) No. (b) There has been no relief for national tax filing or reporting, except for customs duties and VAT exemptions for the import of certain goods. Certain municipalities have granted municipal tax extensions.</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

4. Are you seeing an impact on key government functions that will delay projects or measures affecting projects? For example: (a) Reduced functions or operations of key government agencies or regulators of energy markets or infrastructure projects (e.g., ministries, systems operators, regulators, etc.)? (b) Delays in allowing importation of equipment? (c) Delays in permitting/regulatory actions/approval of environmental impact assessments? (d) Delays in tenders/auctions by government?

Country	Answer
Argentina	(a) Yes. Most of the key government agencies and regulators are not open to the public and have reduced their functions or operations. (b) Yes. Customs is detaching minimum personnel for import operations. Imports related to critical or essential activities are discretionarily prioritized. Essential activities are allowed to import but they may face delays with respect to more critical goods, such as medical equipment, drugs or sanitizer. (c) Yes. (d) Yes, many ongoing tenders were suspended.
Brazil	Yes. (a) Yes. Due to the transition to remote work, some responses have been delayed. (b) Not yet. (c) Not yet. However, many environmental authorities have enacted regulations: (i) closing facilities or suspending customer contact; and (ii) suspending procedural deadlines. This might result in the piling up of work in the near future and result in response delays. (d) Yes, for example, the power generation bid rounds have been postponed indefinitely.
Chile	(a) Yes, due to the transition to remote work, some responses have been delayed, also most of the agencies have ordered the suspension of the terms associated to procedures before them. For example, the Environmental Assessment Agency (“SEA”) has ordered the suspension of all the administrative procedures currently pending before the SEA (including the environmental assessment of the projects, which is needed to start the construction and for obtaining other permits required for different stages of the construction phase). (b) Not yet. (c) Yes, as already explained in the response to question 4(a) above. (d) Yes, the National Commission of Energy has announced that the tender of electric supply of regulated clients will be postponed until November instead of May 2020. The main reason for this change is the national crisis started in October 2019, but the delay was confirmed after the country began suffering the consequences of COVID-19.
Colombia	(a) Yes, several government entities have issued decrees to limit ordinary functions to activities necessary to overcome the emergency. For further details please refer to the following link: more information ³ . (b) Currently all import operations can be carried out normally. Furthermore, the Colombian government issued Decree 457 of 2020 which aims to guarantee the availability of transportation, storage and logistical services for imported or exported goods. (c) Delays are expected since environmental authorities, in some jurisdictions, suspended the processing of applications, while others announced the suspension of on-site home inspections, thus creating even longer delays. Please note that these delays are expected nationwide, but processing times may vary from one environmental authority to another. (d) Yes. There has been one addendum to the upcoming auctions of the Mining and Energy Planning Unit, for the high voltage line determining that auction will take place on April 16 instead of March 24.
Costa Rica	(a) Yes. (b) Yes. (c) Yes. (d) Yes.
Ecuador	(a) Yes, since most public institutions are temporarily closed and employees are working from home, we are experiencing a decrease in the activity of key government agencies and regulators of energy markets and infrastructure projects. (b) No. (c) Yes, since in-person services to the general public by public institutions have been temporarily suspended and public employees are

³ See SSPD Resolution 20201000009965 of April 1st, 2020.

Actions Affecting Energy and Infrastructure Projects in Latin America

	working from home, we are experiencing delays in permitting/regulatory actions/approval of EIAs. (d) Yes, since the activity of most of the public institutions has been temporarily limited or suspended, we expect delays in tenders/auctions by the government.
Mexico	(a) Yes. Please see response to question 3(a) above. (b) Yes. Many of our clients have received notices from their import contractors claiming force majeure due to the national health emergency. (c) Yes. Please see response to question 3(a) above. (d) Yes.
Peru	<p>(a) Yes. The following links contain some relevant official press releases issued by Peruvian regulators related to the suspension of administrative deadlines.</p> <ul style="list-style-type: none"> Official Press Releases: For March 13, 2020 press release, please click: here http://www.minem.gob.pe/minem/archivos/Comunicado_dia7.pdf https://www.gob.pe/institucion/oefa/noticias/109812-comunicado https://www.gob.pe/institucion/oefa/noticias/111474-medidas-relacionadas-al-aporte-por-regulacion-y-fraccionamientos-en-el-marco-del-estado-de-emergencia-por-el-covid-19 https://www.gob.pe/institucion/oefa/noticias/111560-comunicado OSINERGIM's Supervision Protocol during the National Emergency: https://www.osinergmin.gob.pe/seccion/centro_documental/PlantillaMarcoLegalBusqueda/Osinergmin-033-2020-OS-CD.pdf <p>(b) Yes. By virtue of the Urgency Decrees issued by the Peruvian government, cargo transport was not suspended; however, cargo companies have to comply with additional proceedings. Moreover, competent authorities are entitled to adopt the special measures relating to the entry to and exit from the country of goods.</p> <ul style="list-style-type: none"> Urgency Decrees https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-estado-de-emergencia-nacional-po-decreto-supremo-n-044-2020-pcm-1864948-2/ https://busquedas.elperuano.pe/normaslegales/prorroga-del-estado-de-emergencia-nacional-declarado-mediante-decreto-supremo-no-051-2020-pcm-1865180-2/ <p>(c) Yes. Please refer to the links indicated in (a) above. (d) Yes. Please refer to the links indicated in (a) above.</p>
Spain	(a) Yes. (b) No. (c) Yes. (d) Yes.
Venezuela	(a) Yes. (b) Yes. Although ports are an essential sector under the State of Emergency Decree and they are operating normally, it is possible that suspensions of operations of other government agencies could have an impact on the import of equipment. (c) Yes. (d) Not that we are aware of.

Actions Affecting Energy and Infrastructure Projects in Latin America

5. Are there any proposed or existing capital controls or tariffs that could affect the flow of capital or goods required for debt service, repatriation of funds and/or construction of projects?

Country	Answer
Argentina	Yes, although foreign exchange restrictions existed before Covid-19. For more information, please refer to https://www.marval.com/publicacion/medidas-de-emergencia-para-la-transicion-13409&lang=en for a brief summary regarding the re-enactment of – foreign exchange restrictions in Argentina in September 2019 (please note that foreign exchange restrictions have been subsequently amended during the last semester).
Brazil	Not that we are aware of.
Chile	No. On the contrary, the government has imposed several tax benefits in order to promote and facilitate capital flows. Additionally, the Ministry of Public Works has publicly announced that it will promote public funding on infrastructure in order to reactivate the economy once the pandemic is over.
Colombia	No, foreign exchange transactions can proceed without restriction. The Colombian Central Bank has not adopted measures in relation to COVID-19 that tighten the foreign exchange regime.
Costa Rica	No.
Ecuador	No.
Mexico	Not that we are aware of at this moment.
Peru	No.
Spain	Yes.
Venezuela	No. However, given the current economic and political situation, there is a significant shortage of foreign currency which in practice makes it very difficult for private sector companies to repatriate funds or to purchase foreign currency to comply with debt service or contractors.

Actions Affecting Energy and Infrastructure Projects in Latin America

6. Are there steps being taken under bilateral or regional organizations, institutions or agreements that could help or hurt projects (e.g., Pacific Alliance (*Alianza del Pacifico*), CRIE/MER, bilateral agreements, etc.)?

Country	Answer
Argentina	Not that we are aware.
Brazil	Not that we are aware of.
Chile	No.
Colombia	Currently, we understand that there have only been discussions among organizations, institutions and agreements to which Colombia is a party.
Costa Rica	No.
Ecuador	No.
Mexico	Not that we are aware of at this moment.
Peru	No.
Spain	Not yet (at the European Union's level).
Venezuela	Not that we are aware of.

