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## ARGENTINA

### NEWS ON FOREIGN EXCHANGE

On March 31, 2021, the Argentine Central Bank (“CB”) published Communication A 7253, amending provisions governing imports of capital goods. Basically:

1. Advance payments of imports of capital goods are added as one of the transactions that do not require the CB’s prior authorization within the framework of Section 2 of Communication “A” 7030 and complementary ones.

For this purpose, capital goods are any goods so classified in accordance with the tariff items contained in the Mercosur Harmonized Tariff Schedule, as per Executive Order 690/02 and complementary regulations.

If a given advance payment is for capital and non-capital goods, all goods may be considered capital goods as long as (i) capital goods represent at least 90% of the total value of the goods purchased from the provider in the transaction and (ii) a sworn statement is submitted asserting that the other goods are spare parts, accessories, or materials necessary for the operation, construction, or installation of the capital goods that are being purchased.

2. In connection with Section 10.5.5.3 of foreign trade and exchange regulations, the deadline up to which the institution may extend the period to register the reception at customs of the capital goods is increased to 545 consecutive days from the date of access to the foreign exchange market, in the case of advance payments of imports (the maximum extension for any other goods is 365 consecutive days).

3. Section 2 of Communication “A” 7123, which had been amended by Section 3 of Communication “A” 7193 and Section 4 of Communication “A” 7239, is now amended again. Basically:

(i) The increase in the amount of foreign currency that may be purchased in the foreign exchange market to pay imports is ratified. Such amount is equivalent to 50% of the funds that, since October 2, 2020, have been brought into and exchanged in the country by way of exports advances or pre-financing from abroad and for at least 180 days.

(ii) The increase in the remaining 50% is ratified as well, in the case of access to the foreign exchange market both to pay capital goods imports and to pay goods that qualify as necessary supplies for the production of exportable goods, but taking into account transactions carried out from March 19, 2021 (in accordance with the prior wording of Communication A 7239, for payments of capital goods, transactions carried out from January 4, 2021, were taken into account, so, in connection with these goods, the date was postponed to March 19, 2021).

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### **TRADING REAL ESTATE PROPERTIES IN THE STOCK MARKET**

Through General Resolution 855 (the "Resolution"), the *Comisión Nacional de Valores* or CNV (local security regulatory body) has opened the floor for public offerings of the well-known Real Estate Trusts that have been successfully used in private transactions for more than 25 years.

The capital market is a venue to invest in different types of securities which offer a return (Stock Shares, ON or Commercial Papers, Bonds, Trust Securities, etc.) based on the performance of the issuer or the underlying asset. Now, this is turned into real estate platform where the public can buy a residential property. We are referring to the Collective Investment Products as they are called in the mentioned Resolution: *Fondos Comunes de Inversión* (Real Estate Investment Funds) and *Fideicomisos Financieros Inmobiliarios* (Real Estate Financial Trusts).

This is achieved through the acquisition of Trust Securities or Fund Quotas traded in the market which offers the possibility to receive a return in kind: the underlying asset formed by a construction project. These securities give the right to receive a specific unit or apartment and pay it in installments, but they can also coexist with other securities aimed at investors looking for an income.

Those who are already developing private real estate projects will not have to put together different structures or look for new players. The Resolution recognizes the roles of the Real Estate Developer, the Technical Auditor and the Construction Company; developing the same activities they perform in private projects.

On the Buyers / Investors side this is great news. One of the main problems lies on the necessary due diligence to assess the background of the players and how reliable they are. When a buyer / investor enters into these deals there is usually an empty space of land with lot of promises and commitments. This due diligence is now replaced by the controls of the regulatory body (CNV) to approve a Project for Public Offering. All the necessary information, history and background of the participants will form part of the terms of the transaction. At the same time, permanent reports are required during the lifetime of the Project reinforcing controls and the accountability of them.

This is also a win-win scenario for real estate developers. Those projects approved by CNV receive a quality certification that put them on a higher level for commercialization purposes when comparing with other projects that are not traded on the floor.

