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Ministerio de Relaciones Exteriores

DOING BUSINESS IN PERU

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I. INTRODUCTION

For the past 25 years, Peru has been undergoing comprehensive economic growth, followed by a modernization and development process, which includes the establishment of a reliable legal framework geared towards maintaining the stability required to promote private sector activity and investment. This continuous growth has been the best incentive to attract substantial foreign investment in various industries.

The development of the agribusiness, fishing, and mining industries, as well as the completion of major infrastructure projects, primarily in the fields of energy, gas, and transportation, have all contributed to the growth of the domestic market and to increased international trade, making Peru one of Latin America's most attractive countries for investment, and a rising star in the region.

In addition to its ambitious entry into a series of free trade agreements with key commercial partners, such as the United States, China and other international players, Peru is continuously working towards positioning itself in the global market and obtaining a larger share of benefits from the global economy by strengthening its business ties with nations throughout the Pacific basin and further entering into a series of comprehensive and far reaching international treaties. As such, since 2011 Peru is a member of the Pacific Alliance together with leading Latin American economies (Mexico, Chile and Colombia), and has recently entered into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) along with important economies of the Pacific.

This paper briefly describes the legal framework¹ that applies to any individual or entity interested in doing business in Peru. Regulations regarding foreign investment, alternative corporate structures and other relevant provisions are summarized in order to explain the legal structures available for conducting business in Peru.

It goes without saying that the most favorable structure for any business must be determined on a case-by-case basis, and therefore, this document does not aim to take the place of appropriate legal advice.

¹ This document was updated on March 2019, as of which the laws and regulations referred to throughout the report were fully in force. Please seek legal advice on their enforcement when required.

II. PERU TO THE WORLD

In an effort to enter into the global market and create incentives to develop and expand its economy, Peru has entered into a number of international instruments aiming to attract national and international investment.

Investment Agreements

Peru has entered into a number of bilateral investment treaties, as shown in the list below:

Bilateral Investment Treaties (BITs)	
Argentina	Italy
Australia	Japan
Belgium-Luxembourg Economic Union	Malaysia
Canada	Netherlands
Chile	Paraguay
Colombia	People's Republic of China
Cuba	Portugal
Czech Republic	Romania
Denmark	Spain
El Salvador	Sweden
Finland	Thailand
France	United Kingdom
Germany	Venezuela

Investment Chapters in Free Trade Agreements	
Canada	Mexico
Chile	Panama
China	Singapore
Costa Rica	South Korea
European Free Trade Association (EFTA)	The Pacific Alliance
Honduras	United States
Japan	

Free Trade Agreements

Peru has also entered into trade agreements with several countries, as detailed in “Customs” (Section V, item C) hereof, aiming to reduce customs duties and facilitate trade of goods.

Double Tax Agreements

Likewise, Peru has entered into agreements to avoid double taxation for taxpaying residents in the contracting States. Currently, the agreements in force are:

Brazil	Portugal
Canada	South Korea
Chile	Switzerland
Mexico	The Andean Community (Bolivia, Colombia and Ecuador)

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

In March 2018, the CPTPP was executed. Peru entered into said agreement along with important economies of the Pacific such as Australia, Brunei, Canada, Chile, Darussalam, Japan, Malaysia, Mexico, New Zealand, Singapore and Vietnam.

The commitment of Peru under this agreement reinforces its strategic presence in the Asia-Pacific region, whose countries are important APEC economies; strengthens its goal to achieve free trade; and contributes to its desire of being considered a stable and investment-friendly country. It is deemed that this agreement will come into effect in Peru the first semester of 2019.

The Pacific Alliance

Peru is firmly committed to the development and success of the Pacific Alliance, a dynamic mechanism of economic and commercial integration composed by Chile, Colombia, Mexico and Peru. It seeks to create a deep integration towards the free circulation of goods, services, capital and people in order to boost the economic growth and competitiveness of the member countries. Also, it aims to become a platform to project itself into the world, particularly toward the Asia Pacific region.

Upon a formal establishment of the Framework Agreement, the Additional Protocol to the Framework Agreement was enforced by the Pacific Alliance member countries in May 2016 –a commercial agreement representing a first substantial advance towards the free circulation of goods and services. The aforementioned Protocol allowed the immediate elimination of 92% of the tariff universe, with full liberalization to be expected by 2030.

Likewise, by means of negotiated areas in the aforementioned document, the bilateral commercial agreements entered into by Chile, Colombia, Mexico and Peru were enhanced and complemented in order to create more opportunities related to the accumulation of origin and the insertion in regional production chains with broad and diverse supply of products with higher added value.

Additionally, in order to connect with the Asia Pacific region, the Pacific Alliance is currently negotiating agreements with high commercial and economic standards with Australia, Canada, New Zealand and Singapore looking to grant the category of Associated States to these countries and contribute to the establishment of production chains.

In sum, the Pacific Alliance provides tools to economic operators of the four member countries by defining clear rules for the exchange of goods and services, reinforcing the facilitation of commerce and generation of higher investment flows. In this sense, at its moment, commercial and corporate strategies and actions will be promoted. In its almost 10 years of creation, the Pacific Alliance has become a mechanism that contributes to the citizen welfare.

Further, Peru's participation in the CPTPP, the Pacific Alliance and APEC represents an opportunity to consolidate a platform with the Pacific as an articulating axis of our international insertion, participating in valuable global chains and driving competitiveness. In this context, the task being performed by the Peruvian State holding Pro Tempore Presidency of the Pacific Alliance since July 2018 is very important.

Organization for Economic Cooperation and Development (OECD)

On the other hand, Peru's economic success and continual expansion has prompted an interest in the country for adopting the best international standards and public policies. To accomplish this, Peru has sought the cooperation of the Organization for Economic Cooperation and Development (OECD) through the Country Program. This program will create a plan to implement and execute reforms that will increase productivity and set the foundations for sustainable economic growth and development. This will reduce poverty levels in the country and increase public welfare, without damaging the environment. This commitment to reaching the standards set by the OECD offers foreign investors a guarantee that the country is implementing the correct policies to ensure solid economic growth in the future.

Basic Considerations for Investing in Peru²

The following table provides potential investors an overview of basic considerations for investing in Peru:

Restrictions on foreign shareholders	Unrestricted
Minimum capital required to incorporate a company	Not required
Average time of the incorporation process	15 business days
Restrictions on foreign investment	Unrestricted in general terms, except specific limitations defined under the criminal code and/or regulated sectors.
Legal Stability Agreements	Available to investors who meet the minimum legal investment amount. Legal Stability Agreements aim to protect investors and recipient companies on matters such as income tax, free disposal of foreign currency, among others.
Restrictions on foreign exchange	Unrestricted
VAT	18%
Restrictions on hiring foreign personnel	Corporations may hire foreign personnel for up to 20% of their total number of workers.
Restrictions on private real estate property to foreigners	Foreigners are not allowed to own real estates within 50 kilometers from national borders.
Remittance of profits	Full profit remittance is allowed.

III. ESTABLISHING A BUSINESS

A. Permanent Structures

i. Common Company Type

The stock corporation and the limited liability company are the most important and frequently used company types regulated under the General Corporations Law (LGS), effective on January 1, 1998.

