

ENERGY AND NATURAL RESOURCES

A Latin American perspective on the
impact of the COVID-19 pandemic

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The team that works

BARROS & ERRÁZURIZ

GÓMEZ-PINZÓN

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MIJARES ANGOITIA
CORTES Y FUENTES

MIRANDA
AMADO



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1

Which protocols must be adopted by energy and natural resources companies (mines, electric power, oil & gas, forestry, among others) when restarting activities and operations once COVID-19 restrictions are eased?



CHILE

Activities of energy and natural resources companies were exempt by the authority from the general order to halt operations and, therefore, no protocol has been issued for restarting their activities.

Nevertheless, given the nature of energy as a staple product, the authority has requested information and closely monitors the implementation of actions to avoid contagions and thereby maintain the operational safety of the electrical system.

COLOMBIA

Despite the emergency declaration made by the Colombian Central Government due to Covid-19 in which severe restrictions were imposed in the country, the energy and natural resources industry was excluded, in general terms, from such restrictions and was allowed to continue operating provided that certain provisions and regulations were observed/implemented.

In connection with the above, the Ministry of Health and Social Protection issued Resolution 666 of 2020 which adopted the general biosecurity protocol to be adopted in all economic and social activities and the Ministry of Mines and Energy ("MME") together with the Ministry of Labor and the Ministry of Health and Social Protection issued the Joint Circular 01 de 2020 which includes the measures of security and health required for the companies of the mining and energy industry to follow.

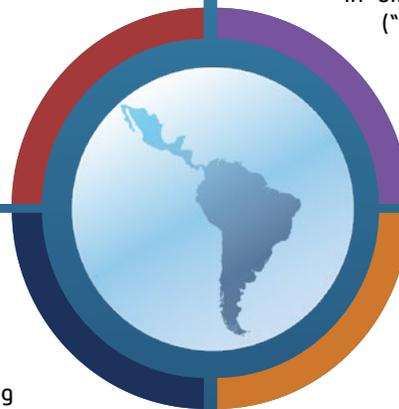
MEXICO

The Mexican Federal Government's strategy for the reopening of activities is divided into three distinct stages:

- Stage 1.- 18 May 2020 : Reopening of activities in municipalities that do not present cases of COVID-19 and whose neighboring municipalities do not present cases of COVID-19. Specific prevention and control measures for these municipalities will apply.
- Stage 2.- 18 to May, 31, 2020: Implementation of preparatory actions for the reopening of activities, such as the development of Health Security Protocols, training of personnel for safety in the work environment, rehabilitation of spaces and production processes, and implementation of income filters, sanitization and hygiene of the work space.
- Stage 3.- 1 June 2020: The reopening of social, educational and economic activities, which will be subject to the system of region-by-region coverage to be updated weekly.

PERU

The Peruvian Ministry of Health, through Ministerial Resolution 239-2020-MINSA approved the general health and safety rules for employees to come back to their workplaces upon the termination of the quarantine resulting from the current sanitary emergency, and its extensions. Energy and natural resources companies need to follow the provisions of the aforementioned Ministerial Resolution together with the specific protocols approved by each subsector. Mining, electricity and oil & gas companies belong to the Energy and Mines sector and the Ministry has accordingly approved specific protocols for each of those subsectors under Ministerial Resolution 128-2020-MINEM/DM. Forestry belongs to the Agriculture sector, so the Ministry of Agriculture approved Ministerial Resolution 0117-2020-MINAGRI, Appendix 3 of which deals specifically with forestry activities.



2 Did regulatory measures adopted due to the COVID-19 emergency substantially modify the energy industry legal structure?



CHILE

The industry's legal structure has neither been discussed nor altered. Nevertheless and due to the economic effect of the COVID-19, the Government is negotiating with utility companies a postponement of the payment of the energy bills of a relevant part of the consumption and, in parallel, two bills with the same objective are being discussed in Congress.

COLOMBIA

The measures adopted by the Colombian Central Government did not substantially modify the energy and natural resources industry legal structure. However, several general incentives were adopted in order to support the energy and natural resources industry.

Some examples refer to: (i) delayed payment of economic rights in favor of the State; (ii) increase in royalties' distribution among producing territories; and (iii) flexible loans to public utility companies, among others

MEXICO

In the case of the Mexican electricity industry, the Mexican Government has taken advantage of the COVID-19 emergency to substantially change the nature of the Mexican electricity market, to the detriment of photovoltaic and wind energy projects. Among these measures, (i) there is now increased authority to impose curtailments on photovoltaic and wind projects, and (ii) energy from so-called "must run power plants" (i.e. thermoelectric plants, nuclear power plants, etc.) can be given priority to enhance the "reliability" of the National Grid), overriding the priority that was given by regulation to "economic dispatch" (which are mainly renewables). Otherwise, the legal structure of Mexico's energy industry has not been modified due to the COVID-19 emergency.

PERU

No. However, there are contractual and commercial issues in debate due to the application of force majeure and similar legal doctrines affecting the players in the energy industry in different ways depending on their position within said industry.



3

Main risks faced by the natural resources sector (mines, electric power, oil & gas, forestry, among others) when restarting operations after the COVID-19 emergency.



CHILE

Chile imports most of the fuels it uses to function (mainly oil, natural gas, and coal), both in the electricity industry and in mining, so there is a real risk of supply problems if the pandemic lengthens or affects to relevant suppliers.

In addition, the financial situation of certain companies may be affected, both by lower demand for their products and by defaults by their customers, which may have an impact on their own production and on the payment chain, which is especially critical in the electric sector.