Actions Affecting Energy and Infrastructure Projects in Latin America

7. Do you have any additional insights on the foregoing questions that you would like to highlight or share?

Country	Answer
Argentina	It is to be expected that the government would continue focusing the relief on helping residential users. This approach would probably create problems for large industrial users and power generators. In the recent past, Argentina suffered power shortages that led the country to import electricity from neighboring countries due to this type of policy.
Brazil	We do not have anything to add.
Chile	No additional comments.
Colombia	Not at this time.
Costa Rica	No additional comments.
Ecuador	Not for the moment.
Mexico	Not at this moment.
Peru	Despite all the measures taken by the Peruvian government in order to temporarily suspend the development of infrastructure, as explained above, energy supply is considered an essential activity since it is linked to a public utility and, therefore, the Peruvian government is fully guarantying the generation, transmission and distribution of energy to all customers.
Spain	We expect that the European Union will approve aids and measures in the coming days.
Venezuela	No.

Actions Affecting Energy and Infrastructure Projects in Latin America

B. Status of Markets and Current Market Problems

1. Are markets (e.g., capital, electricity, etc.) functioning normally or are you seeing disruptions? For example: (a) Have any utilities, distribution companies, or other offtakers reduced their offtake and/or claimed force majeure to excuse their performance under supply contracts? (b) Are you seeing any supply disruptions or other market disruptions for power, natural gas or other fuels? (c) Are you seeing any reduction in demand for power or other energy or infrastructure services (e.g., retail or distribution level, wholesale power, etc.)? (d) Are there disruptions in capital markets, including the availability of financing, failure to honor commitments, etc.?

Country	Answer
Argentina	(a) Yes. Certain renewable developers claimed force majeure and requested the postponement of their committed Commercial Operation Dates based on the impact of Covid-19. (b) Yes. Particularly due to the low oil prices and the steep decrease for gasoline demand, oil producers are requesting a subsidy from the Argentine government to support E&P activities. (c) Yes. For example, according to a recent report issued by CAMMESA (National Grid administrator), the demand for power by industrial users was reduced by almost 50% during March. (d) Yes. But due to Argentine preexisting macroeconomic conditions, financing for energy and infrastructure projects was limited even before the outbreak of Covid-19.
Brazil	(a) Yes. (b) No. (c) Yes. Demand for fuels and energy has been reduced significantly. Other infrastructure sectors are also facing significant reduction in demand (e.g., airports and railroads). (d) Yes.
Chile	No. Consumption has dropped significantly and there is concern regarding the imports of fuels (coal, natural gas and diesel), since Chile imports all its fuel requirements. (a) Not yet, but the government is negotiating with distribution companies to allow persons in the bottom 40% of income groups in the country to delay payment of their bills without service interruption and there is market noise that said distribution companies will claim force majeure to excuse their performance under power purchase agreements (PPAs). (b) Yes, for fuels, as explained in Section 1(a) above. (c) Yes, electricity demand fell 6% in March (when first cases of COVID-19 were reported in Chile), the main reason for this is the closure of shopping malls and certain factories, along with the decrease in production by other large market players. Demand for power could fall further if more companies decide to stop or reduce their operations in April. (d) Not yet.
Colombia	(a) We are not aware of any force majeure claims at this time. In any case, it might be possible for National Transmission and Regional Transmission projects' awardees to claim the occurrence of a such an event in order to request the extension of the Commercial Operation Dates of their projects before the Ministry of Mines and Energy and pursuant to the regulation applicable to those bids ⁴ . (b) Not at this moment. (c) XM, which is the Manager of the Electric Energy Commercial Exchange System, informed the general demand for electricity has been reduced by 13% in the past two weeks in comparison to the week of March 9 ⁵ . (d) (i) Disruptions in capital markets: During the first days of the COVID-19 contingency, and in correlation with the fall and suspension of trading in the NYSE, the Colombian Stock Exchange (<i>Bolsa de Valores de Colombia</i> or BVC) suspended trading, and the COLCAP fell significantly. No further market disruptions have occurred after such events that took place on March 9 and

⁴ See article 4 of CREG Resolution 22 of 2001, and article 25 of CREG Resolution 24 of 2013.

⁵ See <https://www.xm.com.co/Paginas/detalle-noticias.aspx?identificador=2533>

Actions Affecting Energy and Infrastructure Projects in Latin America

	<p>16, 2020. Towards the end of March, the COLCAP recovered notably, and by the end of the month, COLCAP's drop during March was estimated to be 26.8%.</p> <p>Furthermore, the BVC has implemented and reported to be fully functional through remote operation.</p> <p>Notwithstanding the above, there is evidence that capital markets are less liquid, and the conditions to obtain financing through capital markets are less advantageous.</p> <p>(ii) Failure to honor commitments: Because of market conditions described above, we have seen evidence of failures in the capital markets. From a purely legal perspective, counterparties are discussing the possibility of arguing force majeure in these events of lack of compliance.</p> <p>However, circumstances which affect the normal development of business but that do not make it impossible for the parties to comply with their commitments may not be argued as force majeure and could be deemed to be an event of default under the respective agreements.</p>
Costa Rica	(a) No. (b) No. (c) The Costa Rica Electricity Institute ("ICE") has reported a reduction in demand for power. (d) No.
Ecuador	(a) No. (b) No. (c) No. (d) No.
Mexico	(a) Not that we are aware of at this moment. However, clients have been reaching out, requesting analysis and the interpretation of force majeure clauses in connection with permits and contracts relating to their energy and infrastructure projects. (b) Not that we are aware of at this moment. (c) No. However, we are aware of a decrease in demand for gasoline due to the national health emergency measures being implemented. (d) No. However we are aware that it is becoming more challenging for borrowers to satisfy the conditions precedent for the disbursement of their loans under their financing arrangements, especially such borrowers that are required to carry out registrations before the relevant public property registries throughout Mexico.
Peru	(a) No. The Peruvian government has prioritized activities relating to public utilities and, therefore, all the companies involved in the provision and supply of public services (such as energy) are ordinarily performing their activities. (b) No. (c) No, in connection with power for regular customers consumption. However, the energy demand has been negatively impacted as companies (i.e., medium and large consumers) have had to suspend their activities during quarantine. (d) Not yet, according to the public information available at the Peruvian Securities Market Regulator (SMV) web page relating to issuers in the public offer market. There are no available data regarding the private offer market, so we cannot accurately assess if there is any disruption in the private market.
Spain	(a) Not that we are aware of. (b) No. (c) Yes. We have seen a higher reduction in supplying natural gas than electricity. Particularly, the higher reduction is in respect of fuels. (d) Our view is that the loan market for energy projects remains active. Debt capital markets activity has shrunk, especially for sub-investment-grade issuers. Larger investment-grade issuers have been able to issue, but generally with higher rates. Disclosure issues around risk factors and prospects of the issuer remain an area of particular attention and challenge.
Venezuela	(a) Most of the utilities are exclusively provided by state-owned companies, which had been rationing the services (water, electricity and gas supply) before the Covid-19 crisis, without claiming force majeure or any other clause in the supply contracts. The Covid-19 situation is significantly aggravating the rationing in many parts of the country. (b) The government has imposed severe gasoline rationing. This shortage is affecting even those activities that are considered as essential. (c) Yes. (d) The Caracas Stock Exchange and the National Superintendency of Securities are operating. Private companies have recently been authorized to issue debt securities.

Actions Affecting Energy and Infrastructure Projects in Latin America

2. Are you seeing signs of financial distress or even insolvency proceedings with regards to key players in the energy and infrastructure sector? (a) Are you seeing any notices of reservation of rights notices or declarations of defaults under existing financings or commercial contracts? (b) Are you seeing news of cutbacks in capital expenditures that could affect new or continued investment in energy and infrastructure projects?