In general, Peruvian regulations regarding stock corporations are similar to those established in other jurisdictions.

The LGS Law recognizes and regulates four types of corporations: (i) stock corporations, (ii) limited liability companies, (iii) limited-liability partnerships, and (iv) limited partnerships.

The most common corporations in commercial practice are the stock corporations that can be of three types: (i) general stock - S.A.; (ii) closely held - S.A.C.; and (iii) publicly held - S.A.A. These three company types have the essential features of any corporation, that is, stocks are issued, their ownership is divided into shares of stock, and their shareholders enjoy limited liability.

(i) An general stock corporation is a capital stock company. Its capital is represented by shares which give titleholders the rights set forth in the LGS Law, as well as in the respective company bylaws.

(ii) Specific regulations regarding closely held corporations include characteristics proper to a capital stock company, and also provide a suitable corporate structure for a limited number of shareholders who are usually involved in the company management. Given the importance of shareholders' personal factors in terms of ownership and capital management, its shares cannot be listed on the stock market.

(iii) An publicly held corporation should meet one or more of the following conditions: (i) an initial public offering of stock or bonds convertible into shares has been made; (ii) it has over 750 shareholders; (iii) over 35% of its capital stock is held by 175 or more shareholders, not being considered among them those shareholders whose individual stock trend does not reach two per thousand of the capital or exceeds 5% of the capital stock; (iv) it is incorporated as such; or (v) all shareholders with voting rights have unanimously approved to adopt such corporation system. Publicly held corporation must register its stock in the Stock Market Public Registry and list them on the Lima Stock Exchange (BVL). This means that its stock trading of free transfer may not be restricted, unless otherwise expressly provided in the LGS Law. This type of corporation is subject to supervision by the Superintendency of Stock Market (SMV).

Regulations applicable to the limited liability company - S.R.L. are similar to those for closely held corporations as members' personal factors are involved in these types of companies pursuant to the LGS Law. In these companies, capital is represented by membership interest.

a. General Features

The table below describes the most relevant features of the general stock corporation, closely held corporation, and limited liability companies.

	General Stock Corporation - S.A.	Closely Held Corporation - S.A.C.	Limited Liability Company - S.R.L.
Minimum Number of Incorporator/ Organizer	2	2	2
Shareholder/ Member Liability	Limited to the amount of the shareholders'/members' contributions.		
Initial Capital	<p>The LGS Law does not require a minimum amount of capital for the incorporation/organization of a corporation/company.</p> <p>For some specific industries, the minimum initial capital for incorporation/organization is established (e.g., companies under the Peruvian financial system, pension funds management companies, and outsourcing companies).</p>		
Capital Stock	<p>Shares</p> <p>Different types of shares may exist. The difference is in the shareholders' rights, liabilities, or both.</p> <p>All same shares of stock have the same rights and are subject to the same liability.</p> <p>Corporations may issue shares with no voting rights. Shareholders have the right to receive preferred dividends pursuant to the bylaws. If there are distributable profits, the corporation is required to pay the dividends to shareholders with no voting rights on a preferred basis.</p>		Membership Interest
Maximum Number of Shareholders/ Members	750	20	20
Restrictions on Share Transferability and Formalities	<p>None, unless expressly limited by the other shareholders' right of first refusal, if said right is set forth in the bylaws.</p> <p>Transfers are private and are recorded in the company's Stock Ledger Book.</p>	<p>Limited by other shareholders' right of first refusal, unless otherwise provided in the bylaws.</p> <p>Transfers are private and are recorded in the company's Stock Ledger Book.</p>	<p>Limited by other shareholders' right of first refusal, unless otherwise provided in the operating agreement.</p> <p>Transfers are carried out by public deed and registered in Public Registry.</p>
Distribution of Profits	Profits are distributed among holders of shares/membership interests in proportion to their capital contributions, unless otherwise provided in the bylaws/operating agreement.		

	General Stock Corporation - S.A.	Closely Held Corporation - S.A.C.	Limited Liability Company - S.R.L.
	<p>Companies are required to set aside a minimum of 10% of their after-tax profits during each fiscal year to create or increase a legal reserve, until an amount equal to one-fifth of the capital stock is reached.</p> <p>Dividends must be paid in cash up to an amount equal to one-half of the distributable profits during each fiscal year, after deducting the amount that must be set aside for legal reserve. At the request of shareholders representing 20% of total shares with voting rights.</p>		
Agreements among Shareholders/ Members	<p>Agreements among shareholders/members and third parties are valid in all company types and enforceable in all matters concerning the company from the moment they are duly communicated.</p> <p>In case of conflict between said agreements and the articles of incorporation/organization or bylaws/ operating agreement, these latter will prevail.</p>		

b. Management

The table below provides a general overview of the corporate bodies involved in the management of general stock corporation, closed corporation, and limited liability company.

	General Stock Corporation - S.A.	Closely Held Corporation - S.A.C.	Limited Liability Company - S.R.L.
Board of Directors	<p>The existence of a Board of Directors as the governing body is mandatory by law.</p> <p>Directors are elected by shareholders. A Board of Directors must have a minimum of three directors. It is not necessary to be a shareholder in order to serve as a board member, unless otherwise provided in the bylaws. Directors may be removed at any time.</p> <p>No restrictions on nationality or domicile to board members.</p>	<p>The existence of a Board of Directors as the governing body is optional.</p> <p>Directors are elected by shareholders. A Board of Directors must have a minimum of three directors. It is not necessary to be a shareholder in order to serve as a board member, unless otherwise provided in the bylaws. Directors may be removed at any time.</p> <p>No restrictions on nationality or domicile to board members.</p>	Does not have a Board of Directors.

General Manager	<p>A corporation is also managed by one or more managers.</p> <p>The manager may be removed at any time by the shareholders or the board of directors, depending on which body has made the appointment decision.</p> <p>The LGS Law provides that the general manager, solely by appointment or provided otherwise, has full power and authority for procedural and administrative representation, as well as the power to dispose of or encumber the corporation's assets and rights, and may execute any agreement, act and transaction required to carry out the corporate purpose.</p>	<p>The general manager is responsible for the administration and legal representation of the company.</p> <p>The manager may be removed at any time by the Members' Meeting.</p> <p>The LGS Law provides that the general manager, solely by appointment as such and except as otherwise provided, has full power and authority for procedural and administrative representation, as well as the power to dispose of or encumber the corporation's assets and rights, and may execute any agreement, act and transaction required to carry out the corporate purpose.</p>
Shareholders' / Members' Meeting	<p>The Shareholders' Meeting is the corporation's highest governing body.</p> <p>The law establishes the formal notice requirements, minimum quorum, and which matters are solely under the jurisdiction of said general meeting, which are decided by simple or qualified majority vote (as established by law and by the corporate bylaws).</p>	<p>The Members' Meeting is the limited liability company's highest governing body. Its actions are subject to the LGS Law regulations.</p>

c. Incorporation Process

The process of incorporating a company takes approximately 15 business days. For founding partners of non-resident entities or individuals that are abroad at the time of incorporation, registered powers of attorney are required. These documents must be officially translated and registered before the Public Registry. This process could take up to 15 additional business days.

