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FEATURED Q&A

Will Mexico's New Contracting Law Aid Workers & Firms?

A new subcontracting law took effect last month in Mexico. Workers at a job site in Mexico are pictured. // File Photo: Mexican Government.

Q **A law that sharply restricts companies' ability to subcontract labor took effect last month in Mexico. The measure, which President Andrés Manuel López Obrador's government proposed, allows for subcontracting only for specific tasks that are not the contractor's main economic activity. To what extent will the new law aid companies and workers, and what are its main drawbacks? How will the reform affect foreign investment in Mexico, and which industries could see the biggest changes? What are the law's main tax implications for companies?**

A **Alejandro González and Larry B. Pascal, members of the International Practice Group at Haynes and Boone:** "The relative benefits and costs of the new Mexican labor on subcontracting vary based on employer and employee status. With respect to employee rights, the new law brings certain benefits, such as being part of an employer's payroll with full labor rights and protections, including receiving applicable benefits, such as 10 percent statutory profit sharing. Eliminating informal labor practices was the Mexican government's primary goal. However, the new law arguably imposes further rigidity in the Mexican labor market, which may suppress employment in the long run. However, from the employer's perspective, the new law imposes greater monetary, administrative and compliance costs by requiring that all personnel associated with the company's main economic activity have a labor relationship with the company. In practice, this may hurt employers by raising costs, preventing them from focusing on their

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TODAY'S NEWS

ECONOMIC

Mexico's López Obrador Won't Renominate Central Bank Head

Mexican President Andrés Manuel López Obrador said he will not endorse renewing the term of Alejandro Díaz de León as the country's central bank chief.

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BUSINESS

Codelco Says Legislation Would Threaten 40% of Copper Output

Legislation that would limit mining operations near glaciers would threaten 40 percent of the production of Codelco, the state-owned mining company said.

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POLITICAL

Colombia's High Commissioner for Peace Submits Resignation

Miguel Ceballos, Colombia's high commissioner for peace, said he had submitted his resignation to President Iván Duque.

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Ceballos // File Photo: Colombian Government.

POLITICAL NEWS

Colombia's High Peace Commissioner Tenders Resignation

Colombia's high commissioner for peace, Miguel Ceballos, said Saturday that he had submitted his resignation to President Iván Duque, EFE reported. Duque did not say whether he accepted Ceballos' resignation, which came as street protests have continued in the South American country. "I wish to express to you that for personal reasons, following the calls of my conscience and in fulfillment of the responsibilities that my soul has chosen, I irrevocably resign from my position as High Commissioner for Peace, as of May 26," Ceballos wrote in the resignation letter, which was dated May 3. Ceballos has been involved in the talks that Duque's government has been holding for more than a week with the National Strike Committee, which has been the main leader of the demonstrations that have convulsed the country since late April. Ceballos has also taken part in recent talks with political, business, religious and academic groups. Ceballos' resignation followed those of Duque's foreign minister and finance minister. Duque also replaced his culture minister on Friday. The protests were sparked when Duque's government unveiled a now-canceled tax reform. The demonstrations, which have been marred by violence and deaths, have morphed into protests against issues including poverty and police brutality. Ceballos has been at the forefront of government attempts to engage the National Liberation Army, or ELN, guerrillas in order to restart stalled peace talks, EFE reported. At least 42 people have been killed in the protests in Colombia, according to the country's Ombudsman's Office, CNN reported. Human rights groups have said the death toll could be higher. Following the government's withdrawal of the tax reform, S&P Global Ratings last week cut its credit rating for Colombia to junk status, while Fitch Ratings and Moody's Investors Service still have investment-grade ratings for the country. One more junk rating would lead Colombia to being automatically dropped from some indexes used by investors, triggering automatic selling of Colombian assets, Bloomberg News reported. Some institutional bondholders are barred from holding debt that is speculative-grade, leading to forced selling of some $1.5 billion in government dollar bonds, Citi has estimated. Between $1.4 billion and $2.6 billion of peso-denominated Colombian debt, known as TES, could also be sold in the event of another downgrade, according to Credicorp Capital Research.

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core business and delaying their ability to respond to market changes. Under the new law, companies may only subcontract for specialized services with authorized entities. From a foreign investment perspective, many industries could be affected, including but not limited to manufacturing, energy, technology, transportation and tourism. However, the true effect of the new law may not be known for years. From a tax perspective, companies may only deduct expenses for specialized services that are not part of their corporate main purpose, and companies run the risk of having certain contracting expenses disallowed by the Mexican Treasury in the future."