Even though there are still transactional procedures to be tested and improved, this will certainly open the capital markets to a new type of investment security that may help to develop the real estate market.

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## BOLIVIA

### **REGULATION OF DISTRIBUTED GENERATION OF ENERGY IN BOLIVIA**

On March 2021 a "Distributed Generation" (DG) regulation<sup>1</sup> was approved in Bolivia. DG is defined as the generation of electrical energy characterized by being a decentralized generation system installed in the place of consumption, small to medium scale, with renewable sources, connected to the grid distribution network to inject its generation surplus. This regulation admits diverse renewable sources; however, international experience dictates that the implementation of the DG is done mainly through photovoltaic solar systems. These systems can be installed in homes, although it may also be useful for those who decide to install a small energy production plant, or for companies that want to take advantage of their infrastructures to produce energy.

#### **Remuneration for DG**

The following criteria has been set with regards to the compensation for DG users:<sup>2</sup> For household categories in small demand with consumption equal to or less than 500 kWh, the "Net Metering" compensation system will be applied; while for the household

<sup>1</sup> See Supreme Decree No. 4477, March 24, 2021, 1371NEC, which sets forth general conditions to regulate Distributed Generation activity in electrical energy distribution systems and determine the remuneration for electrical energy injected to the Distribution Network by the Distributed Generation activity.

<sup>2</sup> See AETN Administrative Resolution No. 343/2021 of July 2, 2021, which approves the procedure for determining the remuneration for the energy injected into the Distribution Network in the Distributed Generation Activity.

category with consumption greater than 500 kWh and the rest of the categories, the "Net Billing" compensation system will be applied.

This remuneration model must be assessed over time and, where appropriate, modified to generate incentives for DG to be implemented by individuals and industries. This considering that according to a GIZ study<sup>3</sup>, investments with payback periods greater than 5 years are not considered attractive for the residential user, while for large industries and businesses, the maximum attractive payback period is 10 years.

Likewise, the government administration must ensure that the requirements for the authorization of companies dedicated to the installation of DG equipment, the registration and authorization of distributed generators, are not bureaucratic, presenting administrative obstacles, as this could discourage the adoption of DG.

#### **Positive impacts of DG implementation**

With this regulation, we have the following positive expectations: 1) That democratization of energy production be achieved; 2) Reduction of electricity costs for users; 3) Greater participation of environmentally friendly alternative

<sup>3</sup> See Technical feasibility study for the introduction of Distributed Generation (DG) through Alternative Renewable Energies to the electricity grid in low and medium voltage (LV and MV) in Bolivia, including analysis of interconnection of hybrid systems (displacement of diesel), From the Bolivian Ministry of Energy and German Cooperation (GIZ) at: [https://energypedia.info/images/2/28/Estudio\\_Generacion\\_Distribuida.pdf](https://energypedia.info/images/2/28/Estudio_Generacion_Distribuida.pdf)

energies in the country's energy matrix.

It is also expected to have an indirect positive impact on the dinamization of the economy, through the creation of companies and jobs. Government authorities announced that these regulations will allow the creation of at least 350 companies that will provide jobs for hundreds of people and will benefit users by reducing their electricity costs<sup>4</sup>.

### **Incentives for the implementation of DG**

Some countries in the region have also implemented DG regulation, for example Brazil and Chile since 2012, and Mexico since 2015<sup>5</sup>. These countries have applied tax incentives and financing in the acquisition of generation systems, in order to promote the growth of adoption of DG.

The Bolivian government has recently approved the first incentives for the adoption of the DG<sup>6</sup>, as well as for the use of electric and hybrid vehicles and agricultural machinery. These incentives are summarized in three aspects:

- import duties exemption for the manufacture and/or assembly of electric and hybrid vehicles and agricultural machinery.
- Financing destined to the manufacture, assembly and purchase of electric and hybrid vehicles and agricultural machinery.
- Favorable modification of the customs duty rates for the import of recharging systems, bi-directional and intelligent meters, inverters, and goods related to energy and DG.

