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FEATURED Q&A

Will a Package of New Laws Help Argentina Fight Financial Crimes?

Q In December, Argentine President Cristina Fernández de Kirchner approved legislation that boosts government oversight of financial markets. The new laws increase penalties for crimes including money laundering, tax evasion and other offenses. Opponents of the new laws have called them ineffective and ambiguous. Are the new laws going to be useful tools to fight financial crimes in Argentina? Are they too broad, as some critics suggest? How will they affect financial services companies operating in the country?

A Jorge Argüello, Argentina's ambassador to the United States: "Argentina launched a series of legislative reforms to align its legislation on money laundering and terrorist financing to international standards. To this end, in 2011 Argentina amended the Criminal Code as it pertains to the crimes of money laundering, terrorist financing and not-previously-covered financial crimes, as well as an amendment of the Criminal Tax Act regarding the crime of tax evasion. A national program for monitoring the implementation of measures related to the prevention of and penalties for money laundering and terrorist financing was also established to ensure the effectiveness of this set of rules. The new rules of the Argentine Criminal Code on financial crimes provided the state with new tools to avoid a damaging economic destabilization. Therefore, it includes several financial crimes (insider trading and stock market manipulation, among others) that were previously considered only administrative violations with reduced fines. These reforms will not only close loopholes in the legislation, but will also protect the transparency of the financial system and the stock market, ensure equality among investors and protect the domestic economy and public savings. Regarding the crimes of insider trading, the amendment to the Criminal Code punishes anyone who provides or uses information obtained

Continued on page 3

Toll Rises to 358 in Honduras, Deadliest Jail Fire in a Century

Crews worked throughout the day Wednesday to place inmates' bodies in bags following Tuesday night's blaze at the overcrowded prison in Comayagua. Survivors said an inmate had deliberately started the fire. See story on page 2.

Photo: La Prensa.

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NEWS BRIEFS

Ecuador's High Court Upholds Libel Ruling Favoring Correa

Ecuador's highest court early this morning upheld a libel verdict that sentenced a newspaper columnist and three of the paper's executives to three years in prison and a total of $42 million in fines after they were convicted of libeling President Rafael Correa. The case stems from a column by Emilio Palacio in which he referred to Correa as a "dictator" and said Correa had "ordered discretionary fire" during a 2010 revolt. Palacio and two of the other defendants are in Miami, where Palacio said last week that they were seeking political asylum.

Chinese Loans Region More Than $75 Billion Since 2005: Report

Since 2005, Chinese banks have loaned more than $75 billion to Latin America, the *Financial Times* reported Wednesday, citing a new academic report. "Some on the left say China's rising importance in Latin America is driven by an ideological desire to boost South-South ties. Others on the right say that China is buying influence with cheap money," said Kevin Gallagher, one of the report's co-authors.

Vale's Fourth Quarter Profits Fall 21 Percent, Misses Estimates

Rio de Janeiro-based **Vale** said Wednesday that its profits for the fourth quarter fell 21 percent year-on-year as economic uncertainty in Europe took a toll, Bloomberg News reported. Net income fell to $4.67 billion, or 90 cents a share. Twelve analysts in a Bloomberg survey on average had expected 95 cents a share. Last year, the company invested $18 billion excluding acquisitions and, in 2012, it plans to invest $21.4 billion. Vale's stock has fallen about 16 percent in the last year.

Political News

Officials Confirm 358 Killed in Honduras Prison Fire

Honduran officials confirmed Wednesday that 358 people were killed in the fire that incinerated a prison in the town of Comayagua, making it the world's deadliest prison fire in a century, the Associated Press reported. Comayagua Gov. Paola Castro, who had once been a prison employee, told reporters that just before the fire started Tuesday night, she received a call from an inmate who screamed "I will set this place on fire and we are all going to die!" Castro said she immediately alerted firefighters and the Red Cross, but the fire brigade said guards kept them from entering the prison for a half hour while they shot their guns into the air, thinking inmates were rioting or attempting to break out. An unidentified prisoner had set his bedding on fire, survivors told investigators. The blaze swept through the prison within minutes, killing trapped inmates convicted of violent crimes as well as those awaiting trial. "We couldn't get them out because we didn't have the keys and couldn't find the guards who had them," said Josue García, a spokesman for the town's fire department. The prison in the town north of Tegucigalpa was packed with 856 prisoners. It was built in the 1940s to house 400 inmates and had 12 guards on duty at the time the blaze broke out.