Country	Answer
Argentina	(a) Not yet, but many consultations are ongoing. In addition, judicial proceedings were suspended as part of the general lockdown. (b) Not yet.
Brazil	Yes. (a) Yes. However it is not a widespread situation at this stage. (b) Yes.
Chile	Not yet. (a) Not yet. (b) Not yet.
Colombia	There is currently no publicly available information regarding insolvency procedures as a consequence of the current crisis. (a) There have been isolated cases, particularly in the transport business, where companies are requiring waivers from their Lenders in order to pay future debt. If the Lenders do not agree to provide such waivers, transport companies would be obliged to incur in a default situation simply because all of their income depends on the transport of people who are currently self-isolating. (b) We do not know of any measure, and there is currently no publicly available information regarding this issue.
Costa Rica	(a) No. (b) No.
Ecuador	No. (a) Not for the moment. (b) No.
Mexico	Not yet. (a) Not yet. (b) Not yet.
Peru	Not yet. (a) Not yet. (b) Not yet.
Spain	Yes, in general companies are getting ready for financial distress and potential insolvency proceedings although new insolvency proceedings cannot start until the state of emergency finishes. (a) Not yet. However, companies are raising questions on the termination of agreements due to COVID-19, but this is not generally easy to sustain under Spanish law. In any case, financial distress will possibly cause defaults and notices of reservation of rights. (b) Not yet. However, financial distress is likely to affect investments in energy and infrastructure sectors.
Venezuela	There are signs of financial distress. However, players in the energy and infrastructure sectors will probably either seek consensual restructuring of their debt (if they desire to continue operations) or abandon the operations in Venezuela, as insolvency proceedings are very inadequate and rarely used by debtors or creditors to address insolvency issues. (a) Yes. (b) We have not seen news, but we understand that this is happening.

Actions Affecting Energy and Infrastructure Projects in Latin America

3. Are you seeing any insurance claims being filed (e.g., business interruption)? Are you seeing any tension or potential breakdown in the honoring of claims (e.g., reinsurance firms signaling an unwillingness to honor locally underwritten policies)?

Country	Answer
Argentina	Not that we are aware.
Brazil	Not that we are aware of.
Chile	Not yet, but we expect insurance claims to be filed in the coming weeks/months. No.
Colombia	We are not aware of any insurance product within the Colombian market providing business interruption coverage due to pandemics. Consequently, no breakdowns between local insurers and reinsurers shall arise from this matter.
Costa Rica	We are aware of some insurance claims being filed (e.g., business interruption); however, no tension or potential breakdown in the honoring of claims has been reported.
Ecuador	Not for the moment.
Mexico	Not yet.
Peru	Not yet.
Spain	Clients are reviewing their insurance policies to check if their losses due to COVID-19 can be covered by insurance, but we are not seeing significant claims yet. No.
Venezuela	Not that we are aware of.

Actions Affecting Energy and Infrastructure Projects in Latin America

4. Do you have any additional insights on the foregoing questions that you would like to highlight or share?

Country	Answer
Argentina	The most pressing immediate issue is the situation of the oil and gas producers, among other matters, because of (i) the importance that royalties play in the economics of different provinces and (ii) the influence of oil and gas unions.
Brazil	We do not have anything to add.
Chile	No additional comments.
Colombia	Not currently.
Costa Rica	No additional comments.
Ecuador	Not for the moment.
Mexico	Not at this moment.
Peru	No.
Spain	Not for the moment.
Venezuela	No.

Actions Affecting Energy and Infrastructure Projects in Latin America

C. Force Majeure and Excused Non-Performance

1. Are you anticipating force majeure claims to delay legal, regulatory and contractual milestones (e.g., deadlines/milestones for commencing commercial operation, delivering power, commencing construction, etc.)? For example: (a) Are there immediately applicable force majeure provisions under law that would excuse performance under contracts? (b) Are there standard provisions in existing agreements (e.g., power purchase agreements that were based on a published tender form)?

Country	Answer
Argentina	(a) Yes. (b) Yes.
Brazil	Yes. (a) Yes. (b) Yes.
Chile	Yes. (a) Yes. Chilean law provides by default for a general force majeure provision that may excuse the relevant parties from their performance obligations under public and private contracts under certain circumstances. There have been several administrative rulings that have declared the situation created by COVID-19 qualifies as force majeure under Chilean law. (b) Yes.
Colombia	<p>Yes, we are expecting that several actors of the electric energy sector start claiming the occurrence of a force majeure event. The responses to the following questions provide an insight in this regard. (a) Yes. Under Colombian law, force majeure is a legal default, applicable to all contract unless the parties agree otherwise. In broad terms – subject to various caveats and exceptions, applicable in specific circumstances – force majeure excuses non-performance (<i>i.e.</i>, the party who successfully claims a force majeure event is not liable to pay damages) but does not allow the affected party to terminate the contract. To the point, Colombian Law defines force majeure in article 64 of its Civil Code. This term has also been defined by means of judicial decisions. In general, force majeure has three elements: (i) it must be unpredictable, that is, it must not be possible to determine its occurrence in advance by employing an ordinary degree of diligence; (ii) its occurrence and its consequences must be unavoidable, that is, they must be impossible to avoid and overcome; and (iii) it must be unimputable, which means that it is not caused or the fault of the parties and specifically to the person alleging it.</p> <p>In any case, the application of force majeure in Colombia is by no means immediate or automatic. Its application shall be analyzed and agreed by the parties to a contract on a case-by-case basis. It is a common practice that agreements in the electric energy sector include procedures for their suspension or termination after the occurrence of such an event. If the parties do not reach an agreement regarding the occurrence, the duration, or the specific duties that cannot be performed after a <i>force majeure</i> event, they can concur to a judge, who will then be in charge of determining the impacts of such an event.</p> <p>Something similar occurs in the case of the construction of transmission lines, where the Ministry of Mines and Energy is in charge of declaring the occurrence and scope of force majeure events that could imply a change in the Commercial Operation Date of the projects.</p> <p>(b) Yes, force majeure is included within Sections 1.01, and 16.03 of the Renewables' Auction PPA. In a nutshell, the procedure requires the party that wants to allege this event to notify the other party within the following 3 days of its occurrence. Such notification must include all necessary evidence, so as the estimated duration of the event. If the counterparty accepts all aspects</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

	<p>of the notification, the duties related to the event will be suspended. If it does not agree, the controversy will be decided by a third party through a mechanism that is known as “<i>amigable composición</i>” – a third party who fills a gap in a contract on behalf of both parties.</p> <p>The acceptance of a force majeure event within this agreement will lead to the following consequences: (i) The term of the contract, so as the term of the guarantees, will be extended by a period equal to that of the duration of the force majeure event. (ii) If the event does not prevent the execution of all of the obligations of the PPA, the Parties shall agree whether it suspends the PPA, based on the severity of the suspended obligations. If the Parties are unable to agree on this, the matter shall be resolved through the mechanism of the “<i>amigable composición</i>”. (iii) Pursuant to Section 17.01 of the PPA, if the PPA is suspended for a period longer than 180 days, the contract may be terminated early.</p>
Costa Rica	<p>(a) We anticipate potential force majeure claims to delay legal, regulatory and contractual milestones. Costa Rican law includes force majeure provisions that would excuse performance under contracts. (b) PPA based on an ICE’s published tender form includes standard provisions to regulate force majeure events.</p>
Ecuador	<p>Yes. (a) Yes. In addition to any force majeure provisions that were included in existing agreements, the default rule under the Ecuadorian Civil Code (hereinafter ECC) is that force majeure exempts the debtor from responsibility (Art. 1574, ECC), unless otherwise agreed upon (Art. 1689, ECC). These provisions might be applicable as a consequence of the Covid-19 current situation. (b) Yes, the parties usually agree upon the default rule of non-responsibility in a force majeure event.</p>
Mexico	<p>(a) Yes. Please see below the link to the client alert prepared by our firm in connection with this matter: http://www.macf.com.mx/en/covid-19/#tab-id-7</p> <p>(b) Yes.</p>
Peru	<p>(a) Yes. The Peruvian Civil Code and the Peruvian Public Procurement Regime contain specific provisions relating to force majeure that are immediately applicable to excuse contractual performance. For further information relating to force majeure provisions, please refer to the links below:</p> <ul style="list-style-type: none"> • General regime: The provisions of the Peruvian Civil Code may alternatively apply to relationships and legal situations regulated by other laws, provided that such provisions are not incompatible with their nature. Civil Code, Article 1315: http://spij.minjus.gob.pe/notificacion/guias/CODIGO-CIVIL.pdf • Force majeure in Public Procurement Agreements: Public Procurement Law, Article 36: https://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/2018_DL1444/TUO_ley-30225-DS-082-2019-EF.pdf Public Procurement Regulation, Articles 142 and 178: https://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/2019-modif-Regl30225/modifican-el-reglamento-de-la-ley-n-30225-ley-de-contratac-decreto-supremo-n-377-2019-ef-1837283-2.pdf • Force majeure in PPP Agreements: PPP Regulation, Articles 38 and 111: https://cdn.www.gob.pe/uploads/document/file/220095/DS240_2018EF.pdf • RAD Blog:

