Covid-19: reporting on a crisis

# Latin America's tourism sector grounded amid pandemic

Emily Darby | 20 April 2020

Credit: shutterstock.com/ImYanis

**During what is usually high season for the industry, LACCA finds out how legal teams in Latin America's tourism and hospitality sector are coping with the covid-19 pandemic.**

Most countries have already imposed strict curfews, travel restrictions and mandatory lockdowns amid the covid-19 outbreak. Travel organisations that are usually thriving at this time of the year have shut their doors to clients and sent employees home. The World Tourism and Travel Council is estimating a global loss of US$2.1 trillion, along with 75 million jobs in the tourism industry alone.

Many Latin American countries rely on international and local tourism for a sizeable chunk of their GDP, and border closures could have especially devastating implications in the region. There is a real concern about a surge in unemployment in the tourism sector as businesses face mass lay-offs and, in the worst cases, bankruptcy. Legal teams are busier than ever as they seek ways to steer their companies through uncertain waters.

**Making tough decisions**

On average, around 40 million arrivals land each year in Mexico, Latin America's most popular holiday destination. When hotels and airlines shut their doors to the public it was the beginning of peak season, and Mexico had begun to welcome thousands of US holidaymakers for spring break. Despite widespread criticism of the government's passive response, Mexico introduced its lockdown on 24 March. Travel there has not been suspended completely, but with the government advising strongly against it and with most international borders already closed, flights and hotel reservations are being cancelled in their thousands. "Overnight, rates and [hotel] occupancy have fallen to unprecedentedly low levels," says Rodrigo Conesa Labastida, partner at Mexican firm Ritch, Mueller, Heather y Nicolau, SC.

Hotels are scrambling to reach deals with debt providers to minimise their losses, while keeping afloat of other obligations. Hospitality companies must find ways to pay workers while keeping up with tax and rental payments, as well as keeping abreast of the constant flow of legislative changes affecting them. Legal counsel are left facing tough decisions. "Most of the workforce of a hotel is hired on a permanent basis and therefore the employer is required to pay statutory severance if it decides to reduce payroll," says Ritch Mueller partner Javier Domínguez Torrado.

On top of labour and employment matters, companies are also having to renegotiate business development contracts, delaying the construction of resorts and tourist destinations. Legal counsel at Mexican real estate group IGS Enrique Aguilar admits that any deals in the pipeline have dried up for his company, though his team remains focused on continuing existing operations remotely.

Elsewhere in the region, Chilean real estate and tourism companies are in the midst of renegotiating contracts in a sector that had just begun to recover from the country's October protests. Many businesses are having to terminate operations altogether, says José Tagle, partner at Philippi Prietocarrizosa Ferrero DU & Uría (Chile). Some deal-making is being delayed, he adds, giving the example of two deals involving the acquisition of hotel assets that had already been put on hold following last year's social crisis and which have now been "definitively cancelled" because of the covid-19 pandemic.

Meanwhile, Brazil had just reached the other side of the economic downturn and Argentina was sorting through a huge debt pile when the public health crisis struck. The national incomes of Caribbean hotspots like Costa Rica and Panama have been affected, too.

Central American law firm Arias confirmed that since the pandemic started, more than 175 companies have applied for furlough, affecting around 4,700 employees. A spokesperson from the firm added that “many tour operators will be hit hard, as most of these businesses are in the SME (small-to-medium sized business) space, are very sensitive to cash flow problems, and rely on experienced employees who will need to search for alternate employment.”

**Staying calm in times of crisis**

Hotel companies must do their best to maintain customer loyalty in the long-term. To achieve this, they should avoid inflicting cancellation fees on clients and should be prompt at providing refund payments where necessary. Companies will rely on their customers once business resumes, so they should help make their lives easier wherever possible.