The table below is a timetable detailing the steps that need to be taken to incorporate/organize a company in Peru:

Steps	Time for Completion
Powers of attorney to incorporate/organize the company. ³	Up to 15 business days. These documents must be legalized and registered prior to the incorporation/organization of the company.
Verifying the availability of the proposed company name.	1 day
Preparation of incorporation/organization documents and notarization by a notary public.	2 - 5 days
Deposit at least 25% of the company's capital stock in a bank and obtain proof thereof.	1 day
Registration of the incorporation/organization documents in Public Registry.	2 - 7 business days.
Registration before the tax authority.	1 day
Legalization of corporate books.	1 day

³Should the founding shareholder be a non-resident corporation, the following documents are required in addition to the powers of attorney:

1. Certificate of Good Standing 2. Certificate of Corporate Authority

ii. Branches

An alternative to setting up corporations is to establish branches, which are deemed to have permanent legal representation and enjoy procedural autonomy in the sphere of activities assigned to them by the parent company, in accordance with the powers granted to their representatives.

The table below describes the requirements and procedure to establish a branch in Peru.

Establishment	By public deed with, at least, the following information: a) certificate of good standing of the main company in the country of origin with the constancy that neither the articles of incorporation nor the bylaws prohibit the establishment of branches abroad, b) copy of the articles of incorporation and bylaws or equivalents, and c) agreement to establish the branch in Peru, that indicates: (i) the capital assigned to the branch for its operations in the country; (ii) the activities of the branch and a declaration stating that said activities are part of the parent company's corporate purpose; (iii) the branch address; and (iv) the appointment of at least one permanent legal representative in the country, with the granted power of attorney.
Liability	The parent company is liable for all obligations incurred by the branch. Any agreement exempting responsibility is considered null and void.
Capital	The total amount of assets assigned by the parent company to undertake the branch's activities is known as "assigned capital". No minimum capital is required.
Administration	Branches are required to have at least one permanent legal representative in Peru.
Remittance of Profits	There are no limitations on the remittance of profits by a branch to its parent company.

iii. Joint ventures

Peruvian law defines two different types of joint ventures: the consortium and the silent-partnership agreement (contrato de asociación en participación). This is not a closed list, so other associative contracts such as shared risk or joint ventures are also permitted under Peruvian law, albeit no specific regulations exist.

The consortium is defined as a contract in which two individuals or legal entities join together in order to participate in a certain business to share profits and reduce their transaction costs. Consortiums do not generate a separate independent entity from its partners.

The LGS Law defines the silent-partnership agreement as a contract by means of which an individual or company grants to a person or persons (whether individuals or legal entities) a participation in the profits of the business that it carries out with third parties. In exchange, the participating partner usually provides some kind of contribution to the business. In this type of contracts, the participating party remains hidden from third parties with whom its partner may undertake business activities.

iv. Mergers / Investing in Existing Organizations

Foreign investment is granted equal treatment to local Peruvian investments.

Mergers between companies are permitted and must comply with the applicable requirements and formalities provided in the LGS Law.

There are no merger controls currently in force except for in the electrical power industry, as mentioned below in the section regarding Antitrust and Competition issues.

B. Agency / Reseller / Franchising / Distribution Networks

Peruvian law does not contain specific provisions for the establishment, treatment or requirements applicable to agency, reseller, franchising or distribution networks. Likewise, no agent or distributor protection regulations are currently in force. Accordingly, any agency, reseller, franchising or distribution operations undertaken with Peruvian entities will be governed by the provisions of any contract entered into between the parties.

Franchising agreements must be registered before the National Institute for the Protection of Competition and Intellectual Property (INDECOPI), the Peruvian trademark authority, in order to use the marks involved in said agreements.

C. Representative Offices and other “Non-Permanent” Establishments

Foreign corporations may establish offices and “non-permanent” establishments without prior approval or registration, except in certain regulated industries such as banking and insurance. This type of establishment must be vested with sufficient powers of representation to allow the agreements signed by these establishments to be enforceable under Peruvian law.

D. Authorizations and Registrations

The undertaking of certain business activities requires prior approval from the competent authorities. This is the case, for instance, for banking and financial, insurance, and telecom activities, among others. Likewise, any activities involving natural resources, both renewable and nonrenewable, require prior authorization or granting of a concession by the competent governmental authorities.

E. Sensitive Industries / Restrictions on Foreign Ownership

Generally, Peruvian law does not establish restrictions on undertaking any business activity or owning property in Peru, except for the limitations on shareholding ownership by foreigners in local companies in certain industries such as air and maritime transport, among others, and the ownership of land referred to in section regarding Land Use and Real Estate.

F. Political Risk and Related Issues

Peru has provided a stable legal and business environment for the past 25 years. As a result, the country has been recently granted investment grade by major risk assessment entities⁴. Provided they meet certain minimum requirements, foreign investors are entitled to enter into the Legal Stability Agreements referred to in the following section.

IV. PROMOTION OF INVESTMENT AND LEGAL STABILITY

A. Legal Framework for Foreign Investment

14 Peru has a general legal regime that promotes and establishes guarantees for foreign investments. In addition, specific

⁴The latest rating of Peru by the international agency Fitch Ratings was in September 2018, granting an investment grade of BBB+. Regarding Moody's rating, this was in August 2018 and gave a result of A3 (Stable)



laws regarding mining, hydrocarbons, telecommunications, agriculture and fishing, among others, further regulate foreign investment in those industries.

The most important principles governing foreign investment are the following:

1. Foreign investment is entitled to the same treatment as domestic investments.
2. Foreign investors may invest in any sector of the economy.
3. The Government's prior express authorization is not required.
4. There are no exchange controls and the use, convertibility, and remittance of foreign currency is unrestricted.

B. Stability Agreements for Investment Protection

Investors may benefit from Peru's legal stability regime by entering into Legal Stability Agreements (*convenios de estabilidad jurídica*), pursuant to which the Government guarantees the stability of the laws governing certain legal regimes and rights for a specific term.

Said Legal Stability Agreements have law status between the parties thereto. Therefore, the parties must abide by them and cannot amend them on a unilateral basis. Further, the Government may not unilaterally modify them through regulation or otherwise revoke them.

Legal Stability Agreements may be entered into at any time, provided the legal requirements are met. If an investment in the form of a contribution to a local company's capital stock has been made before the execution of a Legal Stability Agreement, said investment may be used to fulfill the investment commitment requirements for both the investor and the local company's Legal Stability Agreements, provided said agreements are entered into within the next twelve months after the registration of the capital stock increase in the local company's accounting records.

Generally, the term of any Legal Stability Agreements is ten years, and the time period to comply with the pertinent investment agreement is two years. However, for companies entering into concession agreements by virtue of Legislative Order No. 1362, the term of Legal Stability Agreements of the recipient company and those of each investor may be the same as the concession agreement thereof. In such case, the time period to invest and comply with investment requirements will be determined by the provisions in the pertinent concession agreement.

1. Requirements for Investors under the General Legal Stability Regime

Generally, among other requirements, investors are required to contribute to the capital stock of a local company within a term of two years and the total investment commitment shall be, at least, USD10 million for mining and hydrocarbon activities, or USD5 million for all other activities. Additionally, investment must be directed through the Peruvian financial system.