Actions Affecting Energy and Infrastructure Projects in Latin America

	<p>http://rebaza-alcazar.com/blog/covid-19-posibles-efectos-legales-en-contratos-y-ejecucion-de-proyectos-covid-19-possible-legal-effects-contracts-development-projects/</p> <p>(b) It depends on the type of purchaser. Under Peruvian regulation, power purchase agreements (PPAs) are divided into two types:</p> <p>(i) If the energy is purchased by a non-regulated client (cliente libre), which means that the purchaser is not regulated by the Peruvian Regulator of Mining and Energy (OSINERGMIN), there is not a template of PPA with standard provisions that have to be applied. In this case, the client will freely negotiate the agreement with the energy supplier and, therefore, it is expected that they will agree on the general provisions of force majeure contained in the Peruvian Civil Code. An example of a non-regulated client would be a mining company that requires energy for the exploitation and operation of the mine. For this scenario, please refer to the relevant links contained in (a) above. (ii) If the energy purchaser is a regulated client (such as a distribution company), such companies have to participate in a public bidding process to purchase the available energy and they will execute a standard PPA. The template of PPA contains force majeure provisions that reflect (i) the approval proceeding of a force majeure event by OSINERGMIN (set forth in the following resolution enacted by OSINERGMIN found: here) and the Peruvian Civil Code. The template of PPA can be downloaded in the following link: http://www2.osinerg.gob.pe/Resoluciones/pdf/2007/OSINERGMIN%20No.101-2007-OS-CD.pdf</p>
Spain	<p>(a) Yes. Spanish regulations establish force majeure provisions for private contracts and for public procurement contracts that may be applicable under the current situation. Additionally, following the outbreak of the COVID-19 crisis, the Spanish authorities have issued rules specifically addressing a temporary suspension of public procurement contracts. (b) Yes. There are standard provisions in existing agreements that usually mirror the legal regime on force majeure. In M&A agreements, syndicated loans agreements and investment contracts, amongst others, attention is to be paid to MAC clauses. These clauses usually favor the purchaser/investor as they entitle the parties to terminate the contract or to renegotiate its terms. To assess whether a MAC clause applies to the situation caused by the COVID-19 crisis, a specific analysis of the MAC clause is required.</p>
Venezuela	<p>(a) Yes, Venezuelan law establishes force majeure provisions for private and public procurement contracts. As a general rule, an event to qualify as force majeure under Venezuelan law must be unforeseeable, unavoidable and not attributable to the party claiming the force majeure. Depending on the case, force majeure provisions may allow suspension of performance, contract termination or other remedies. (b) No.</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

2. Have you started to see delays in construction and/or force majeure claims to obtain postponement of construction milestones?

Country	Answer
Argentina	Yes.
Brazil	Yes. However, it is not a widespread situation at this stage.
Chile	Yes, we have seen problems in the construction of projects mainly due to (i) the international borders lockdown implemented in Chile and (ii) the restrictions on mobility imposed by local authorities.
Colombia	<p>Yes. For example, in the contracts executed by the National Infrastructure Agency (“ANI”), though Resolution No. 471 of 2020, such agency expressly recognized that the COVID-19 pandemic is a force majeure event and that, therefore, certain obligations on the contracts subscribed by such entity will be unilaterally suspended.</p> <p>Currently, there is no available information regarding any delay in the construction of transmission or generation infrastructure. Nevertheless, the Renewable Energies Association’s Executive Director has requested the extension of the generation project’s COD within the auctions PPA. The request is basically because the mandatory self-isolation has delayed the public consultation procedures of wind projects. The government has not provided any public response regarding this issue.</p>
Costa Rica	We have not seen yet delays in construction and/or force majeure claims to obtain postponement of construction milestones, but we anticipate that they will occur due to the COVID-19 situation.
Ecuador	Yes, we are seeing delays in construction of several projects, due to force majeure claims.
Mexico	Yes. We believe this is something that must be analyzed case by case, due to the fact that other than construction: i) considered essential for addressing the COVID-19 public health crisis, or ii) if the suspension of the project may result in irreversible effects for its continuation, all constructions have been suspended.
Peru	<p>Yes. For further information, please refer to the link below:</p> <p>https://www.gob.pe/institucion/osce/noticias/111443-comunicado-n-005-2020-sobre-la-ejecucion-de-contratos-en-el-marco-de-las-normas-que-establecen-medidas-excepcionales-para-contener-la-propagacion-del-covid-19</p>
Spain	Yes. In fact, Spanish authorities have suspended construction works. Also, in relation to public procurement contracts, the Spanish authorities have issued specific regulations to address a temporary suspension of this type of contract and allow the contractors to postpone the construction milestones.
Venezuela	Yes.

Actions Affecting Energy and Infrastructure Projects in Latin America

3. Are you already seeing parties, specifically offtakers, asserting claims of force majeure or other excuses for non-performance to reduce or suspend offtake under supply agreements?

Country	Answer
Argentina	Not yet. To any event, most large industrial users do not have offtaking commitments and demand is supplied through CAMMESA, which is the National Grid administrator.
Brazil	Yes. However, it is not a widespread situation at this stage. In the power and gas markets, parties are considering such alternatives but are still seeking an agreed solution in general.
Chile	Not yet. For further detail, please refer to Section B, Section 1(a) above.
Colombia	Yes. Particularly, some of the non-regulated offtakers/wholesale consumers, which are companies that consume over 55 MWh/month, have expressed their intention to claim force majeure in order to suspend their performance under previously executed PPAs. This occurs mainly in agreements where the offtaker stopped producing due to mandatory self-isolation, and it had a PPA which required it to pay for a minimum or a specific monthly amount of energy ("take or pay").
Costa Rica	No.
Ecuador	Yes.
Mexico	Not that we are aware of at this moment.
Peru	No. Please note that energy production and supply is one of the permitted essential services during the state of emergency. For further information, please refer to the link below: <ul style="list-style-type: none"> Urgency Decree https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-estado-de-emergencia-nacional-po-decreto-supremo-n-044-2020-pcm-1864948-2/
Spain	Not yet. However, in relation to energy supply contracts, the Spanish authorities have issued specific regulations that allow freelancers and companies to request the modification or temporary suspension of contracts. Based on that regulation, we expect that in the coming days some of the industry players will invoke the COVID-19 crisis to suspend planned deliveries.
Venezuela	Offtakers are raising questions on suspensions of works due to COVID-19 on grounds of force majeure.

Actions Affecting Energy and Infrastructure Projects in Latin America

4. Are you anticipating legal or commercial questions or issues related to the interpretation of whether a force majeure or other excuse for performance applies to the COVID-19 public health crisis? For example: (a) Do you anticipate potential mismatches among contracts (e.g., mismatch between force majeure provisions under construction contracts and PPA commercial operation date deadlines) (b) Do you have particular views on how the risk and liabilities of excused performance or non-performance may be allocated among parties in projects?

