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ARGENTINA

In early stages of the pandemic situation, the National Government issued an Urgent and Necessity Decree ("DNU" in Spanish acronym) to establish a strict lock-down, which has been then extended and still in force. Subsequently, law enforcement authorities have been carrying out a number of measures in order to prevent the breach of mandatory isolation that would constitute the commission of certain offenses established in the Argentine Criminal Code ("ACC"). On the other hand, the Supreme Court has issued different Resolutions (Acordadas) to implement alternative procedures to guarantee access to the judicial system but, still, preventing both, a collapse of the judicial system and exposure of the judicial magistrates, officers, and employees to COVID-19.

I. Crimes under the ACC and Judiciary response

The DNU established a lock-down by which the civilian population was requested to stay at home and avoid going to workplaces, to reduce any risk of contagion to COVID-19. During this +90 days of isolation, the Executive Branch has expressly authorized certain activities to go out – if strictly necessary. Pursuant to this, the breach of the mandatory isolation would constitute a violation to the ACC, namely its Sections 202, 203, and/or 205, which are depicted under the chapter of crimes against Public Health.

The law enforcement authorities together with the judiciary and the General Attorney, managed to establish a protocol and responded quickly to criminal cases originated by breaches of the DNU. Firstly, cases not related to the pandemic situation together with not urgent cases, such as ones involving detainees for example, were halted until further notice. The courts speedily decided on DNU breaches by ordering law enforcement authorities to escort individuals to their residences and even to seize vehicles. Moreover, steps were taken to adequate judicial formalities with the technological means, and, for example, hold hearings through videoconference apps such as Zoom. Additionally, the Public Attorney's Office requested the Supreme Court to expedite the delivery of assets recovered in criminal cases to offset pandemic-related expenses. This was implemented in a couple of cases in which asset recoveries from corruption cases were used to meet extraordinary expenses arising from COVID-19.

During the last weeks, the courts have been also implementing alternative resolutions to criminal cases originated from breaches of the DNU, by accepting donations to health institutions in order to supplant the prosecution of the case (opportunity criteria).

II. Increase in compliance monitoring in COVID-19 related purchases and health-sector

The pandemic situation triggered the need of quick response from the governmental authorities and the subsequent hurdling of purchases processes to provide adequate response to the situation.

This originated an increase on the control over the direct purchases processes that have been carried out throughout these past months. During this task, several cases of wrongful doing were identified, such as the overpriced purchase of facemasks and the hiring of hotels, for the use of their beds, in which the directors were related to government officials. As a result, several purchase cases were suspended with the further intervention of the judiciary.

BRAZIL

During the pandemic state resulting from the infectious disease Coronavirus (COVID-19), Brazilian law enforcement authorities have taken severe measures to prevent the occurrence of certain crimes. The most relevant measures that deserve attention are:

I. Bills of law under discussion in the Brazilian Congress

Since the beginning of the pandemic, the Brazilian Congress started discussions to verify how this new scenario would affect the Brazilian society and, as a result, possible changes that should be made in the local legislation.

Different bills of law are under discussion and some of them intend to (i) increase the penalties for corruption, breach of sanitary measures, and thefts crimes committed in times of public calamity, and (ii) establish penalties for individuals who do not comply with government regulations for the prevention of COVID-19. Those bills must be previously approved by the Brazilian Congress to produce effects in the legal system and our firm is monitoring this evolving legal landscape.

II. Increase of the number of investigations related to the health sector

Brazilian law enforcement agencies are focusing on investigations related to the health sector in order to monitor the sale of essential products to combat the COVID-19 for the public sector, such as artificial ventilation.

This course of action was adopted in order to (i) prevent the diversion of public funds and illicit enrichment of private parties, (ii) discourage possible frauds in the context of public bids (e.g., bid rigging), and (iii) guarantee that such products are effectively delivered to the population.

In a time of crisis, robust compliance programs are a key element in the context of contracts and agreements with the public sector to prevent violations and legal exposure for both the companies and individuals under the Brazilian law.

II. Increase of the number of investigations related to the health sector

According to the Brazilian criminal law, it is considered a violation against the consumers to increase or reduce the prices of goods based on fake news, forged operations, or any other deception.

In order to refrain the occurrence of such crime, some State Public Prosecutor's Offices issued an official recommendation for law enforcement agencies to verify the occurrence of potential wrongdoings related to unsubstantiated increase of prices of medical and health products used for the combat of COVID-19 and, if applicable, to arrest and prosecute the responsible individuals.