2. Requirements for Recipient Companies under the General Legal Stability Regime

Recipient companies may also enter into a Legal Stability Agreement with the Government if they receive investments from at least one investor meeting the requirements set forth by law.

Companies fulfilling this requirement may benefit from the stability of the employment and export promotion regimes. In addition, they can benefit from income tax regime stability, provided they meet any of the following requirements:

- The new investments exceed 50% of the company's capital stock and reserves accounts, and are allocated to the expansion of its production capacity or to technological improvement; or

- The new investments entail the acquisition of more than 50% of the shares of a company that is directly or indirectly owned by the Government (as is the case in state-owned companies that are privatized).

3. Rights Guaranteed under Stability Agreements

- For foreign investors:

Legal Stability Agreement's guarantee, for the entire term of the agreement and in connection with the investment commitment undertaken pursuant to the Legal Stability Agreement, legal stability of the regulations governing the following regimes and rights:

- Income tax regime: Dividends and any other form of profit-sharing to which foreign investors are entitled will not be affected by any tax resulting in a greater tax burden than that which was in effect as of the date on which the agreement was executed;
- The right to free availability of foreign currency (only for foreign investors);
- The right to freely remit profits, dividends and royalties abroad, without any limitations or restrictions;
- The right to use the best exchange rate available on the market;
- The right to non-discrimination.

- For recipient companies:

Legal Stability Agreement's guarantee, for the entire term of the agreement, legal stability of the regulations governing the following regimes and rights:

- Income Tax system (if at least one of the specific requirements is met): Throughout the term of the Legal Stability Agreement, amendments to the Income Tax regime will not be applicable to the titleholder of the Legal Stability Agreement. Similarly, taxable income will be calculated based on the same rates, deductions and scale set forth in the legislation in effect at the time of executing the agreement. This protection exists regardless of whether said modifications prove favorable or not to the company;
- Employment system
- Export promotion system

V. OPERATIONAL LEGAL ENVIRONMENT

A. Foreign Exchange

There are neither foreign exchange controls, registrations, authorizations or other similar restrictions in place for remittance of foreign currency to or from Peru; nor a requirement to obtain authorization in order to undertake foreign exchange transactions or to carry foreign currency. Any currency can be exchanged to Peruvian Soles and may be used in any transaction in Peru, provided that the parties agree to do so.

Bank accounts of any kind can be opened in USD and other currencies. Also, credit facilities may be contracted in USD or other currencies without any special authorizations.

B. Immigration and Visa Requirements

Any foreign citizen –tourist, business person or resident– desiring to enter the Peruvian territory shall present a passport

issued by a State with a minimum six-month validity counting from his or her entry to the Peruvian territory.

Below is an overview of the most relevant types of immigration status for corporate and business purposes.

1. Business Visa

Business visas are issued to foreign citizen who enter the country for corporate, legal, or contractual purposes, or to provide specialized technical assistance or similar purposes, with no intention to work or earn incomes from a Peruvian-source company.

Business visas are issued by Peruvian Consulates abroad after complying with the requirements (valid passport, letter of invitation and introduction letter, form, fee payment, etc.). Business visa may be issued from 5 to 15 business days.

In case of countries with which Peru has entered into international business visa exemption agreements, immigration status will be granted by the National Immigration Agency at immigration and/or border checkpoints. Some of the countries with this benefit are: Chile, Colombia, Mexico, Brazil, Costa Rica, India, China, Bulgaria, Croatia, Cyprus, Romania, Iceland, Switzerland, Liechtenstein, Norway, and European Union member countries that are part of the Schengen Area.

A foreign citizen who obtains this temporary status has the right to stay in the country for up to 183 calendar days per year, continuously or in different time period, without extensions.

2. Change of Designated Worker Immigration Status (Foreign Worker from Non-Resident Company)

This immigration status is granted to foreign workers who are relocated to Peru by their non-resident employer in order to render contractual services on the employer's behalf.

This immigration status entails the existence of two companies. The first company must be domiciled in Peru and operate in the country. The second company must be domiciled abroad.

The designated worker immigration status allows the foreigner to work in national territory, performing activities involving specific tasks or roles or work requiring specialized professional, business or technical knowledge.

The current Immigration Law differentiates between temporary designated workers and resident designated workers.

Resident designated workers may stay in the country for a renewable term of 365 days, while temporary designated workers have a term of 183 days, renewable for the same period of time.

3. Resident Worker Immigration Status

Foreign citizens who seek to work and reside in Peru are required to obtain resident worker immigration status.

For that purpose, they must enter into a foreign employment contract with a domiciled company, subject to the approval of the labor authority.

This immigration status can also be granted to workers of a transnational or international corporation who are relocated to Peru to work at a company belonging to the same group of companies or holding, as senior management, trusted management personnel or specialists.

The worker must then request the change of his or her immigration status to resident worker before the National Immigration Agency.

A foreign citizen who obtains this immigration status shall have the right to work legally for one year, renewable on a yearly basis.

C. Customs

The General Customs Law establishes the legal framework applicable to the entry and exit of goods to and from Peru.

1. Import

Only domiciled entities or individuals can act as importers of foreign goods for their definitive use or consumption in the country.

As a general rule, there are no restrictions to the import of goods, although some restrictions based on specific regulations (regarding matters like health and safety, security, environment, etc.) may apply. In such cases, importation is conditioned on the approval of the corresponding authorities.

Duties and taxes applied to import of goods are ad valorem duties, additional variable duty, Selective Consumption Tax (ISC) and Value added tax (VAT). In addition, the import of goods is subject to advance VAT payments.

The applicable ad valorem rates are 0%, 6%, or 11%, depending on the tariff sub-category of the imported merchandise. More than 70% of the merchandise listed in the current customs tariff is subject to a 0% ad valorem rate. Additional variable duties apply only to certain agricultural products. The rate will depend on the type of merchandise and the reference price established at the time of import.

As a general rule, the tax base for calculation of ad valorem duties is cost, insurance and freight (CIF value). This value is determined according to the Relative Agreement on Implementation of Article VII of the General Agreement on Customs Tariffs and Trade (GATT) of 1994 (Valuation Agreement) of the World Trade Organization (WTO).

Excise Tax applies only to a certain group of products: petrol (gasoline), gas-oil (diesel), spirits, cigars, tobacco and certain vehicles. The rate or amount will depend on the type of product involved (as discussed in the section on "Taxation and Cross-Border Transactions").

VAT applies to most imported goods. There is only a limited group of products that are tax exempted, according to the type of merchandise or the place to where the goods are imported (e.g., import benefits in the jungle region). The applicable rate is 18%.

The VAT's perceptions system applies, as a general rule, in the importation of all types of goods (However, there are cases in which said system does not apply). The applicable rate is: (i) 10% when, among other cases, the importer carries out for the first time an operation and/or customs regime, (ii) 5% when the importer nationalizes used goods, and (iii) 3.5% in the rest of cases. To calculate the VAT, the calculation basis is the customs value plus all the importation taxes.