Once companies have mitigated any negative impacts on clients, legal teams should work with unions to establish flexible rights for workers and look for ways of preserving remaining assets. One way of doing this is to securitise some assets - such as receivables - to raise new credit. Partner Ivana Coelho Bomfim at Machado Meyer adds that it is imperative to maintain resources that companies will rely on when the market opens up again. “The conservation of machinery, gardens and facilities now enables a quicker resuming of operations for when restrictions are lifted,” she adds.

While it is prudent for businesses to preserve remaining assets, companies in the sector should also seek to make some cuts. It is critical for companies – especially those in the tourism and real estate sector who will be hit worse than others – to analyse and understand their cash flow forecast for the upcoming months to conserve cash, says Gomez-Pinzón partner Lina Uribe García. Meanwhile, Lima-based CMS Grau associate Carlos Calderón advises that companies “suspend their payments with counterparties that, due to the mandatory quarantine, cannot fulfil their obligations.” If there is room for negotiation, there is always the possibility of rescheduling payments, he adds.

With uncertainty on how long the pandemic may last, Beccar Varela partner Pedro Nicholson insists that maintaining communication and continuity between departments in whatever way possible can help businesses stay ahead of the evolving situation. “Negotiations and virtual meetings are the rule in this industry these days,” he says, adding that agreements can still be closed around a virtual table. Nader Hayaux & Goebbels partner Vanessa Franyutti urges that companies should also act with caution on certain matters: she advises that, before considering lay-offs or furloughs, “care should be taken in complying with all labour laws, especially in light of the executive orders mandated by the government to face covid-19.”

**A long road ahead**

Until initials signs of recovery begin to show, however, companies are looking towards governments to offer support. For some this has been a welcome lifeline, but for several others local governments have been too slow getting off the ground. One Mexican lawyer voices concerns that “the [local] federal government has been extremely slow to react and provide support to companies in the tourism sector, and others.” They added that businesses are being “left alone to deal with these hardships.”

Other countries are providing sector-specific relief. Colombia’s government has announced a 250-billion-peso (US$62 million) credit line especially for tourism and aviation industries, aimed at maintaining liquidity in the sector. In Costa Rica, legislation has included a four-month extended tax break for companies in the sector to reduce the possibility of job losses or bankruptcy. That said, Costa Rica’s National Chamber of Tourism has warned that all businesses will feel the effects of the crisis and that it may not be possible to protect every organisation. Lawyers from local firm BLP ascertain that with tourism one of the key components of the country’s income, the speed of the government response is essential to mitigating any negative consequences.

In Argentina, Beccar Varela partner Pedro Nicholson suggests that recent government legislation prohibiting employers from laying off staff for a period of 60 days to prevent job losses could simply just create a “time bomb”, leading to eventual spikes in unemployment.

Some industries bear a heavier burden than others. In Peru, partner Ines Baca at Estudio Echecopar member firm of Baker McKenzie International predicts that the hospitality sector is likely to take longer to recover than retail or catering, for example, as foreigners may be reluctant to travel overseas even once borders are re-opened.

After vessels carrying infected passengers made headlines, cruise companies are also worried about the impact on their revenue. But there is hope that certain sub-sectors could recover faster. “After the rewarming of economic activity, the resumption in urban and business-oriented hotels is likely to be more pronounced,” says Jonnys Borges de Lucena, partner at Machado Meyer Advogados

What lies ahead is uncertain, but it is clear that the tourism sector has been hit hard by the pandemic. In the meantime, companies should rely on their legal teams and external counsel to offer key guidance to mitigate the strain on their business, so that when restrictions are lifted, they have the best chance at bouncing back. “It’s hard to know how hard the impact will be, but it is definitely going to hit,” says IGS’s Aguilar. “For now, companies should keep working, be patient and keep focused on finding the opportunities that the crisis may create.”

---

Practice area: Real estate & tourism, In-house

Country: Argentina, Chile, Colombia, Mexico, Peru, Panama, Costa Rica, Brazil

Industry: Travel and Leisure