There were already news disclosed by the media of task forces formed by different agencies – such as police, consumer protection authority, and antitrust authority – to investigate and restrain this type of conduct.





CHILE

During the pandemic state resulting from COVID-19, and also motivated by the prior social outbreak in Chile, some relevant measures have been undertaken:

I. Bills of law under discussion in the Chilean Congress

There are some very important bills of law being currently discussed in the Chilean Congress. They are encompassed in the Anti-Abuse Agenda announced by President Piñera.

I.A) Bill of law n. 13,301 extends the limitation period of criminal action for crimes regarding political contributions from 2 to 5 years.

I.B) Another Bill of law, n. 13,312, refers to a very material amendment to the Chilean Anti-Trust Act. (DL 211). This Bill mainly: (i) provides new tools to the National Economic Prosecutor (FNE) to strengthen investigation and prosecution of collusive practices; (ii) increases the penalty assigned to the crime of collusion when it affects basic goods and services; and (iii) incorporates into Chilean legal system the figure of the anonymous whistleblower for reporting anti-competitive conducts.

I.C) Finally, Bill of Law n. 13,205, systematizes economic crimes in Chile in a radically new way and also materially amends Law 20,393 (on the liability of legal entities). The bill incorporates important modifications that will involve an enormous work of updating prevention models. In addition, it extends the type of individuals for whose behavior legal entities are responsible, incorporating third parties outside the company – the so-called intermediaries –, which could include sales agents, lobbyists, advisers, consultants, etc. Besides, the bill considerably multiplies the base crimes for which the legal entity may be criminally responsible, incorporating various offenses related to tax, computer systems, environment, stock market, customs, among many others.

We admit that the project, for the moment, seems to simplify the requirements of the prevention model of Article 4 of Law 20,393 (for example, the person in charge of crime prevention disappears and, instead, alludes to one more generic assignment of subjects responsible for the application of protocols), but, if approved, this simplification would not be enough to avoid all the efforts that companies must undertake to adjust their prevention models to the new reality. Hence, the convenience of preparing, from now on, to meet that new standard.

II. Main investigations by Public Prosecutors

The Public Prosecutors and the Police have been quite active during the pandemic, mainly investigating the following offenses: sale of fake and infringing sanitary products (i.e., alcohol gel) and prosecution of individuals under not complying with the lockdown.

COLOMBIA

Whilst the current health emergency has prompted the enactment of multiple decrees and measures by several authorities across the country, and although most efforts aim at preventing the direct effects of the pandemic, Colombian law enforcement authorities have been pursuing a steady surveillance of the ancillary risks and wrongdoings that may hamper the way out of the crisis. Some of the most relevant are the following:

I. Investigation of acts of corruption in public procurement and acts of cybercrime

The current need for quickly providing goods to meet the high demands for medical supplies and essentials, especially for those in greatest need, has triggered the alarms of all enforcement authorities in Colombia.

The irregularly high increase of complaints of corruption in public procurement has been actionable for criminal prosecution, thus the opening of investigations by the Attorney General's Office regarding acts that might constitute criminal offenses. Some public financial entities have also been investigated on irregularities in the adjudication of credits.

However, other public bodies in charge of surveillance have initiated investigations too. Both the Office of the Comptroller General and the Office of the Inspector General have opened cases against public officials and private parties fulfilling public functions, who might be either fiscally or disciplinarily liable, respectively. Going forward, these circumstances are relevant from the criminal perspective since the investigated facts might potentially fall under the criminal scope.

In summary, the current circumstances require stronger controls in procurement, mainly where public entities are in the urgent search for goods and services. Offenses related to corruption include bribery within both private and public transactions, the wrongful interest in procurement, embezzlement, among others.

Another on-side effect of the current state of affairs, mainly caused by the lockdown ordered countrywide, is the increase in reported cases of cybercrime. According to domestic competent authorities, cybercrime and other ways of electronic fraud have raised up to 30%. Fortunately, the timely response by specialized authorities has helped counter the harmful effects. Criminal offenses enshrined in Colombian Criminal Code include offenses against private property, such as fraud and theft, as well as offenses against data, such as the use of malicious software or the unauthorized access to personal data.

II. Prompt response by the judiciary relating to criminal law

The slowdown in regular commerce and public office has affected several services, including the access to justice as a public service. However, most criminal law authorities have been exempt from the cessation of activities.

As criminal law practitioners, we have continued to pursue legal action in both ongoing and new assignments, mostly thanks to the decision by the judiciary central authorities to allow virtual channels to attend hearings, file legal documents, and be timely heard by law enforcement officials and criminal courts.



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