2. Temporary Imports

Temporary entry of goods is also allowed. Such entries can be of two types: (i) for internal use and subsequent re-export (applicable to equipment and machinery included in a closed list of goods approved for this purpose); and (ii) for transformation and subsequent export of the final product obtained (applicable to raw materials). In both cases the payment of customs duties and import taxes is suspended by submitting a guarantee covering the amount of such duties and taxes plus interests.

3. Export

Export operations are tax-free and, as a general rule, there are no restrictions to the export of goods. However, exportation of some goods such as endangered animals, vegetable species, and archeological findings, among others, is prohibited or restricted depending on the type of good.

Only domiciled entities or individuals can act as exporters.

Temporary exports of goods are also allowed and can be of two types: (i) to be used abroad and returned to the country in the same condition as they were when exported; and (ii) to be transformed, repaired or replaced abroad. In these cases, the re-import of the goods is subject to special tax regulations.

4. Drawback

Peruvian regulations allow the refund of duties upon import of raw materials required for the production of the exported goods. From January 1, 2019, this refund is (a fixed rate of) 43% of the FOB export value up to a cap of 50% of its production value.

Only companies that manufacture or produce goods in the country (by themselves or by hiring third parties), using imported raw materials, can obtain this benefit after said goods have been exported. Specific conditions and requirements provided by applicable regulations must be fulfilled to obtain a restitution of the duties.

5. Good Replenishment with Customs Exemption

This regime allows goods to be imported (raw materials/inputs) with an automatic exemption of customs duties and import taxes. The exemption applies for the same quantity of equivalent goods (identical or equivalent) that was previously imported (without exemption) and was transformed to obtain goods that were exported.

This regime allows exporters to replenish, free of duties and import taxes, the raw materials and inputs used in the process of manufacturing goods to supply to their foreign clients.

6. Other Customs Procedures

- Entry into, or exit from Peru of goods contained in parcels carried by international cargo carriers, express mail, or courier services.
- A duty free system that allows duty free storage and sale to inbound or outbound passengers of domestic or foreign merchandise in authorized establishments inside international ports or airports.
- Entry into and exit from Peru of samples for exhibition purposes.
- Entry into and exit from Peru of baggage and household items.

7. International Trade Agreements

Peru has entered into several trade agreements that establish the reduction of customs duties and facilitate the trade of goods with countries in Asia, the Pacific Basin, Europe and South America.

Acuerdos vigentes

Agreements currently in force	Mexico
Andean Community	Pacific Alliance
APEC	Panama
Chile	People's Republic of China
Costa Rica	Singapore
Cuba	South Korea
European Free Trade Association (EFTA)	Thailand
European Union	United States
Honduras	Venezuela
Japan	World Trade Organization (WTO)
Mercosur	

Acuerdos próximamente vigentes

Australia	Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
Brasil	Guatemala

8. Antidumping and Countervailing Duties

In accordance with the WTO's general rules on antidumping and countervailing measures, Peru has adopted rules to prevent and correct distortions of competition in the market caused by dumping and subsidies. Peruvian provisions try to prevent unfair trade practices resulting from sale prices that are below the production cost of exported products, or from granting subventions.

Antidumping and countervailing duties are imposed by the National Institute for the Defense of Competition and Intellectual Property (INDECOPI). The customs authority is in charge of their collection.

D. Taxation and Cross-Border Transactions

The Customs and Tax Administration National Superintendence (SUNAT), the Peruvian tax authority, collects and administrates internal taxes, custom duties and other foreign trade borne charges which constitute Peruvian treasury revenue (exceptionally, SUNAT collects other taxes and contributions established by law). SUNAT also enforces the Tax Code and is involved in issuing rulings regarding matters of revenue.

1. Taxpayer Identification – RUC

Every individual, corporation, undivided estate, partnership or any entity, whether Peruvian or foreign, regardless of its tax domicile, must be registered in the taxpayer identification record (RUC) upon acquiring taxpayer status or becoming responsible for taxes administrated or collected by SUNAT. The same requirement applies to tax withholding agents.

The taxpayer and the tax withholding agent are identified by the 11-digit number assigned by SUNAT (the RUC), which is used to comply with both its formal and substantive tax obligations.

Workers (who earn "fifth category" income only) and non-residents subject to withholding in the source country of their income are not required to be registered in the RUC.

2. Peruvian Tax System

The following is an overview of the taxes generally applied in Peru, at the time this report was issued. This report also includes a description of certain tax issues relevant to mining activities.

3. Income Tax

- Scope of Application

Income tax is levied on income obtained from capital, work, the joint application of both factors, capital gains, revenues resulting from operations with third parties as expressly stated in the Income Tax Law (LIR), and imputed income as expressly stated in the LIR Law.

- Tax Jurisdiction

Peruvian residents are subject to income tax on their worldwide income. Non-residents or permanent establishments in Peru of foreign corporations are taxed only on their Peruvian source income.

- Peruvian Residents

For tax purposes, the following are considered residents in Peru, among others: (i) Peruvian individuals who reside in Peru; (ii) foreign individuals who have resided or remained in the country more than 183 calendar days within a 12-month period; (iii) legal entities incorporated in the country; (iv) branches, agencies or other permanent establishments in Peru of non-resident corporations, in which case the status of resident applies to the branch, agency or other permanent establishment as to its Peruvian source income.

- Peruvian Source Income

The term "income from Peruvian sources" includes, among others, the income generated and/or produced by real estate, loans, capital investments, technical assistance used for economic gain within the country, royalties and property located in or used for economic benefit within the country, personal work undertaken in the country, as well as that which is derived from civil, commercial, business or other activities conducted in Peruvian territory.

4. Individual Income Tax Rules

For resident individuals, income from capital is subject to an Income Tax rate of 6.25% on net income, while income from employment is subject to an accumulative progressive scale. Income up to 7 tax units (UIT⁶) is exempted from income tax; a rate of 8% applies to income from 7 to 12 UIT, 14% for the following bracket from 12 to 27 UIT, 17% for income from 27 UIT to 42 UIT, 20% for the next bracket from 42 to 52% UIT, and 30% for income over 52 UIT.

For non-resident individuals, a flat 30% rate is applied over the net rent, without deducting the aforementioned 7 UIT.

5. Taxation of Mining Activities

i. Special Deduction Rules

Pursuant to the provisions set forth in the Mining Law, the acquisition value of mining concessions is deducted as an expense and amortized during their lifetime, since the year in which the minimum production levels (regardless of the actual start of production) must be accomplished, and within the term determined by the titleholder of the mining concession at that time.

If the mining concession is abandoned or declared outdated before complying with the minimum production levels established by the applicable law, the acquisition value may be totally amortized in the fiscal period in which any of said events occur. In addition, exploration expenses incurred after the mining concession has started the minimum mandatory production stage may be totally deducted in the respective fiscal period, or amortized as of that time.

⁶As provided by law, in 2019 the value of the tax unit (UIT) is S/. 4200 (approximately US\$1,257). An exchange rate of S/.3.32 per 1 USD has been used throughout the document; this exchange rate may change at any time.