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<sup>4</sup> See ENDE expects that with the distributed generation of alternative energy, 350 companies will be created, at: [https://eldeber.com.bo/economia/ende-espera-que-con-la-generacion-distribuida-de-energia-alternativa-se-creen-350-empresas\\_226716](https://eldeber.com.bo/economia/ende-espera-que-con-la-generacion-distribuida-de-energia-alternativa-se-creen-350-empresas_226716)

<sup>5</sup> See Comparative analysis of regulatory and commercial frameworks for the adoption of photovoltaic solar energy in Brazil, Chile and Mexico, by Ernst & Young S.A.S., at: <http://fundacionbariloche.org.ar/wp-content/uploads/2020/02/Presentacion-de-resultados-BR-CL-MX.pdf>

<sup>6</sup> See Supreme Decree No. 4539, July 7, 2021, 1404NEC, which introduces incentives for the use of alternative energy to contribute to the improvement of the environment, energy savings and efficiency.

## CHILE

### ACT No. 21,314 WHICH REGULATES AGENTS AND PENSION ADVISORS

On April 13, 2021, Act No. 21,314 was published in the Official Gazette (the “Act”). The Act provides, among others matters, new requirements for transparency and strengthens the responsibilities of market agents and regulates the social security advice. Mainly, the Act regulates the following legal matters:

#### A. Investment Advisory Services.

The Act subjects the provision of investment advisory services in Chile to the supervision of the Commission for the Financial Market (the “CFM”), by establishing that investment advisory may only be provided on a habitual basis by those entities registered in the registry that the CFM will keep for such purpose. As of its publication the CFM will have 12 months to enact a general rule to regulate, among other matters, certain requirements that must be met in relation to this registry.

#### B. Pensions Regulation.

The Act amends relevant matters regulated by the *Pension Funds Act* (Decree No. 3,500) including, among others: (i) maximum commission rates for the commercialization of life annuities insurance; and (ii) issues related to pension advice and the establishment of a *Pension Advisors Registry* kept by the Superintendence of Pensions. Furthermore, any sanctions procedures initiated before the entry into force of the Act must be prosecuted pursuant to the rules in

force and effect at the date of initiation of such procedures.

#### C. Money Credit Operations.

The Act modifies regulations on money credit operations (*operaciones de crédito de dinero* - Law No. 18,010) in a series of relevant matters, including: (i) limitations to charges of default interests; (ii) other interpretative provisions regarding applicable interests in these operations; and (iii) the fees charged by entities supervised by the CFM and the conditions under these must be charged. As of the publication of the Act, the CFM will have 12 months to enact a general rule in which it shall establish the conditions mentioned in point (iii).

#### D. Insurance Regulation.

The Act amends the *Insurance Act* (Decree with Force of Law No. 251) in matters related to: (i) the establishment of a new digital insurance consultation system for policyholders or insured parties under insurance policies or those who have an interest in accessing such information; (ii) certain prohibitions regarding the tender related to the insurances covering mortgage loans (e.g. tender rules require insurance companies to include an insurance broker in their offer); and (iii) registration requirements before the CMF for annuity sales agents. Additionally, the Act amends the Chilean Commercial Code with regards to (i) the recognition of the insurable interest of financial entities in insurance related with financial products or services, and (ii) regulations on insurance related to financial products or services and

voluntary insurance subject to ratification by the policyholder.

#### E. Corporations and the Securities Market.

The Act regulates multiple topics and introduces different modifications to the rules governing stock market agents, including: (i) the integration and interconnection in real time between stock exchanges; (ii) a reform of the reporting and sanctioning regime, through which the companies registered in the *Securities Registry* before the CMF shall implement control policies, procedures and systems intended to timely disclose essential information and avoid any leakage; (iii) prohibitions to directors, managers, administrators and chief executives, as well as some of their related persons, from carrying out transactions of securities issued by the relevant company, within 30 days prior to the disclosure of its financial statements; (iv) the presumption of liability of directors of a corporation who approve transactions with related parties in breach of the Act; (v) the CMF's authority to determine the requirements that a director must satisfy in order to be considered independent; and (vi) the creation of the figure of the "anonymous whistleblower" (*i.e.* those who, voluntarily and complying with the requirements of the CMF, collaborate with investigations providing substantial, precise, truthful, verifiable and previously unknown information to the CMF).