COLOMBIA

Although the energy and natural resources industry was allowed to continue operating, many projects had to stop their activities due to lack of other required services. In that regard, the main challenges that companies related to the energy and natural resources industry face when restarting operations are related to: (i) delays in procedures related to obtaining licenses and permits; (ii) shortage in goods and machinery required for the operation; (iii) general low commodity prices; (iv) potential sanctions/guarantee enforcement for missing COD's agreed dates.

MEXICO

The main risk faced by companies in the natural resources sector when restarting operations is ensuring a safe-work environment, which are compliant with the Protocols required by the Mexican Federal Government.

PERU

Compliance with employment law regulations focusing on health, safety and data privacy.

Regulatory and enforcement risk: companies need to be aware that the regulatory risk has already increased and may continue to do so in the short term. There are also political incentives for Congress to pass new laws that may harden the business environment.

Social-management risk: The companies in the energy and natural resources industry, especially those active in remote areas, will have to continue their constant work to manage the expectations of the social stakeholders affected by the development of their projects or operations, with the added variable of the COVID-19.



4 While the mandatory restrictions for COVID-19 last, can the procedures to obtain permits / licenses to develop projects be advanced?



CHILE

Yes, the authorities have taken the necessary measures so that all kinds of permits can be obtained.

Notwithstanding the foregoing, permits that require instances of citizen participation are currently suspended. This means that the environmental approval (known as "RCA") of some projects is suspended, until citizen participation can be resumed in their evaluation.

COLOMBIA

Although government authorities have encouraged that virtual meetings should be a solution to the Covid-19 emergency, currently applicable regulations do not have the sufficient and required provisions in order to ensure that permits and licenses to develop projects are advanced without having physical meetings. That being said, in practice all procedures are currently suspended until restrictions are lifted and/or virtual meetings are formalized.

MEXICO

Most procedures to obtain permits and licenses to develop projects have been suspended since June 1, 2020 and are scheduled to resume until the sanitary authority considers that there is no epidemiological risk to return to the activities related to the Federal Public Administration. However, certain essential economic activities are excluded from this suspension, such as: forestry, environmental impact, biohazard wastes, hydrocarbon sector, among others.

PERU

Yes, but with the current limitations imposed by the sanitary emergency declared by the Government, which do affect progress with permitting significantly. Practically all relevant government agencies have enabled electronic portals in order to allow companies to continue making filings, if they are able, and at the same time the terms applicable to administrative procedures (deadlines) have been suspended or extended so as not to be applied in detriment of companies that are unable to meet them due to the sanitary emergency. Perhaps more significantly, the Peruvian government has recently enacted Legislative Decree 1500 declaring that, due to the pandemic, licenses and authorizations expiring this year, including environmental permits, applicable to investment projects, including energy, natural resources, public infrastructure and public services projects, even if sponsored by private parties, are to be extended for 12 months counted as from the original termination date.



5 Will COVID-19 emergency be considered as a force majeure event exempting the fulfilment of contractual obligations in the natural resources sector (mines, electric power, oil & gas, forestry, among others) and/or the compliance of certain legal obligations regarding environmental matters?

CHILE

Chilean law provides by default for a general force majeure provision that may excuse the relevant parties from performing their obligations, either from a legal or contractual source.

There have been several administrative rulings that have declared the situation caused by COVID-19 as force majeure under Chilean law but, in spite of this, the force majeure allegations have to be reviewed on a case-by-case basis, to verify that COVID-19, as an unforeseen and irresistible event, has made it impossible to comply with certain obligations.

Even though there are no specific regulations on the matter, the authority has been especially concerned with preventing the electricity industry's payment chain from breaking, as this could have a highly relevant domino effect. Also, to prevent environmental problems, the environmental authority has requested weekly reports about the operational status of projects with environmental impact, in order to be able to timely demand the implementation of emergency actions, pursuant to the respective environmental license, if required.

MEXICO

In principle, the COVID 19 emergency is considered a force majeure event that exempts the fulfilment of contractual obligations and compliance of certain legal obligations, but only to the extent that the obligation cannot be complied with as a result of the COVID-19 emergency.

COLOMBIA

In our opinion, immediate effects caused by Covid-19 were in fact irresistible and unforeseen and should be considered as a force majeure event exempting fulfilment of contractual/legal obligations in the energy and natural resources sector. However, as time passes, the irresistible and unforeseen traits of Covid-19 start to disappear and thus Covid-19 effects will cease to be considered as a force majeure event exempting the fulfillment of contractual / legal obligations.

PERU

The Peruvian Civil Code does include provisions on force majeure that may apply to certain contractual obligations in lieu of a specific clause in the agreement. Said law basically requires the force majeure event to be extraordinary, unforeseeable and irresistible. However, whether the COVID-19 emergency would be considered an event of force majeure allowing to suspend the fulfilment of specific contractual obligations will require a careful case-by-case analysis of the relevant contract and ancillary documentation.

As to compliance with legal obligations regarding environmental matters, most energy companies have been allowed to continue to operate during the sanitary emergency (so as to -for example- prevent blackouts and fuel shortages). Mining companies have been allowed to keep a skeleton force to monitor, maintain and prevent damages to producing operations and milling facilities. And, in general, obligations concerning management of solid waste and other types of hazardous materials have not been suspended at all. Therefore, certain specific -yet substantial- environmental obligations have continued to be complied with during the quarantine by companies in the energy and natural resources sectors. However, many other environmental obligations, especially those concerning socio-environmental monitoring and other fieldwork have indeed been suspended, in line with the restrictions imposed in the context of the sanitary emergency.



CONTACT

FIND YOUR EXPERT HERE



MIJARES ANGOITIA
CORTES Y FUENTES

GÓMEZ-PINZÓN

SINCE 1992

MIRANDA
AMADO

BARROS & ERRÁZURIZ



www.affinitaslegal.com
contact@affinitaslegal.com

