Looking back, looking forward.

Linklaters

Latin America Year in Review 2016 and Year to Come 2017
January 2017
Argentina

Sovereign debt restructuring: On April 22, 2016, after Congress approved a settlement proposal, Argentina issued US$16.5bn of new debt securities in the international capital markets, and applied US$9.3bn of these proceeds to satisfy settlement payments on agreements with holders.

Litigation initiated by bondholders that have not accepted Argentina’s settlement offer continue in several jurisdictions, although the size of the claims involved has decreased significantly and it no longer prevents Argentina from accessing the international markets.

Foreign exchange restrictions: Argentina had in the recent past imposed exchange controls, tax regulations and transfer restrictions, substantially limiting the ability of companies to retain foreign currency or make payments abroad. Furthermore, the Argentine Government had also adopted various rules and regulations that established restrictive controls on capital inflows into Argentina.

The Macri administration has implemented various reforms to the foreign exchange market that have already provided greater flexibility and easier access to the market. Among others, regulations regarding import of goods and services, export of goods and services, payments of dividends, financial indebtedness and interests, acquisitions of foreign currency and repatriation of investments have been amended, resulting in clearer provisions and fewer obstacles for residents and non-residents performing cross-border transactions.

Tax Amnesty Regime: On June 29, 2016, the Argentine Congress approved a Tax Amnesty Regime. Like other tax amnesty programs, the taxpayer can include previously undeclared assets in property disclosures, without having to face tax, criminal or foreign exchange penalties with respect to previous assets (such as VAT, Income Tax, and Personal Asset Tax). The taxpayer will also be released from certain potential claims or penalties arising from the lack of prior disclosure, including penalties arising under criminal tax law, criminal foreign exchange law, criminal and customs law and any administrative penalties.

Brazil

Political and economic crises in the context of legal changes: Brazil faced two major crises in 2016: former President Rousseff was removed from office, accused of breaking fiscal laws, and the economy was (and is still) suffering from a recession involving many segments of the economy, including infrastructure. That notwithstanding, the Federal Government recently implemented a series of important reforms aimed at economic recovery, including Constitutional Amendment No. 55/2016 which limits the increase in government spending for the next 20 years and the Investment Partnerships Program which provides a roadmap for concessions and privatizations in the infrastructure and energy sectors. Those measures are attracting interest from foreign investors and are expected to result in a new wave of investments in the Brazilian infrastructure sector.

Chile

Labor Reform: On September 8, 2016, a new law intended to reform and modernize labor relations was passed. The law both increases the bargaining power of unions and introduces important amendments to the collective bargaining regulations. The law will take full effect on April 1, 2017.

Prepaid Cards Law: On October 29, 2016, a new law authorizing non-banking entities to issue and operate pre-funded payment methods or similar systems was passed. To be eligible under this law, the issuer must regularly engage in monetary obligations with the general public or with specific sectors or groups.

New Direct Foreign Investment Law: On January 1, 2016, the Direct Foreign Investment Law came into force. This law established a new legal framework for foreign direct investment in Chile, created two new institutions – a Committee of Ministers and the Agency for the Promotion of Foreign Investment – to replace the former governing committee and regulated the effects of contracts entered into under the previous legal regime.
Colombia

Comprehensive Tax Reform: Congress is currently reviewing a bill involving significant tax reform. The bill includes substantial amendments to existing provisions which may affect both foreign investment in Colombia and the taxation of Colombian residents, including individuals and corporate entities. The proposed bill includes modifications to the following seven main areas: (i) corporate and other business income tax; (ii) taxation of individuals; (iii) value added tax (VAT); (iv) taxation of international transactions (inbound and outbound); (v) tax practice and procedure; (vi) taxation of non-profit organizations; and (vii) new direct taxes. The reform also introduces some OECD BEPS Action Plans containing measures intended to tackle base erosion and profit shifting.