A **Joyce Sadka, head of the law department at Instituto Tecnológico Autónomo de México (ITAM):** "The previous regulation of outsourcing already stipulated that the practice was legal only when the outsourced tasks were specialized and not the main business of the firm, when the outsourcing firm respected workers' labor rights and when the company hiring the outsourcing firm did not have workers doing the same tasks but rather hired directly, not through outsourcing. However, Mexican labor courts by and large did not apply these requirements, and companies routinely avoided fiscal and labor law responsibilities. Had

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NEWS BRIEFS

Lasso to Take Office Today as President of Ecuador

Guillermo Lasso is to be sworn in as Ecuador's president today. The conservative former banker, 65, takes office promising to boost the country from its deepest economic slump in decades, betting on mass vaccination and a bid to make Ecuador more attractive to foreign investment. Ecuador's economy shrank 7.8 percent last year, and the International Monetary Fund has forecast that it won't recover to its pre-pandemic level until 2024, Bloomberg News reported. Lasso faces tough opposition in Congress, where he does not have a majority.

Peru's Castillo Gains Ground Against Fujimori in Latest Poll

Radical leftist Pedro Castillo has regained ground in the latest poll by the Institute of Peruvian Studies, released Sunday, Reuters reported. Two weeks ahead of the June 6 runoff, Castillo had 44.8 percent of support, while right-leaning former legislator Keiko Fujimori garnered 34.4 percent of support. Fujimori had been closing the gap between her and Castillo in earlier May polls. [Editor's note: See related Q&A in the May 17 issue of the Advisor.]

Brazil's Caixa Econômica Federal to Open 130 New Offices

Brazilian state-owned bank Caixa Econômica Federal plans to open 130 new offices by the end of the year, the lender's chairman, Pedro Guimarães, said last week, The Rio Times reported Friday. The expansion will include 79 branches for serving the public as well as 51 specialized agribusiness branches, Guimarães said. The new offices will open in 128 municipalities, and the expansion will give the bank a presence in all Brazilian municipalities with more than 40,000 residents.

BUSINESS NEWS

Codelco Says 40% of Copper Output at Risk From Bill

Legislation currently under consideration in Chile's Congress that would limit mining operations near glaciers would jeopardize 40 percent of Codelco's copper production, the state-owned miner told lawmakers in a letter, El Mercurio reported Saturday. The bill would affect Codelco's Andina, El Teniente and Salvador mines, Codelco said. The three mines account for nearly 40 percent of Codelco's output, Reuters reported, citing government statistics. Chile's Senate is debating the bill as it also considers increasing royalties paid by miners.

Consortium Submits Offer for Brazil Natural Gas Pipeline

A consortium made of Canada's Enbridge, Belgium's Fluxys and U.S. private equity firm EIG Global Energy Partners has submitted a nonbinding offer for Brazil's largest natural gas import pipeline, Reuters reported last Friday, citing three people with knowledge of the matter. Nonbinding offers for two pipelines, which Brazilian state oil company Petrobras put up for sale in December, were due by late April. One is the 2,593-kilometer pipeline, known as TBG, which transports gas coming from Bolivia, and the second is the southern TSB pipeline. Sources told Reuters the group was preparing to submit a binding offer by the July 5 deadline. It was unclear whether there are other bids for the pipelines, whose sale is expected to raise billions of dollars. If the consortium's offer is successful, this would be Enbridge's first foray into South America. The company said in a statement that it does not "respond to market speculation or rumors." Petrobras, EIG and Fluxys did not respond to Reuters' request for comment. In the past years, Petrobras has been moving to divest noncore assets in a bid to cut its debt load and emphasize its focus on deepwater oil production. It has already sold its stake in the TAG and NTS gas pipeline units to groups led by Engie and Brookfield Asset Management, respectively, Reuters reported.

JOB POSTINGS

EDITOR'S NOTE: We are pleased to share Latin America-related job postings that companies reading the Advisor and others have posted recently.

Genentech / Roche: Head LATAM Health Policy Leader, Washington, D.C.