#### F. Criminal Law.

The Act modifies certain provisions regarding criminal law. The Act increases the minimum penalties

contemplated by these provisions, and modifies offenses related to, among others: (i) the destruction and delivery of false information to the CMF regarding the financial situation of entities subject to its control; (ii) the executive officers who fall under these offenses; (iii) the misuse of confidential information by external audit companies; and (iv) penalties to those who act as a *Pension Fund Administrator* without being authorized.

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**PROJECT THAT MODIFIES THE INDUSTRIAL PROPERTY LAW IN CHILE IS APPROVED BY THE CHILEAN CONGRESS**

With the purpose of increasing the protection and enforcement of industrial property rights in Chile, on April 20, 2021, the Chilean Congress approved a bill that sought to partially modify Law No. 19,039 on Industrial Property and Law No. 20,524 which creates the National Industrial Property Institute (the “Project”). The modifications will be enacted within the next months. Among the modifications, the following are worth highlighting:

Regarding *trademarks*, the Project introduces the recognition of new types of signs that can be registered, including olfactory and three-dimensional brands. It also incorporates the partial or total cancellation of trademark registration due to lack of effective use or loss of distinctive character in the national territory within at least five years from the date of its registration.

The Project also provides some measures related to the offense of trademark counterfeiting, establishing penalties of imprisonment, along with fines. In addition, once the counterfeit offense has been judicially evidenced, the Project introduces the possibility for the owner of the trademark registration to request that the compensation for damages be replaced for a single compensatory sum of approximately USD 140.

In terms of *patents of invention*, one of the main innovations is the possibility of requesting the granting of a provisional patent for a term of 12 months, providing its owner a priority

to file a definitive patent once the provisional term concludes.

Additionally, the Project reduces the term to request supplementary protection from 6 months to 60 days, counted as of the date the registration is granted, and limits its extension to a maximum term of 5 years.

Likewise, it establishes that all patent applications that exceed 80 pages will have to pay an additional fee for every twenty additional pages or fraction of a page.

Regarding *industrial designs and drawings*, the Project sets forth the possibility of undergoing an abbreviated proceeding according to which the applicant will be granted a “deposit certificate” of the industrial design or drawing, without need for a substantial examination of the application, in addition to extending the term of protection of these privileges to 15 years.

Finally, the Project also extends the concept of *trade secret* by including all undisclosed information that a person has under their control and that may be used in some industrial or commercial productive activity.

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## COLOMBIA

### MEASURES FOR CRIMINAL PROSECUTION AGAINST TAX CRIMES

Resolution 720 of 2021 established the criteria to determine the prosecution's jurisdiction over the possible commission of tax crimes.

The tax reform bills of recent years have adopted the standard of other jurisdictions regarding the criminalization of certain conducts related to tax obligations.

The amplification of the scope of withholding agent's omission crime (2016) and the creation of the relatively broad criminal category 'tax fraud' (2018) show that the intention of the Colombian state is to discourage tax evasion and non-compliance with tax obligations through criminal prosecution.

In this vein, the last two tax reforms (Law 1943 of 2018 and Law 2010 of 2019) created a group of the Attorney General's office specialized in the detection, investigation and prosecution of tax crimes, called the Special Directorate Against Tax Crimes, under the Attorney General's Delegate of Criminal Finance.

Based on this legal provision, the Attorney General issued Resolution 720 of 2021 in which criteria are established for the prosecution of tax crimes, according to the jurisdiction of the Specialized Directorate Against Tax Crimes.

Thus, the criminal penalization of conducts related to tax matters is increasingly close, so that taxpayers must act with the utmost diligence in determining and fulfilling their tax obligations.

#### **Decree 579 of 2021**

The decree aims to increase the number of bidders in the selection processes and reactivate the country's economy.

As of June 1, 2021, for purposes of registration in the Sole Registry of

Bidders (RUP for its Spanish acronym), the interested party shall report the accounting information for the last three (3) fiscal years.