Country	Answer
Argentina	(a) Yes, it is highly likely. (b) From our perspective, the allocation of risk and responsibilities in an excused performance or non-performance scenario will respond to the specific aspects of every transaction. Among other matters, it would probably rely on the following considerations: (i) the construction phase of the project (ii) the bargaining power of the parties involved in the project and (iii) the existence of prior breaches.
Brazil	Yes. Since it is a fact-based analysis, the affected party is expected to demonstrate a sufficiently close causal relationship between the force majeure event and the impediment to perform its obligations. (a) Yes. Not all contracts contain appropriate back-to-back provisions. Therefore, there may be circumstances where contractors are entitled to a delay relief on account of force majeure without the corresponding relief being granted to the project under the PPA. (b) No. It will depend on the specific characteristics of each case and the best cost avoider under each scenario. To the extent government or regulators provide relief to the project, the contractor should be entitled to an extension of time where completion of the works is likely to be delayed beyond COD. Cost impacts will need to be assessed and negotiated based on a careful analysis of contractual risk allocation and entitlement as well as questions of causation, in particular with respect to pre-existing issues where no impact of COVID-19 existed.
Chile	Yes, we recognize that the application of force majeure is quite casuistic, so commercial and legal understandings on this matter will be subject to different interpretations. (a) Yes, the Chilean energy market is privately held, "sectorized" and diversified so we do not expect to find appropriate back-to-back provisions between parties. (b) Past jurisprudence has given little importance to the "theory of unforeseen events" in Chile, so the risks and liabilities should be distributed between the parties in accordance with the relevant contract provisions on a case-by-case basis. However, we expect in the coming months an increase in negotiations between the parties in order to reallocate the risks and costs that might have existed as a result of the pandemic. Some cases would be escalated to arbitration, but we believe that the bilateral negotiations to amend the existing terms and conditions of the relevant agreements in order to reach the COD will be the general trend.
Colombia	(a) There might be some mismatches between the COD of construction contacts and PPA term for the beginning of the supply but it may not be excused because the energy supply commitment can be covered through the alternatives offered by the Wholesale Energy Market, especially when PPAs are executed under the take or pay modality. (b) It might be particularly difficult to justify the non-compliance in the payment/supply of electric energy since the supply duties are covered by the Wholesale Energy Market. Nonetheless, this should be reviewed on a case-by-case basis and taking into account the modality of each PPA. On the other hand, in relation with National and Regional Transmission lines, awardees of such projects might eventually request the extension of the COD based on the delays that come from expected and unexpected consequences of the pandemic. In any

Actions Affecting Energy and Infrastructure Projects in Latin America

	case, and as in the case of all electric energy utility's activities, the investment risk is solely assumed by its the investors and not by the government ⁶ .
Costa Rica	(a) Yes. (b) We do not have a general view on how the risk and liabilities of excused performance or non-performance may be allocated among parties since they need to be assessed on a case-by-case basis.
Ecuador	Yes. (a) No, in the event that a force majeure event is applicable to a specific case, the parties to the relevant agreement/s will be released from all their obligations under the existing legal relationship, regardless of the number of documents governing such relationship. We expect a consistent interpretation by the courts of the force majeure provisions to avoid any mismatches. (b) In general, from a legal perspective the risks and liabilities of excused performance or non-performance in the event of force majeure will be equally allocated between both parties, i.e., both the contractor and its relevant counterparty/ies are excused from complying with their obligations under the relevant contract/s. In practice, from a business standpoint, this may have a heavier negative impact on the party which is expecting the service rather than the contractor, but it will depend on the specific circumstances of each case.
Mexico	Yes. In fact, clients have already been reaching out to us requesting analysis and interpretation of force majeure provisions in connection with permits and contracts relating to their energy and infrastructure projects. (a) Yes. In this regard, our firm always looks to have back-to-back provisions in the project agreements vis-à-vis PPAs or other offtake agreements for the projects in which we are involved. (b) This is a contractual matter that should be addressed on a case-by-case basis.
Peru	Yes. (a) Yes. For further information on this matter, please refer to the link below: <ul style="list-style-type: none"> • RAD Blog http://mail.rebaza-alcazar.com.pe/uploadimages/files/Bolet%C3%ADn%20RAD_final.pdf (b) Yes. For further information on this matter, please refer to the link below: <ul style="list-style-type: none"> • RAD Blog http://mail.rebaza-alcazar.com.pe/uploadimages/files/Bolet%C3%ADn%20RAD_final.pdf
Spain	(a) These mismatches and interactions may probably occur. However, it is necessary to analyze the specific contract provisions to determine whether the COVID-19 crisis only affects the construction contracts or whether it also allows modifying the COD date. (b) Yes. In private contracts, we are anticipating defenses based on non-performance of the contract due to a force majeure event (the COVID-19 crisis) and as a cause for release from liability for breach of a contract. In the long run and depending on the real and direct impact of the COVID-19 crisis on a specific contract, we may be facing claims requesting the termination of the contract or the renegotiation of its terms based on the <i>rebus sic stantibus</i> doctrine (also known in international contracting as hardship). Spanish courts have applied such doctrine very exceptionally and it is too soon to foresee a likely outcome. Under the specific public contract regulations is recognized a compensation for damages. In general, if effectively there exists an impossibility of performing the contract, then the party that does not perform will be released from liability stemming therefrom. Thus, no damages may be requested. In such a scenario, the party that does not receive the product or the service will not be obliged to pay for it.
Venezuela	(a) Yes. (b) This will need to be reviewed on a case-by-case basis as there are no standardized force majeure clauses. Another key issue to consider is whether any dispute of this type will be governed by Venezuelan or another law and settled by arbitration outside Venezuela, arbitration in Venezuela, Venezuelan courts or foreign courts.

⁶ See article 85 of Law 143 of 1994.

Actions Affecting Energy and Infrastructure Projects in Latin America

5. Are you expecting broad, uniform legislative or regulatory action to grant relief or mainly bilateral negotiations under contracts?

Country	Answer
Argentina	It is difficult to predict at this stage.
Brazil	Yes.
Chile	No, mainly bilateral negotiations.
Colombia	<p>Regarding state contracts, certain of the decrees issued by the Government are already giving new tools to their parties to reach an agreement on potential compensations to be granted. For example, among others, Decree 482 of 2020 regulated the following⁷: (i) In public initiative Public Private Partnerships (“PPP”) of Law 1508 of 2012, time extensions may be granted, which added may exceed 20% of the initially agreed contract value. (ii) In private initiative PPP projects, contracts may be extended exceeding 20% of their initial term. (iii) Grantors of port concession agreements (i.e. ANI and Cormagdalena) may increase the terms for time extension of the concession for the time deemed necessary to recognize the possible accredited effects that may be generated in the contract's economy for the service provision in the corresponding ports, during the time of the emergency.</p> <p>On the other hand, regarding National and Regional Transmission projects, the Ministry of Mines and Energy could eventually analyze each Project, after the awardee's request, in order to determine the viability of declaring an extension of the COD due to force majeure.</p> <p>In the case of PPAs through the Wholesale Energy Market, any change will solely depend on bilateral negotiations. It would be particularly unusual that the government changes conditions to these agreements that are privately executed (also in the case of the PPAs of the Renewables' Auction).</p>
Costa Rica	No.
Ecuador	No. We do not expect a broad, uniform legislative or regulatory action, there are already existing regulations addressing both force majeure and material adverse effect contractual issues. We believe that the most likely scenario is that future conflicts will be resolved mainly through bilateral negotiations under the existing contracts.
Mexico	We mainly expect bilateral negotiations under contracts.

⁷ Art. 25 of Decree 482 of 2020.