Infrastructure: In April 2016, the Bogotá City Council approved funding in the 2017 district public budget for the first line of the Bogotá metro. The funding also provides allowances for expenditures in future years. However, the cost of the project is expected to increase because of structural modifications involving the design of the metro line.

Public Procurement: There have been several major legal developments in public procurement: (i) two legislative initiatives related to the modification of the Public Procurement Statute which included structural and substantive reforms were passed in the Colombian Congress; and (ii) a law was also passed modifying the anti-corruption statute and issuing new rules concerning corporate liability for acts of transnational bribery.

Mexico

International Trade: In early 2016, President Peña Nieto signed the Trans Pacific Partnership Agreement (“TPPA”), a major trade agreement among some of the most important countries in the Pacific Rim. The TPPA is intended to promote the exchange of goods and services, competition, higher living standards, governance and environmental protection among its members. The TPPA is currently under review by the Mexican Senate. Its ratification is expected to take place during the first part of 2017, and it is likely to become effective during 2018.

Energy: Round 1 of Mexico’s energy reform (which involved the granting of exploration and extraction blocks) was concluded during 2016 with a high number of hydrocarbons bids, mainly involving deep water drilling. During 2016, PEMEX also granted the first permits for gasoline retail, the electricity market was officially opened and the first bids for long-term power supply projects were made.

Capital Markets: During the first months of 2016, the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público) issued new tax rules intended to incentivize Mexican Master Limited Partnerships (“MLPs”) to develop energy and infrastructure investments. Further private and governmental infrastructure work implementing the Mexican MLPs is expected to take place during the next months. The IPOs of the first FIÉRA E (Mexican vehicle similar to the U.S. REIT for energy) and of the CerPis (Certificados de Proyectos de Inversión) – publicly traded securities through which pension funds, insurance companies and other institutional investors are authorized to invest in productive sectors – were also launched.

Political Developments: During the first part of 2016, Congress passed a law converting Mexico City to state status, now officially called Mexico City (Ciudad de México). This grants Mexico City’s government the privileges and autonomy that accompany state status.

Peru

Election of Pedro Pablo Kuczynski: Pedro Pablo Kuczynski – a former World Bank executive, Minister of Finance and President of the Council of Ministers – was elected as President defeating opposition leader Keiko Fujimori by the slimmest of margins (0.22%) in a runoff held in early June 2016 after both failed to earn a majority of the vote in the general election last April. President Kuczynski’s election has been warmly received by foreign investors and private market leaders who were encouraged by the President’s impressive resume, which includes significant public and private sector experience as well as by his pro-business attitudes.

New Public Contract Law: A new Public Contract Law came into effect in January 2016. The new law abandoned the old austerity principle which sought to minimize government expenses for a new value efficiency principle which seeks to secure maximum value for services contracted through performance management. Among other features, the new law streamlines the tendering process by creating a new simplified, fast track bidding process for the purchase of certain goods and services, and increases the
threshold under which government entities may purchase goods and services at their own discretion without complying with formal requirements.
Argentina

**Capital Markets Reform Bill:** On November 16, 2016, Congress was presented with a bill to reform the current capital markets law. This bill intends, through clear and transparent rules, to modernize the entire regulatory framework, incorporate current international practices and encourage growth in the Argentine capital markets by increasing the number of investors and companies that are eligible to receive financing. The bill also provides for regulations relating to derivatives and collateral agents. If the bill is passed by Congress, the existing Capital Markets Law, the Common Investment Funds Law and the Negotiable Obligations Law, among others, will be modified.

Brazil

**Reforming the Brazilian Administrative Law:** There are ongoing attempts to modernize Brazilian administrative law. Reform includes updating the federal procurement law (Federal Law No. 8,666 which dates back to 1993) in order to expedite the public procurement process in Brazil and modernize federal agencies. The reform is intended to foster private (mainly foreign) investment in Brazil in the coming year.