If the bidder does not have the 3 years of experience, it will be able to accredit such information from its first fiscal closing.

For the purposes of the registration or renewal of this Registry for the year 2022, the interested party shall report the information of the last three (3) fiscal years.

As of July 1, 2021, the chambers of commerce will certify this information. Also, as of this date, the State Entities will establish and evaluate the qualifying requirements of financial and organizational capacity taking into account the information contained in the Sole Registry of Bidders. In any case, indicators proportional to the contracting procedure will be established.

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## URUGUAY

### ANALYSIS OF THE LAWS THAT GRANT SPECIAL LEAVE FOR VACCINATION AGAINST COVID-19 AND PLASMA DONATION BY WORKERS RECOVERED FROM THE DISEASE

In the context of the pandemic caused by COVID-19 and in order to continue fighting against this disease, in April 2021, the National Government passed two acts that grant special leave for workers in public and private sector.

The first of them is Act No. 19,947 of April 13, 2021, which provides a special leave for workers who attend to be vaccinated. The second is Act No. 19,950 of April 30, 2021, which grants workers recovered from COVID-19 a day off to donate plasma.

#### 1) Free hours to attend vaccination centers

Act No. 19,947 set forth that public or private workers who are scheduled to be vaccinated against the COVID-19 disease within their working hours, have the right to be absent from work on the day of vaccination for a maximum period 4 hours each day they have an appointment to get vaccinated. The mentioned hours have to be paid by the employer and considered for all purposes as worked.

##### I) Conditions to access the benefit

In order to access this benefit, worker must give prior notice to the employer or hierarchical superior that they will attend to be vaccinated and justify the vaccination within 3 (three) days of receiving the last dose.

##### II) Retroactive application

Finally, the rule sets forth its retroactive application for employees who have already been vaccinated against COVID-19 according to the vaccination plan of the Ministry of Public Health and some time has been

deducted for this fact. To access this benefit, the Law provides that the worker must justify compliance with the vaccination to the employer.

#### 2) Paid free day for plasma donation

In light of the importance of treatment in patients infected with COVID-19 with plasma from people who have been positive for this disease and have recovered, the National Government approved Act No. 19,950 with the aim of promoting plasma donation as another way to combat the pandemic caused by this disease.

The benefit consists of the worker's right not to work on the day he donates plasma, also receiving his wage that has to be paid by the employer and considered as worked for all purposes.

##### I) Workers included

The Law grants the aforementioned special leave to donate plasma, both to public activity workers and to those of private sector, who have contracted COVID-19.

Those workers who have contracted the disease, who have been cured and are plasma donors in accordance with the provisions of the Ministry of Public Health, may enjoy this said leave.

##### II) Scope of the special leave

Ministerial Ordinance 534/021 of the Ministry of Public Health amending Ordinance No. 392/021 of the same body, establishes the process for plasma donation. It consists of a first instance which includes a face-to-face interview where the candidate must give their formal consent, and where blood samples are taken for the usual serological studies for blood donors, hemogram and antibody titer for COVID-19.

In a second instance, after it is verified that the donor candidate meets all the requirements to do so, the effective extraction of the plasma to donate is foreseen, on the day and time previously coordinated with the person.

From the interpretation of the Law, it emerges that the benefit is only valid for the day on which the plasma is actually donated, the hours or day spent for complying with the face-to-face interview and blood sample extraction are excluded from the benefit.

### III) Conditions to access the benefit

The Act establishes that, in order to make use of the special leave, the employee must give prior notice to his employer or hierarchical superior that he will attend to make the plasma donation and justify the effective realization of it within 3 (three) immediately following days.

### IV) Retroactive application

Like the Law that established the special leave for vaccination against COVID-19, the benefit includes all workers who, prior to the approval of the Law, had donated plasma during their working hours. In order to access the benefit, they must duly prove it to their employer or hierarchical superior.

Finally, the Law provides that the benefit will govern for the duration of the declaration of Health Emergency decreed by the Executive Power.

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