Actions Affecting Energy and Infrastructure Projects in Latin America

Peru	<p>Yes. For further information, please refer to the link below:</p> <ul style="list-style-type: none">Public Procurement Agreements <p>https://www.gob.pe/institucion/osce/noticias/111443-comunicado-n-005-2020-sobre-la-ejecucion-de-contratos-en-el-marco-de-las-normas-que-establecen-medidas-excepcionales-para-contener-la-propagacion-del-covid-19</p> <ul style="list-style-type: none">PPP Agreements <p>We believe that it will depend on the project; however, based on the regulation referred to in section 1(a) of this Section C, we anticipate that PPP Agreements will be treated similarly to Public Procurement Agreements.</p>
Spain	<p>No. There is already specific regulation on public procurement contracts (<i>ex ante</i> and <i>ex professo</i>) to address the situation created by the COVID-19 crisis. In relation to private contracts, force majeure existing legal provisions and scholars' doctrine on <i>rebus sic stantibus</i> will be used by courts to address the effects of the COVID-19 crisis. It is too soon to see whether there will be more bilateral negotiations or whether parties will resort to courts to seek relief.</p>
Venezuela	<p>We expect bilateral negotiations.</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

6. Do you have any additional insights on the foregoing questions that you would like to highlight or share?

Country	Answer
Argentina	Many renewable developers were experiencing delays before COVID-19 and had already requested the postponement of their committed Commercial Operation Dates (for example, arguing that because of the macroeconomic situation they were unable to secure financing in a timely manner). Controversies between (at least) EPC contractors, sponsors and offtakers are to be expected.
Brazil	At this stage, our view is that most companies are reviewing their contracts and evaluating their alternatives, including claiming force majeure. Notwithstanding, as far as we are concerned, there have not yet been many claims of force majeure in the energy and infrastructure projects. Recently, energy distribution companies started to put some pressure on power generators/suppliers to reduce the energy supply in response to the reduction in energy demand.
Chile	No additional comments.
Colombia	At the moment of this response, there is no additional analysis to be shared.
Costa Rica	No additional comments.
Ecuador	Not for the moment.
Mexico	Not at this moment.
Peru	Yes. For further information, please refer to the links below: <ul style="list-style-type: none"> • RAD Blog http://mail.rebaza-alcazar.com.pe/uploadimages/files/Bolet%C3%ADn_%20Litigios.pdf http://rebaza-alcazar.com/blog/alerta-litigios-el-centro-de-arbitraje-de-la-camara-de-comercio-de-lima-se-pronuncia-sobre-la-extension-de-la-cuarentena/ http://rebaza-alcazar.com/blog/alerta-litigios-suspension-de-plazos-durante-el-estado-de-emergencia/
Spain	No.
Venezuela	No.

Actions Affecting Energy and Infrastructure Projects in Latin America

D. Prospective Developments

1. Have you been seeing or do you anticipate any of the following: (a) Broad government/public sector relief and/or action (e.g., grants or loans, broad extension milestones and deadlines for projects)? (b) Renegotiation or extension of start dates and terms of offtake agreements? (c) Extensions of tax relief to affected producers? (d) Potential cascading delays related to interrelated infrastructure or projects (e.g., delays in construction of key transmission lines affecting interconnection of new projects)? (e) What do you expect to happen once the immediate quarantine/crisis is over? Do you expect a ramp up or counter-shock resulting from a sudden increase in demand?

Country	Answer
Argentina	(a) So far the government relief has been focused on the most vulnerable sectors (for example, prohibiting disconnections due to lack of payment of electricity and natural gas bills). (b) Not yet, although it would be likely after the lockdown. (c) It is likely. E&P companies might be subsidized. (d) It is likely. (e) Probably not in the short term.
Brazil	(a) Yes. (b) Yes. (c) Yes. (d) Yes. (e) In our view, in general, demand will increase after the quarantine/crisis, but it will take longer to reach the pre-crisis levels. We anticipate that the slope of the ramp-up curve will not be as sharp as was the decrease. In certain specific infrastructure sectors – such as the aviation/airport market - such trend will very likely not apply and demand will take much longer to recover.
Chile	(a) Yes. (b) Yes. (c) Yes. (d) Yes. (e) In our view, in general, demand will increase slowly after quarantine. Chile is also facing some social issues and a constitutional process during this year. Then, we believe it would take a while to reach the level of demand existing before the quarantine.
Colombia	(a) Yes. The government has expressed its strong commitment to implement policies that enhance a strong recovery of the economy. (b) Yes. Regarding PPAs, there is currently no public available information and we do not expect massive renegotiations of PPAs. Depending on the duration of the crisis, PPA agreements executed with non-regulated users might be amended due to the paralysis of their industrial activities. (c) It is uncertain. (d) There might be cascading delays in relation to the entering into operation of electric energy projects especially in the case of generation projects that were missing only their connection to the National Interconnected System and transmission projects that are delayed due to the current crisis. In any case, it is also likely that both generation and transmission projects that are at similar stages are delayed and that they do enter commercial operation at very similar times. (e) From a legal perspective it is not possible to determine financial, commercial, or technical consequences of the immediate quarantine/crisis is over. Neither would it be possible to determine from a legal perspective if there will be ramp up or counter-shock resulting from the sudden increase in demand.
Costa Rica	(a) No. (b) No. (c) No. (d) No. (e) Demand will recover its prior level before the COVID-19 crisis.
Ecuador	(a) In the case of Ecuador we do believe this is highly improbable. The economic situation is complicated, so economic relief will be complicated. What we envisage could happen is the adoption of laws that will have tax exemptions, or the extension on terms for payment of loans and fulfilment of obligations towards the government. (b) Most likely. (c) Yes. The government has recently announced the approval of tax relief measures in the coming days, which may impact the energy and infrastructure

Actions Affecting Energy and Infrastructure Projects in Latin America

	<p>sectors. (d) Yes, due to the state of emergency declared, mobilization is restricted, so we expect a cascade of delays on key energy and infrastructure projects. The problem here is that all construction projects are delayed or closed due to the transit restrictions throughout the country. (e) We expect the activity to be resumed in stages and progress depending on the situation in each region. We do not expect a ramp-up or counter-shock resulting from a sudden increase in demand immediately after the crisis.</p>
<p>Mexico</p>	<p>(a) As of today, we have only seen the measures described in the response to question 3(a) of Section A above. (b) Yes. We have seen and expect to see more renegotiations and extensions of start dates in connection with projects affected by force majeure. (c) No. (d) Yes. (e) Our expectation, in line with forecasts issued by national and international financial institutions, is that there will be an economic slowdown in Mexico for the remainder of 2020. As a result, we are not expecting a ramp-up or counter-shock resulting from an increase in demand.</p>
<p>Peru</p>	<p>(a) Yes. For further information, please refer to the links below:</p> <ul style="list-style-type: none"> • Grants or loans: <ul style="list-style-type: none"> http://mail.rebaza-alcazar.com.pe/uploadimages/files/Refinanciamiento_MYPES.pdf http://mail.rebaza-alcazar.com.pe/uploadimages/files/Alerta_Laboral_DU0332020.pdf http://mail.rebaza-alcazar.com.pe/uploadimages/files/Bolet%C3%ADn%20REG_FINANCIERO.pdf • Extension of milestones and deadlines for projects: <p>Public Procurement:</p> <p>https://www.gob.pe/institucion/osce/noticias/111443-comunicado-n-005-2020-sobre-la-ejecucion-de-contratos-en-el-marco-de-las-normas-que-establecen-medidas-excepcionales-para-contener-la-propagacion-del-covid-19</p> <p>PPP Agreements:</p> <p>We believe that it will depend on the project; however, based on the regulation referred to in section 1(a) of Section C, we anticipate that PPP Agreements will be treated similarly to Public Procurement Agreements.</p> <p>(b) No. Please note that energy production and supply is one of the permitted essential services during the state of emergency. For further information, please refer to the links below:</p> <p>https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-estado-de-emergencia-nacional-po-decreto-supremo-n-044-2020-pcm-1864948-2/</p> <p>https://www.gob.pe/institucion/minem/informes-publicaciones/462266-listado-de-empresas-electricas-a-que-hace-referencia-el-articulo-7-de-la-rvm-n-001-2020-minem-vme</p> <p>(c) No. As mentioned above, extensions have been granted only for taxpayers with an income of less than US\$6.5 million. However, it is expected that the Peruvian government will enact new regulations and amendments to the current tax regime, in order to help companies to overcome the COVID-19 crisis.</p> <p>For further information, please refer to the links contained in question 3(b) of Section A.</p> <p>(d) Yes. However, there is no public information to disclose as of the date hereof. Please note that prior to the COVID-19 crisis, the Peruvian government enacted an Infrastructure Development Plan prioritizing key infrastructure projects (please refer to the link below). We anticipate that the state of emergency will have a negative impact on the development of such projects.</p> <ul style="list-style-type: none"> • Peruvian’s prioritized projects (2020-2021) <p>http://www.proinversion.gob.pe/portafolioapp/docs/Portafolio-app-final.pdf</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