ALBA Bloc Demands Summit of the Americas Invitation for Cuba

The eight-nation leftist ALBA bloc demanded Wednesday that Cuba be invited to the Summit of the Americas, Reuters reported. The political council of the bloc, which Venezuela and Cuba founded in 2004, held off on deciding to boycott the summit, which is to be held April 14-15 in Cartagena, Colombia, if Havana does not receive an invitation. The United States has insisted Cuba cannot attend the summit unless it takes on democratic reforms that would allow it to rejoin the Organization of American States, which is organizing the gathering along with Colombia. Cuban Foreign Minister Bruno Rodríguez has said, however, that Havana is not interested in rejoining the OAS, from which it was suspended in 1962, saying the organization "has served, for purposes of domination, occupation and aggression, as a platform for the United States to attack and plunder Latin America and the Caribbean." Leaders of 34 countries in the Western Hemisphere, including U.S. President Barack Obama, are expected to attend the summit. Colombian Foreign Minister María Ángela Holguín met last week in Cuba with Rodríguez and President Raúl Castro, who said Cuba would attend the summit if invited.

Rodríguez

File Photo: Granma.

Company News

Virgin Mobile Planning to Invest $300 Million in Latin America

Cell phone provider **Virgin Mobile**, a unit of British billionaire Richard Branson's **Virgin Group**, is planning to invest $300 million in Latin America over the next five years, Bloomberg News reported Wednesday. The company, which hopes the investment will make it Latin America's largest mobile virtual network operator, is planning to expand into Chile and Colombia this year and then begin offering service in Brazil, Argentina, Mexico and Peru, chief executive officer Peter Macnee told the news service in an interview in Bogotá. The company plans to purchase network space from other mobile providers rather than building new infrastructure, he said.

Virgin Mobile is planning to expand first into Chile and Colombia.

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Featured Q&A

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during their operations and the penalty increases if the person habitually engages in these activities, makes a profit or avoids personal or group damages. The inclusion of the stock market manipulation crime in the Criminal Code will enable punishment of all cases of price manipulation in the markets, such as through spreading false news and agreements between holders of securities."

Jeffrey R. Brown, associate attorney at Diaz, Reus & Targ LLP in Miami: "Argentina's new financial crimes laws will not be effective tools to combat financial crimes unless the government improves cooperation between its investigative and prosecutorial authorities. Improving cooperation is also a time-sensitive issue because while Argentina tries to improve cooperation, some financial services companies will leave the country because of these overly broad laws. Argentina was between the proverbial rock and a hard place when the Financial Action Task Force (FATF) released its Mutual Evaluation Report on Argentina on Oct. 22, 2010. The report condemned Argentina for not making adequate improvements to its anti-money-laundering/combating-the-financing-of-terrorism (AML/CFT) measures. The report especially referenced legal limitations in the Financial Information Unit's ability to prosecute financial crimes and inadequate supervisory provisions in the financial sector laws. Argentina had to choose between addressing the inadequacies discussed in the FATF's report and appeasing human rights groups, which view any expansion of government power as a threat to human freedoms. Argentina's new financial crimes laws address the FATF's concerns, and are broad enough to allow the government to adapt its prosecution as financial crimes evolve. However, the new laws do not address the lack of cooperation between the government agencies that prosecute financial crimes. Furthermore, while broadly worded laws give Argentina the flexibility it needs to deal with financial crimes, they will also drive some companies away—as has happened with Exotix Ltd. and Barclays Plc. Argentina eventually has to deal with its jurisdictional cooperation issues if it expects these new financial crimes laws to be effective."

José Octavio Bordón, former Argentine ambassador to the United States: "In Argentina, there is a consensus about the need to act against tax evasion and money laundering, both for domestic tax reasons and also to combat organized crime and terrorism. There are disagreements, however, on how to do that amid a climate of distrust among the various actors in our democratic system. In order to be effective and enduring, legislation must be subject to broad and rich debate and also must be technically well-written. Also, authorities must appropriately apply the laws. Are these conditions in place with this new law? Experts have pointed out that the law's wording has gaps and ambiguities that could generate incorrect and discretionary decisions. Supreme Court Justice Eugenio Zaffaroni has said that the law does not serve its intended purpose, but rather allows for controlling the finances of third parties. Progressive sectors that support the government oppose the law because they fear that another administration could use it to criminalize social protests. The opposition, business sectors and the media have criticized it on concerns that it could be used against politicians, businesspeople and journalists. Repealing the law would cause difficulties for the country and would deepen mistrust. The most reasonable path would be to seek dialogue in order to reform the law according to international standards that Argentina abides by, but with wording that respects our own legal tradition in order to boost the law's legitimacy and effectiveness."

The Advisor *welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.*

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Erik Brand
General Manager, Publishing
ebrand@thedialogue.org

Gene Kuleta
Editor
gkuleta@thedialogue.org

Rachel Sadon
Reporter, Assistant Editor
rsadon@thedialogue.org

Inter-American Dialogue

Michael Shifter, President

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Jeffrey Puryear, Vice President, Social Policy

Viron Vaky, Senior Fellow

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