Development and preparation expenses allowing the exploitation of the mining concession for more than one year may be wholly deducted in the fiscal period in which said expenses are incurred, or amortized within said term and over two additional years (i.e. an overall three-year amortization period).

ii. Mining company tax benefits for public infrastructure investments

According to the Mining Law, investments by mining companies on public infrastructure may be deductible expenses for Income Tax purposes. In order to enjoy this benefit, the investments must be made in roads; seaports; airports; environmental sanitation works; energy, telecommunication, education and health infrastructure; and in public facilities for recreation and other public infrastructure projects.

Investments must be approved by the competent authority (i.e., in the case of roads, the Ministry of Transport and Communication). The amount of the investment that may be Income Tax-deductible expenses is only that which is related to the part of the works considered public infrastructure. Expenses related to maintenance, acquisition of land, or pre-investment and investment studies are not deductible (unless the taxpayer proves they are necessary to obtain the taxable income or maintain its source).

iii. Special Mining Tax

Mining companies are subject to Special Mining Taxes in the exploitation and production stages.

Special Mining Taxes are levied on the company's quarterly operating profits from the sale of mineral resources, determined according to the applicable accounting rules.

The effective Special Mining Tax rate ranges from 2% to 8.40%. There is no minimum Special Mining Tax. The tax effectively paid is a deductible expense for Income Taxes for the year in which it is paid.

iv. Mining Royalties

Mining Royalties are a royalty charge to be paid by subjects of mining activity mainly in favor of the Regional and Local Governments where mining resources are exploited.

Mining Royalties are currently a percentage of the quarterly operating profits, with effective rates ranging from 1 to 12%, which can be a deductible expense for purposes of annual Income Taxes for the year in which it is paid. Should the resulting Mining Royalty be lower than 1% of the respective quarterly sales revenue, the latter would be deemed as the royalty to be paid by the company. Finally, under current legislation, assignees of mining concessions are also subject to Mining Royalty regulations.

6. Transfer Pricing

In the case of sales and other property transfers, as well as in the provision of services, notwithstanding the consideration agreed upon between the parties, for tax purposes the relevant transaction will always be deemed as made at its corresponding "fair market" value. If the value determined by the parties differs from the "fair market" value, tax authorities will make the necessary adjustments to the involved parties.

With regard to transactions between "related" parties, or made from, to or through non-cooperative countries, tax haven or individuals under a preferential tax regime, the corresponding "fair market" value will be deemed equivalent to the consideration that would have been agreed upon by independent parties in comparable transactions, in identical or similar conditions, following local "transfer-pricing" rules.

The value of the operations will only be adjusted if the payable tax in the country is less (a fiscal damage). The Peruvian Tax Authority may make said adjustment, even if the previous assumption is not met, in case the adjustment involves the determination of a higher tax to transactions between the taxpayer and its related parties.

and Tax Administrations, approved by OECD Council, as long as they do not oppose the mentioned Peruvian legislation with character of law. For transactions carried out as of January 1, 2017, taxpayers subject to the tax regime must keep the following documents: (i) Local Report; (ii) Master Report; and (iii) Country-by-Country Report (Master and Country-by-Country report requirements are effective since 2018). Failure to comply with these requirements is subject to tax penalties.

7. International Transparency Regime (ITR)

The International Transparency Regime (ITR) applies to domiciled taxpayers owners of non-domiciled controlled entities. They must recognize the passive income of a foreign source in the same fiscal year in which such entities obtain them and pay the corresponding tax.

The ITR applies only to passive income obtained from "controlled foreign corporations" which: i) have a legal entity separate from that of the individuals who comprise it; ii) are entities incorporated or domiciled in tax havens, those corporations whose passive income is not subject to tax or which is subject to a tax rate equal or lower than 75% of the Peruvian Income Tax rate that would apply in Peru to income of the same nature; and (iii) are owned by domiciled taxpayers. Moreover, shareholders subject to the ITR are those who own more than 50% of the stock, economic benefits, or voting power of the foreign entity.

For this purpose, the following are considered "passive income" among others: income from dividends, interest, royalties, rental activities, capital gains from the sale of rights, real property and stock. Peruvian source income, such as dividends derived from Peruvian companies, is not subject to the ITR.

8. Value-Added Tax (VAT)

- Scope of Application

VAT applies to the following transactions: (i) sale of movable goods within Peru; (ii) services provided or used within Peru; (iii) construction contracts; (iv) first sale of real estate by constructors; and (v) import of goods.

- VAT Payers

All Individuals, legal entities, foreign company's branches irregular partnerships, associations, trusts, and mutual and investment funds that carry out any of the transactions subject to VAT.

Likewise, they are taxpayers of the VAT, joint ventures, consortiums and other forms of business cooperation contracts that keep independent accounting from that of the investors or ventures joint ventures, consortia and other forms of business collaboration contracts, which carry independent accounting of that of their investors or participants.

Individuals and any type of entity that does not carry out business activities may be subject to VAT rules if they regularly import goods or carry out activities subject to VAT.

- VAT Calculation

The payable tax is determined monthly by deducting the fiscal credit from the gross tax payable each month. The gross tax for each taxable transaction is the amount resulting from applying the tax rate to the taxable base. The VAT tax rate is 16%. A 2% rate is added for the Municipal Promotion Tax, which is governed by the provisions applicable to VAT, resulting in a total tax rate of 18%.

- Fiscal Credit

Consists of the VAT that appears separately in receipts/invoices. Only purchases of goods, provision or use of services, construction contracts or imports that are allowed as expenses or costs for income tax purposes and are related to transactions subject to VAT may be used for fiscal credit.

- VAT Definitive Recovery Regime for Mining Activities - Act No. 27623

The regime allows holders of mining concessions performing mining exploration activities, which are still in a pre-production stage, to recover VAT paid on imports or local purchases of certain goods, and for the acquisition of certain services and construction contracts related to said exploration activities, provided that the formalities and requirements set forth in the applicable laws are fulfilled. This regime will be in force until December 31, 2019.

9. Tax on Net Assets (ITAN)

This tax levies companies' net asset value as reflected on their balance sheets as of December 31 of the year prior to the date of payment, after deducting the depreciation and amortization permitted by the LIR Law.

ITAN must be paid only by companies subject to the general income tax regime. ITAN is determined by applying a 0.4% rate to net asset values over S/1,000,000. Net assets with a lower value are not subject to ITAN. In principle, taxpayers have the option of considering ITAN payments: as a deductible expense; or as a credit to offset the corresponding monthly Income Tax prepayments and their annual Income Tax. If the ITAN paid exceeds the annual Income Tax due at the end of a fiscal year, taxpayers may request the refund of said excess.

10. Financial Transaction Tax (ITF)

The ITF applies, among others, to deposits and withdrawals to bank accounts, with the exception of transactions between an accountholder's own accounts; payments to a financial institution; purchase of cashier's checks, bank certificates, traveler's checks; money transfers made through a financial institution or a fund transfer company.

The tax rate is 0.005% and must be withheld by the financial institution or fund transfer corporation, as appropriate.

11. Selective Consumption Tax (ISC)

The ISC levies the import and local sale of goods, such as certain cars, cigars and similar, alcoholic and non-alcoholic beverages and fuel.

Depending on the respective good's nature, the tax is determined based on systems to the specific value and to the value according to the price of sale to the public.