	<p>(e) We expect to see an increase in demand since the large number of companies will resume their activities once the quarantine is over. Moreover, please note that the Peruvian government will be investing the largest budget in Latin America for economic reactivation through several measures in different fields. Therefore, a ramp-up of the current demand could be foreseen.</p> <p>Please refer to the link below for further information in relation to the measures recently adopted by the Peruvian government: https://www.bbc.com/mundo/noticias-america-latina-52104166</p>
Spain	<p>(a) Yes. (b) Yes, in respect of energy supply agreements. (c) No. (d). Yes. (e) We expect a reasonable ramp-up in the energy and infrastructure sector after the COVID-19 crisis.</p>
Venezuela	<p>(a) Not yet. (b) Not yet. (c) Not yet. (d) Yes. (e) No, unless there is a resolution of the current political stalemate.</p>

Actions Affecting Energy and Infrastructure Projects in Latin America

2. Given the adverse economic impacts in your country as a result of the COVID-19 crisis, will the government reduce its support for investment and development of energy infrastructure, particularly renewables, or will the government seek to increase or support those investments as part of its economic stimulus?

Country	Answer
Argentina	Due to financing restrictions, it would be unlikely that the government would seek to boost new renewable projects.
Brazil	Even before the crisis, governmental incentives to certain renewable energy were being discussed. In general, such discussions involved the reduction or elimination of governmental incentives to renewable projects such as distributed generation. Please note that Brazil already has a renewable energy matrix and the incentives to solar and wind projects have been successful in increasing the share of solar and wind in the energy matrix. At this stage, it is difficult to assess whether and how COVID-19 will impact such discussions.
Chile	We think it is still too early to anticipate the severity of the impact that COVID-19 will have on the Chilean economy. Notwithstanding the aforementioned, Chile has a long tradition of, and very favorable, popular response to, support for renewable energy, so we expect that the government will continue to support the development of energy and infrastructure projects, especially renewable energy projects, after COVID-19.
Colombia	It sounds unlikely that the government will reduce its support to the country's energetic transformation through renewables.
Costa Rica	We consider that the Costa Rica government will not reduce its support for investment and development of energy infrastructure. However, it is worth noting that the current ICE's investment pipeline within the National Energy Plan 2020-2025 does not include major investments in energy infrastructure.
Ecuador	Ecuador had been facing a difficult economic situation long before the Covid-19 crisis. However, the government has been keen in taking steps towards economic growth and development of energy and infrastructure projects by partnering with the private sector. Surely this measure will continue.
Mexico	Despite recent administrative actions by the federal government which have had a negative reception by the energy sector, we expect the government will seek to increase investment and development of energy infrastructure. Recently the Mexican government reiterated its intention to issue its long-awaited energy infrastructure plan despite the COVID-19 crisis, and in fact sees the release of the plan at this time as a countercyclical measure to counteract any slowdown in the Mexican economy caused by COVID-19.
Peru	No. The Peruvian government has not publicly addressed this issue yet. However, a reduction in support for investment and development of energy infrastructure would not be consistent with the latest policies adopted.
Spain	We expect that the government will continue supporting the renewable energy sector.
Venezuela	The government will probably try to seek to increase or support these investments, but it will probably be unsuccessful unless there is a resolution of the current political stalemate.

Actions Affecting Energy and Infrastructure Projects in Latin America

3. Do you have any additional insights on the foregoing questions that you would like to highlight or share?

Country	Answer
Argentina	Investments in high tension transmission lines are critical for the development of Argentina's National Grid. The main challenge of the government would be to find a way to finance these projects.
Brazil	We do not have anything to add.
Chile	No additional comments.
Colombia	At the moment of this response, there is no additional analysis to be shared.
Costa Rica	No additional comments.
Ecuador	Not for the moment.
Mexico	Not at this moment.
Peru	Yes. Please refer to the link below: http://mail.rebaza-alcazar.com.pe/uploadimages/files/BOLET%C3%8DN_RAD.pdf
Spain	Not for the moment. For additional information on the COVID-19 client alerts we have prepared, please refer to https://www.perezllorca.com/en/news/coronavirus-covid-19/
Venezuela	No.

E. Brief Observations of the Willkie Latin America Team

While it is too early in this crisis to reasonably attempt to make any predictions about the long-term impacts on and outcomes for the energy and infrastructure sectors in Latin America, we thought it might be helpful to share our observations based on the responses from our colleagues on the LATAM COVID-19 Task Force as viewed through the lens of our experience, what we are seeing and analyzing in the U.S. and European markets, and our discussions with clients and friends in these sectors.

- **Tool for Anticipating Potential Issues** – One of the main reasons we spearheaded this particular survey and used this approach is that we hope that the information that we collect will allow clients to identify potential issues affecting projects early with a level of specificity that would allow them time to analyze and plan to mitigate as soon as possible. As our clients and friends in these sectors know, energy and infrastructure projects exist in the context of a range of public and private arrangements and contractual relationships that typically require detailed analysis. With all of that in mind, the feedback provided by our colleagues on the LATAM COVID-19 Task Force has allowed us to achieve those objectives and has given us very content-rich answers which provide a very helpful snapshot of the status of key issues for the energy and infrastructure sectors.
- **Use of Force Majeure** – As you can observe from the design of the questions, we were very focused on identifying declarations of force majeure in different contexts and by different parties, so clients and their counsel can start to analyze how those declarations may ripple through their value chains and myriad contractual and business arrangements.
 - In designing the questions, we were particularly concerned about giving clients whose businesses involve project-financed projects – whether owners, developers, lenders or investors – as much advance warning as possible given the often complex legal, statutory and contractual analysis required. Among other questions:
 - What event(s) associated with the COVID-19 crisis (or its derivative effects) is the “affected party” (i.e., the party claiming force majeure relief) identifying as the cause for its inability to perform its obligations? Which project contracts may be affected and how those contracts interplay with the project’s financing documents? Which law(s) will apply for purposes of assessing the implications?
 - Is the claim for relief based on force majeure provisions in a contract, a law or statute, or common law principles? What are the standards that will apply to determining the merits of the claim for relief and what will be the process for determining the merits (e.g., arbitration, litigation, government agency review, private litigation, etc.)? Has the affected party satisfied any notice requirements required to claim force majeure?