Visa Foundation: Program Officer, San Francisco

Citigroup: Program Management International Analyst, Santiago, Chile

JPMorgan: Private Banker, Latin America, Miami

Prudential: Vice President, Head of Global Financial Crimes, United States

Viasat: Accounting Manager, Brazil

Aspen Institute: Latin America Finance Coordinator, Mexico City

International Monetary Fund: Director—Western Hemisphere Department, Washington, D.C.

Inter-American Development Bank: Chief Investment Officer, IDB Lab, Washington, D.C.

ECONOMIC NEWS

Mexican President Won't Renominate Central Bank Chief

Mexican President Andrés Manuel López Obrador said Friday that he will not endorse a renewed term for current central bank governor Alejandro Díaz de León, Reuters reported. The president said he would instead nominate an economist with a "social dimension." Díaz de León's term as head of the Bank of Mexico, or Banxico, ends Dec. 31. In his daily news conference, López Obrador said he would nominate a "prestigious" economist to the post. "It will be an economist with a social dimension, very in favor of moral economics," he said, adding that the next central bank chief would be a "professional who will meet the requirements of having experience in economic and financial matters," Reuters reported. López Obrador would still need his nominee, whose name he did not mention, to be ratified by the Senate, Bloomberg News reported. The ruling Morena party has a majority in the upper chamber. Mexico's peso lost 0.4 percent against the U.S. dollar following his remarks. Díaz de León was appointed to the central bank under the previous government. López Obrador has taken to blasting Díaz de León for the bank's failure to generate an operating surplus last year, which his government had hoped to put to use, Reuters reported. However, López Obrador has appointed three out of five members of the central bank's board.

Díaz de León // File Photo: Mexican Government.

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the previous law been applied correctly, a legal reform of outsourcing provisions would not have been necessary. The new law will reduce outsourcing, which overall would be good for workers if it does not inhibit economic activity and hiring. Outsourcing employers are less likely to settle labor disputes with workers because both the beneficiary company (where the worker provides labor services) and the outsourcing firm often deny that they have a labor relationship with the worker, and workers have difficulty proving who is their employer as they are often not given a copy of their employment contract and are made to sign undated letters of resignation before getting hired. The possible drawback of the law is that as labor becomes more expensive in Mexico, fewer jobs could be available, especially to the population usually working in outsourced jobs. This could especially affect foreign investment in Mexico, since most large transnational companies use insourcing and outsourcing to reduce the uncertainty attached to labor liabilities under Mexico's labor laws, which generally provide very high protection to workers on paper, but with highly unpredictable enforcement. It is still unclear how certain elements of the law will be interpreted. A national registry of outsourcing firms is mandated, but courts may see this registry as a violation of individuals' and firms' privacy and free association rights. Tax liabilities if companies break the law are quite harsh, but the criteria of what will constitute a specialized service and when a worker is considered to be outsourced are yet to be developed."

A **Daniel Aranda, partner at Foley Arena in Mexico City:** "The new provisions of the federal labor law intend to enable workers to effectively participate in profit sharing as mandated by Mexico's constitution, as well as to forbid companies from operating without employees (since some were outsourced and not all the outsourcing companies were in compliance with their social security obligations). In the case of companies entering the market, either foreign or local, it was standard to incorporate an operational company (only employing high ranked officers) and a services company (holding the totality of the work force). This structure enabled the operational company to maintain the vast majority of the profit, while allocating a minimal part of it in the services company (insourcing). The main drawbacks of these revisions to the law consist of: 1.) not allowing investors, whether foreign or domestic, to control allocation of profit; 2.) increasing companies' risk before the Social Security Institute by having desk workers as compared to field workers (the risk of a night pusher on a drilling rig is different to an accountant in his or her office); and 3.) uncertainty about whether the relevant authority will grant registration to vendors as specialized services companies and imposing a burden of surveillance on the finances and registrations of those vendors to prevent becoming jointly liable for labor liabilities and able to deduct such expenses. It affects companies in their ability to allocate profit and will imply restructuring to either have specialized cost centers or absorb the profit cost as well as the increase in social security risk, which could ultimately result in a 30 percent increase in its work force costs. The manufacturing and automotive sectors will be particularly affected, but mid-size companies in all sectors of the economy will be affected by such provisions. Any payment made to a service provider/vendor that assigns employees specifically to a company as a beneficiary of services and that fails to obtain its recordation as specialized will prevent the company receiving those services from deducting related expenses, and may trigger tax credits against it."

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org.

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