Chile

**Tax Reform:** Extensive reform to the Chilean tax code was enacted in 2014, modified in 2016 and will take full effect on January 1, 2017. Most significantly, the reform permits new alternative tax regimes for Chilean companies (including an attribution and deferral regime) and a decrease in personal income taxes (the highest tranche is reduced from 40% to 35%).

**New Constitution:** During the second half of 2017, the President of Chile is scheduled to send the draft of the new Chilean constitution to Congress. However, it has been largely speculated that, due to budgetary issues, the timing will be postponed.

**Banking Law Reform:** The Ministry of Finance announced a banking law reform, which will implement diverse changes to the Chilean General Banking Act (the “GBA”) in order to bring it more in line with a global regulatory framework. The reform will incorporate: (i) Basel III Capital Requirements; (ii) supervisory governance; and (iii) other banking resolutions. The project is expected to be submitted to Congress in March 2017.

Colombia

**Comprehensive Tax Reform:** A comprehensive tax reform bill, if passed by the Colombian Congress, will become effective January 1, 2017. The proposed bill includes OECD’s BEPS Action Plans measures, clarifications to and uniformity in corporate income tax, changes to the taxable base and VAT rate which will increase the number of individuals subject to income tax. The latter reform will likely present new challenges both for corporate and individual tax planning.

**Infrastructure:** Infrastructure is expected to be key to the Colombian economy in 2017, and involve the creation and development of major projects relating to airport infrastructure, port terminals, and road and mobility infrastructure.

**Peace Process:** The implementation of the peace agreements signed with FARC will begin locally and regionally. The peace process not only seeks to disarm FARC, but also it aims to end the structural causes of the conflict. This will be addressed through improving the connectivity of rural areas through tertiary roads, social infrastructure projects, economic relationships between regions and improvement of regional and municipal infrastructure.

Mexico

**International Trade:** As a result of the U.S. presidential elections, certain Mexican ministries are creating commissions relating to possible re-negotiations of the North American Free Trade Agreement (NAFTA).
**Political Developments:** During 2017, four Mexican states will hold gubernatorial elections. The upcoming 2018 presidential election race is expected to kick off sometime in late 2017.

**Banking and Finance:** It is expected that during 2017, the Mexican Congress will continue to discuss and pass legislation relating to crowdfunding (Financiamiento Colectivo), a model for capital raising and market participation wherein investment projects are shared through media platforms. These regulations will affect financial institutions, insurance companies and other institutional investors.

**Peru**

**Tax Reform:** The government is in the process of implementing both tax code and income tax reform. The Impuesto General a las Ventas (VAT) has already been reduced by 1% to boost consumption, while tax rates on dividend distributions, capital gains and personal income tax are scheduled to be slashed in 2017. Personal income tax deductions have also been revamped – people are now able to choose not to apply a general standard deduction and instead deduct individual expenses for rent, education, mortgage and utility payments, among other expenses.

**Modifications to Private and Public Partnerships Regulations:** The government has also made significant changes to regulations on public and private partnerships in order to accelerate both the bidding process and the preparation stages of infrastructure projects. New regulations facilitate land purchases in areas required for project developments and reduce the waiting time for unsolicited proposals from third parties on government-approved projects from 150 to 90 days.

The new regulations also emphasize central government control by boosting the role of the Ministry of Finance, which will now have the final say in whether a particular project proceeds to the bidding phase.

**Overhaul and rebranding of the National Public Investment System:** The new administration of President Kuczynski conducted a thorough reform of the National Public Investment System, rebranding it as “Invierte.pe” (in Peruvian slang, “come on, invest!”).

The new Public Investment System aspires to substantially streamline the appraisal and approval procedures in order to fast track much needed infrastructure projects through measures such as merging the conception and appraisal phases of the Public Investment Approval process (which used to be separate). Furthermore, the entire feasibility assessment process will now be conducted simultaneously instead of through separate feasibility and pre-feasibility stages that involve different, parallel documents.