

CLIENT ALERT

COVID-19: The Latin America Perspective II – Argentina and Peru

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[español](#)

In our previous Crowell & Moring [alert](#), we discussed how COVID-19 is affecting commercial activities and dynamics in Latin America, particularly in Colombia and Mexico. Our second edition focuses on the measures currently in place in two South American nations: Argentina and Peru. Like most of the region, unprecedented measures in Argentina and Peru are causing business interruptions across all industries, forcing companies to review their commercial agreements and determine whether “force majeure” or other similar concepts may help them to mitigate the disruption.

Crowell & Moring has assisted clients and worked with local counsel across Latin America and the Caribbean, and is closely monitoring how governments in the area are responding to COVID-19 and how commercial relationships are impacted by the global pandemic.

Argentina:

In March, the Government of Argentina issued [a series of decrees](#) establishing measures to prevent the spread of COVID-19, including a mandatory quarantine until at least April 26. The quarantine requires all people to stay at home and to refrain from going to their places of work, with certain [exceptions](#).

These exceptions include workers in the following industries:

1. Health care or industries that provide health care support and supplies, such as medicines, vaccines, and medical equipment;
2. Armed forces and security;
3. Communications and media;
4. Groceries, pharmacies, hardware stores and establishments in the food industry, including production and chain supplies;
5. Agriculture and fishing;
6. Maintenance of basic services, such as water, electricity, gas, communications, and emergency care;
7. Public transportation and transportation of goods, oil, and fuels; and
8. Postal, shipping, and delivery services.

As in most Latin American countries, these emergency measures have disrupted businesses and the ability of many entities to fulfill their contractual obligations. Argentinian law contemplates the concept of “force majeure” or “fortuitous event” (a/k/a “*caso fortuito*” or “Acts of God”), which is defined by [Argentina’s National Civil and Commercial Code](#) as an event that is unforeseeable or unavoidable. Such an event exempts parties from liability, unless otherwise provided by the parties. This

broad definition may apply to contractual obligations affected by the Argentinian Government's response to the COVID-19 pandemic. However, a party's ability to invoke force majeure will depend on the terms of the contract and the specific circumstances of the contractual obligation that is being affected.

The business disruptions and the reordering of contractual rights impact goes well beyond certain parties' commercial relationships. In fact, the pandemic is expected to negatively affect the entire Argentinian economy, as reflected by [Fitch Ratings](#) downgrading Argentina's credit rating on April 17.

Peru:

On April 8, Peru's President Martín Vizcarra extended the state of emergency and [nationwide quarantine](#) through April 26. Peru was among the first countries to launch a full lock-down at the national level, when it issued, on March 15, [Supreme Decree No. 044-2020-PCM](#), imposing strict controls on movement within the country, and significantly impacting commerce.

The Decree ordered an almost total cessation of business, impacting nearly all commercial activities. However, certain "essential services" were exempted:

1. Production and supply of food, medicines and pharmaceutical products, and other essential goods;
2. Water, sanitation, electric power, gas, telecommunications and financial services, among other services;
3. Hotels, to the extent they comply with quarantine restrictions; and
4. Services and activities in industrial and production sectors to be determined (as an exception) as strictly essential by the Ministry of Economy and Finance.

The Peruvian Government also temporarily closed its borders—suspending international travel—and restricted public domestic transportation, imposing strict self-isolation orders, a gender-based circulation system and a curfew from 6:00 pm to 5:00 am. Major sites such as Machu Picchu were also shut down, causing substantial losses to the tourism industry.

The Decree suspended nearly all commercial establishments and activities, forcing companies to review their agreements and applicable law to assess the risk of potential failure to comply with their contractual obligations. Peruvian law contemplates the concept of force majeure, which allows parties to a contract to be released from liability in the event of unforeseen and extraordinary events such as the pandemic and the nationwide quarantine prevent performance. Specifically, the [Civil Code of Peru](#) defines "force majeure" or "fortuitous event" as a "*non-attributable cause, consisting of an extraordinary, unforeseeable and irresistible event that prevents performance of an obligation or determines its partial, late or defective performance.*" While this definition under Peruvian law is sufficiently broad to apply to all sorts of obligations potentially affected by COVID-19, parties have—to some extent—the ability to negotiate their own scope and terms. In practice, when disputes arise, Peruvian courts, and tribunals in general, are required to determine whether invoking force majeure is proper per the terms of the contract and the specific circumstances of the business commercial activity affected.

Some of the measures enacted by the Peruvian Government have raised concerns regarding whether they could cause a wave of new foreign investment claims. For example, in early April, Peru's Congress [approved a bill](#) suspending the collection of toll fees on major highways. This measure has triggered opposition among investors and other stakeholders in those projects, some of whom have warned of potential new ICSID claims against Peru over COVID-19 and the Government's unilateral actions

interrupting businesses and government contracts. Foreign investors have faced similar measures in other jurisdictions, such as in Mexico, where a state government closed a U.S.-owned plant for allegedly refusing to sell ventilators to Mexican hospitals.

In short, COVID-19 is expected to significantly impact the Peruvian economy. According to a recent report by The World Bank, Peru projects that its economy will contract by 4.7% in 2020. Fitch Ratings also projects a 1.9% drop in global GDP in 2020, although it expects a recovery in 2021.

To learn more about our previous Crowell & Moring Alert on the impact of COVID-19 in Colombia and Mexico regarding force majeure, click [here](#).

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