- For example, under U.S. law and principles, we would ask a series of questions such as whether the event in question appears to be beyond the affected party's reasonable control, has the event prevented, impeded or hindered the affected party's performance, and has the affected party taken reasonable steps to avoid or mitigate the event or its consequences?
 - What sort of relief is the affected party seeking (e.g., schedule relief, excuse for not taking the minimum required offtake, etc.)? How closely does that relief correspond to the event identified by the affected party and the obligation that the affected party has identified that it was unable to perform (i.e., does the relief fit the nonperformance)? If there is an obligation to mitigate, what options might the affected party have available that would limit the force majeure claim (e.g., availability of alternatives to cover its obligations such as spot market purchases, alternative logistical arrangements, etc.)?
- Our emphasis in the questions on force majeure declarations also reflects our concern that force majeure claims under project contracts can have secondary consequences under financing documents. For example, those claims may result in schedule relief or delays in construction schedules that can trigger notices to lenders, result in change orders or amendments requiring lender consent, and put pressure on meeting guaranteed dates for commencing operations and completing projects under contracts, permits and/or financings among other consequences. Those claims or notices of claims can affect disbursement conditions and lead to delays in anticipated disbursement schedules. Project owners, lenders and investors may need to analyze the potential gaps and differences between the interpretation of a claim for force majeure relief and the extent to which that claim or the underlying facts may trigger "material adverse change/material adverse effect" provisions (e.g., under the conditions precedent to funding disbursements under a financing). Again, those situations require a careful fact-driven legal analysis that may involve different agreements under different applicable laws.
 - We noted that our LATAM COVID-19 Task Force colleagues indicated that government actions to slow the spread of the virus have, in many of the surveyed countries, restricted the movement of goods and people and limited access to key infrastructure (e.g., ports) which in turn has resulted in logistical delays. Those delays may lead to force majeure claims under construction and material supply contracts. While those claims may not have surfaced yet, if they do, they may impact projects under construction or development that have permits, offtake contracts or other agreements that require satisfaction of completion milestones, schedules, deadlines and similar timing requirements related to the commencement of construction, commercial operation or other performance requirements, which may be impacted. Again, clients and their counsel will need to carefully review the relevant contractual provisions and analyze how those resulting delays ripple through the contracts and permits with these types of

timing requirements. Again, we intend to continue to have future updates endeavor to track these developments and how parties address the issues.

- We also observed that all of the surveyed countries reflected some drop in electricity demand as a result of the social distancing/self-isolation/curfew policies that have noticeably reduced economic activity. While we are aware that some electricity distribution companies have claimed force majeure as the basis for reducing their obligation to meet minimum requirements for taking power under existing power purchase agreements, those situations seem to be fairly limited at the moment, which may reflect that the terms of those agreements can vary within a country and across the various countries in the region.
- We shall continue to watch how the responses to our questions evolve over the coming weeks (or remain the same). For the moment, absent further insight into how force majeure claims will be interpreted and what relief will be granted, neither the risk of a claim nor the assertion of a claim should cause parties to conclude or assume that claims will be resolved in a manner adverse or unfavorable to affected projects.
- **Limited government relief** – While there are some notable exceptions, we noted that our LATAM COVID-19 colleagues were by and large not expecting uniform legislative or regulatory action to provide projects relief under offtake or other project contracts and that any relief would need to be determined and negotiated bilaterally.
 - If that turns out to be the case, we may expect to see adverse impacts to the energy and infrastructure sectors as investors, owners and lenders find they have less visibility and transparency around the timing, effect, and value of the relief to be obtained from these bilaterally negotiated outcomes.
 - Differing approaches by governments with respect to measures affecting projects, including access, and relief could mean disproportionate impacts on projects and portfolios.
 - Without uniform approaches, we may see, among other possible outcomes, continued market uncertainty, potentially larger discounts on the value of projects due to uncertainty, diminished access to capital, and a more challenging M&A market for sellers.
 - However, we understand that there has been some discussion or suggestion that government agencies or institutions may channel economic stimulus for their economies through support to the private sector as in the United States, but we are waiting for the details to emerge as governments assess how they will respond to the crisis.
 - For example, we understand that there has been some discussion about using national development banks, like BNDES in Brazil, to channel financial relief to difference sectors. Similarly, we know that

Actions Affecting Energy and Infrastructure Projects in Latin America

multilaterals, like the IMF, World Bank and Inter-American Development Bank, have publicly announced financial support to *governments* and public entities trying to cope with the COVID-19 crisis.

- While our colleagues in the LATAM COVID-19 Task Force generally thought that governments would continue to support investment in energy and infrastructure, it remains to be seen whether economic stimulus packages will provide support to energy and infrastructure projects, how the government will choose to direct or provide that support, what form any support will take, and the details of that support. We will endeavor to continue to track actions and initiatives proposed and adopted by the governments in the surveyed countries in future updates.
- **Value of coordinated action** – If broad government relief is not anticipated, market participants facing similar issues or challenges – such as power producers seeking extensions under power purchase agreements with the government that are based on the same precedent or template – should consider coordinating through trade associations or other legal mechanisms that do not run afoul of competition laws to communicate common concerns and preferred solutions to government policy-makers as opposed to pursuing individual, piecemeal solutions.
 - One example of such coordinated action is the effort by the Colombian renewable energy association (SER) which has presented a joint request for relief in the form of extended deadlines under previously executed PPAs with the government.
 - Project developers and owners (and their lenders) may want to consider concerted efforts to seek relief on milestones associated with permits or to commence commercial operation. That relief may take many forms, including force majeure or other legal relief.
 - While our LATAM COVID-19 Task Force colleagues did not identify specific involvement in coordinating sector-wide government action or responses, we expect that multilaterals, like the World Bank and Inter-American Development Bank, will over time provide thought-leadership, guidance and financial support to governments seeking to cope with the economic impacts of the crisis. However, the scope and form of that support and where it will be directed remains to be seen.
- **Prospective Developments** – Some of the problems that we were concerned would arise have not materialized, but neither has the state-driven relief.
 - So far, we have generally been hearing that lenders have only been disposed to provide very specific, surgical relief to borrowers as opposed to broader waivers of EOD, due in part to uncertainty around the crisis. As a result, sponsors may want to lay out a strategy for sequencing requests even where some of the indications from the survey suggest potential issues ahead.

Actions Affecting Energy and Infrastructure Projects in Latin America

- We have not seen governmental restrictions (i.e., capital controls) yet that could impact funds flow to and from projects.
- While the stock markets have been impacted, our LATAM COVID-19 Task Force colleagues have generally not seen problems with access to capital or disruptions in the capital markets although those situations may change in the coming weeks as the global economic picture and its recovery become clearer.
- Our LATAM COVID-19 Task Force members have not yet seen widespread signs of financial distress or insurance claims, which may be encouraging or may reflect differences in markets.

We will continue to work with the LATAM COVID-19 Task Force to provide our clients with periodic, timely updates to the surveyed questions and updates to these observations as warranted. As noted throughout, these situations and issues will require fairly intensive fact-driven, legal analysis by parties and their counsel. Both the Willkie Latin America Practice team and the members of the LATAM COVID-19 Task Force are happy to address your questions and discuss our views and assessments of any of the developments and issues that we have noted in this client alert.

Actions Affecting Energy and Infrastructure Projects in Latin America

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Maria-Leticia Ossa Daza	Jorge H. Kamine	Maria Isabel Nieto
212 728 8146	202 303 1376	212 728 3224
mossadaza@willkie.com	jkamine@willkie.com	mnieto@willkie.com

Copyright © 2020 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and colleagues at leading law firms in Latin America and Spain. The selection of the questions and information gathered in response is anecdotal by nature and is not the product of a scientific or systematic study of the COVID-19 crisis or its effects. As a result, this client alert is only intended to provide general information to the reader based on a limited set of questions. It should not be read or construed as providing any form of legal or other advice from Willkie Farr & Gallagher LLP or any of the other law firms participating in the LATAM COVID-19 Task Force. The COVID-19 pandemic is an incredibly dynamic and evolving situation with constantly changing effects and impacts on each of the countries described in this client alert. As a result, this client alert can only serve to provide a limited perspective at a given moment in time based on the limited information available to the law firms participating in preparing this client alert. The answers and linked memoranda reflect the views of the respective firms that authored them, not necessarily those of Willkie.

This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.