12. Tax Incentives

- Tax benefits for public investment projects – Act No. 29230

Companies in general may enter into agreements with Regional and Local Governments to finance or carry out public investment projects listed on ProInversion's portfolio. Once finalized, the works must be transferred to the Regional and Local Governments. Investors are paid by the Peruvian Government with Regional and Local Public Investment Certificates (CIPRL). These certificates may be used by the company to offset its monthly and annual Income Tax payments for the respective year, up to an amount equal to 50% of the Income Tax for the previous fiscal year. If the certificates are not used in the respective fiscal year due to the 50% limitation, Peruvian Government will issue new certificates, adding a credit of 2% to the amount stated on the previous certificates. If the certificates are not used within a period of ten years, the company may request a reimbursement from SUNAT.

In order to subscribe such agreements, the companies must be selected by the regional and local governments according to certain statutory rules. Moreover, the companies must be registered in the registry of companies that undertake public infrastructure projects.

Legislative Order No. 1238 has extended this tax benefit to companies entering into this type of agreement with the Peruvian Government for public investment projects related to health, education, tourism, agriculture and irrigation, public order

and security, culture, sanitation, rural electrification, fishing, sports, environment, urban development, social protection and development, transportation, communications and justice, including its maintenance, provided they are registered on the list of priority projects issued by the competent Public Institution. Thus, Peruvian Government will issue “Peruvian Government – Public Treasury Public Investment Certificates” (CIPGN) to pay the private company the amount it invested. CIPGN Certificates are subject to the same rules as CIPRL Certificates.

- Stability Agreements

See section regarding Foreign Investment Protection (Section IV, item B).

E. Labor Regulation and Employment

The most relevant labor and employment aspects of the Peruvian legal framework will be outlined in this section. The following four charts include overviews of: (i) employment and non-employment agreements, as well as contracting through third parties (intermediation and outsourcing); (ii) the conditions applicable to labor relations; (iii) minimum standards in terms of salary and benefits applicable to workers; and (iv) pension systems and taxes on compensations.

1. Labor Relationships and Contracts

Employment Agreements

Indefinite-Term Employment Contract

- This is general rule. It is not mandatory to formalize it in writing as the main characteristics of the contract appear in the payment slip the employer must deliver to the employee.

Fixed-Term Contracts

Fixed-term employment is extraordinary, and requires an explicit justification in a writing contract. It applies in the following cases:

- Starting or increasing operations: Contracts for start-ups or new business activities for a maximum term of 3 years.
- Market needs: Contracts executed in order to meet business production due to demand significant variations.
- Corporate restructuring: For substitution, expansion or modification of the company's activities or production methods, for a maximum term of 2 years;
- Temporary: For temporary needs, other than the workplace's regular activities, for a maximum term of 6 months;
- Substitution: To temporarily replace a stable worker at the company;
- Emergency: To cover needs resulting from unforeseeable circumstances or force majeure, for the duration of the emergency;
- Specific work or service: To execute specific work or service consisting in a predetermined aim and specified duration;
- Intermittent: To cover permanent but intermittent needs;
- Seasonal: To cover needs that occur only at certain times of the year and subject to be repeated in similar periods.

Maximum cumulative term for any fix-term contract is five years.

Part-Time Contracts

When the working day of the employee is less than 4 hours a day, on average.

- No previous authorization is required.
- Must be in writing.
- It does not generate the right of: (i) protection against dismissal, (ii) Severance Pay (CTS), and (iii) full vacations (only 6 days per year).

Collective Agreements

They are entered into by one or more employers and one or more unions or workers' representatives in order to regulate working conditions (mainly workers' benefits).

Most of collective agreements are executed at a company level. If the union represents majority, its collective agreement applies to all workers; or only to its affiliated, otherwise.

If the parties do not reach an agreement through collective bargaining, may use pacific mechanisms to solve the conflict, such as conciliation, mediation, and arbitration.

Peruvian Constitution recognizes workers' right to strike.

Special Agreements	Special labor regimes exist for agriculture, civil construction, foreign employees, micro- and small business employees, among others. Each is governed by special legislation establishing its characteristics and specifications.
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Non-Employment Agreements	<p>Trainee Contracts</p> <ul style="list-style-type: none"> • The purpose is to professionally train and instruct those who has not entered the labor market yet. It includes the following agreement: apprenticeship, internship, youth trainee, clerkships, and labor re-insertion. • Individuals rendering these services are not entitled to common labor rights, but they have partial benefits instead. <p>Independent Services Contracts</p> <ul style="list-style-type: none"> • They are governed by the Civil Code. • They are available for independent services and there is no subordination or subject to the party requesting such service. • The service provider is not entitled to labor benefits.
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Labor Intermediation and Outsourcing	<p>Labor Intermediation</p> <ul style="list-style-type: none"> • Consists of placement of service company personnel at a user company. • Labor intermediation is only allowed when there is a need for temporary, supplementary or specialized services. Not valid for services that entail the ongoing performance of the employer's core business. • Personnel transferred to the user company may not exceed 20% of the user company's total workforce, except for supplementary or specialized services. <p>Outsourcing Services</p> <ul style="list-style-type: none"> • The purpose of outsourcing is to decentralize or externalize part of a company's core business by hiring a contractor or subcontractor (i.e. administrative, management, project contracts; contracts placing a third party in charge of an integral part of a company's production; etc). • The outsourcing contractor may: (i) be in charge of an integral part of the contracting party's activities, (ii) perform the tasks for which it is hired at its own risk and account, (iii) have its own financial, technical or material resources, (iv) be responsible for the outcome of its activities and, (v) have its employees under its exclusive subordination. • It may comply with the following characteristic elements: (i) multiple clients; (ii) enough equipment; (iii) capital investment; and (iv) salary evidencing that is not a simple personnel providing service. When the task or delegated work involves the user company's core business, and there is continuous placement of personnel, companies are jointly liable for the wage payments and legal benefits up to one year after placement of personnel.
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Unions	<ul style="list-style-type: none"> • To form a union and its type (company, industrial and craft unions) depending only on the employees' will. • A minimum of 20 members is required for a company union. Industrial unions require a minimum of 50 members. Union affiliation is voluntary, and is governed by its bylaws. • Unions represent employees in its company/industry facing collective conflicts and complaints.
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2. Labor Conditions

Age	<ul style="list-style-type: none"> • The minimum working age is 14 years, prior authorization of the parents and approval of the Ministry of Labor. Some activities require a greater age. • Retirement age is 65 years. Under the Private Pension System, workers may choose: (i) access to the retirement pension; or, (ii) to withdraw up to 95.5% of the Pension Fund accrued. If the person chooses to withdraw less, a pension with the remaining funds may be obtained. • There are earlier retirement cases for workers with sufficient accrued capital, and those performing qualified high-risk activities. • Compulsory and automatic retirement age is 70 years, unless both parties agree otherwise.
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Nationality	<ul style="list-style-type: none"> • Hiring foreign workers is subject to two limitations: no more than 20% of the employer's workforce, and no more than 30% of the payroll value may be foreign workers. • These limitations do not apply to: (i) excluded workers (immigrants, with Peruvian close relatives, etc.); (ii) to exempted workers (professional or specialized technical personnel, senior management personnel for a new business activity, etc.); (iii) Andean emigrant workers; (iv) workers subject to the Mercosur Agreement.
Working Day	<ul style="list-style-type: none"> • The maximum legal working day is 8 hours, or a 48-hours work week. • Time and Attendance Record tracking in/out time entry of workers, trainees, and third party service providers is kept. • All excess hours of any ordinary working day fixed by the employer refer to as overtime, and agreement by the parties is required. • The minimum payment of the first 2 overtime hours is 125% of the common value; and for the next overtime hours is 135%. • Cumulative or irregular working days are valid, but the maximum verification cycle may not exceed three weeks.
Salary	<ul style="list-style-type: none"> • Salary refers to the total amount received by workers in exchange for their services, whether in cash or in kind, provided it may be freely used by workers. • Non-remunerative benefits such as extraordinary payment, profit sharing, and working conditions, among others are allowed. • Workers receiving monthly payments greater than 2 UIT may agree an annual payment that includes all legal and conventional benefits, except profit-sharing. • Salary may not be discriminatory. For such purpose, the employer must prepare salary, category and function charts; and inform its salary policy to its employees.
Living Wage	<ul style="list-style-type: none"> • It is approximately US\$290 (S/930) per month. A proportional amount is paid to part-time employees. • The minimum wage for night-shift workers (from 10:00 p.m. to 6:00 a.m.) is 35% more than the living wage.
3. Labor Benefits	
Vacation	<ul style="list-style-type: none"> • Workers are entitled to 30 days of paid vacation leave after each full year of service to be used within the following year it was accrued. • For unused vacation leave, workers will be paid the amount equivalent to 2 salaries plus the corresponding salary, except managers being granted autonomy to schedule his or her vacation leave.
Rest Day / Paid Holidays	<ul style="list-style-type: none"> • Rest day per week refers to 24 continuous hours at minimum, preferably Sundays. • Workers have the right to paid holidays on: January 1 (New Year's Day), Easter (Holy Thursday and Good Friday), May 1 (Labor Day), June 29 (St. Peter and St. Paul), July 28 and 29 (Independence Day), August 30 (St. Rose of Lima), October 8 (Battle of Angamos), November 1 (All Saints' Day), December 8 (Immaculate Conception) and December 25 (Christmas Day).
Leave and Benefits	<p>Maternity Leave</p> <ul style="list-style-type: none"> • Female workers are entitled to 49 days of prenatal leave and 49 days of postnatal leave. • Female worker is free to use her prenatal leave, on a partial or comprehensive basis, together with her postnatal leave, as well as her pending vacations. • In the event of multiple births or birth of a child with disabilities, postnatal leave will extend to 30 days. • The mother is entitled to a daily one-hour nursing leave (two hours in case of multiple births) until the child become 1 year old. That nursing leave is considered time effectively worked.
	<p>Paternity Leave</p> <ul style="list-style-type: none"> • The working father is entitled to 4 consecutive days for paternity leave.

Leave for medical assistance and rehabilitation therapy for family members with disabilities

- It is granted to workers who are parents, guardians or conservators of persons with disabilities requiring medical assistance or rehabilitation therapy, with 7-day prior notice attaching the appropriate medical documents.
- It is granted for 56 hours to be discounted from vacation leave (or may be compensated with extra hours, unless agreed otherwise).

Leave for workers whose immediate family being under terminal or serious medical conditions or having suffered a serious accident

- It is granted to workers whose children, parents, spouse or common-law partner has been diagnosed under a serious or terminal condition, or having suffered a life-threatening accident.
- It is subject to 48-hour notice being occurred or acknowledge the event by attaching the medical certificate.
- Continuous 7-day paid leave of absence is granted. If additional leave is required, it is granted for an additional period of no more than 30 to 40 days to be discounted from vacation leave. It may be compensated with extra hours, unless agreed otherwise.

Adoption Leave

- It is granted to workers having requested the adoption of a child no more than 12 years of age.
- It is granted for 30 days, counting from the day the Administrative Adoption Placement Order and the respective Record of Reception are issued.

Family Allowance

- It is granted to employees whose salary are not regulated by collective agreement and have minor children under 18. The benefit may be extended if children studies at the university or superior education until they become 24 years old.
- It is equal to 10% of the living wage.

Profit Sharing

- Workers of companies earning incomes, unless employed by a less than 20-worker company, have the right to profit sharing.
- Profit sharing is calculated on the annual income determined pursuant to tax regulations. The employer distributes among its workers a percentage depending on said income according to its line of business, varying from 5% to 10% of the taxable income.

Severance Pay (CTS)

- Workers working a minimum of 4 hours per day on average are entitled to CTS.
- It is deposited every 6 months (in May and November) by the employer in the banking or financial institution up to the employee's choice.
- The amount of each deposit is equal to one-twelfth of salary. The monthly total amount the worker regularly receives by his/her work is computed, whether in cash or in kind.

Mandatory Legal Bonuses

- There are two mandatory legal bonuses per year: one in July for the Independence Day, and another in December for Christmas.
- The amount is one-month payroll being in force at the date of payment.

Life Insurance

- Workers have the right to a life insurance paid by the employer after completing 4 years of work.
- The employer may effect it since the worker has accumulated 3 months of service.
- The premium is negotiated with an insurance company.

Workers with Disabilities

- Employer with more than 50 workers must hire employees with disabilities representing at minimum 3% of its payroll.
- Reasonable adjustments may be set for them.
- Employers must provide reasonable accommodations to disabled workers, unless doing so would impose an undue economic burden to the business.

Lactation Room

- Employer may implement lactation room in every workplace with twenty or more women of childbearing age.

Workers' Termination

- Employment relationship can be terminated: resignation, mutual termination, retirement, dismissal, among others.

- As a general rule, a worker can only be dismissed under a fair cause under law (related to the capacity or behavior of the worker).
- Workers dismissed under an unfair cause (termination without cause, null and void dismissal or fraudulent dismissal), not pursuant to law but case-law criteria, may choose between two remedies: (i) reinstatement, or (ii) indemnity amounting to 1.5 salaries per year of service for indefinite employment contracts, and 1.5 salaries per month stopped working for fixed-term contract. Limit of indemnity is up to 12 salaries.
- Workers in position of trust or management positions may not request reinstatement, unless they have been promoted, in which case they may request to be reinstated in the position prior to the position of trust or management position.
- There is an emerging trend to claim for pain and suffering, as an additional remedy in cases of termination without cause.

4. Pension Systems and Taxes on Salary

Pension Systems

There are two main pension systems.

National Pension System

- It is administered by the Government through the National Social Security Pension Fund Office (ONP). All workers subject to private labor regime are included, unless they are affiliated to the private pension system.
- Affiliated workers contribute with 13% of their payroll.
- This is a collective system. If workers meet the minimum requirements, the received pension will primarily depend on the time being affiliated to this system.

Private Pension System

- It refers to Private Pension Fund Administrators (AFP).

EsSalud Social Security and Income Tax

EsSalud Social Security Health Insurance

- Monthly contribution per working regular affiliated member is 9% of the insurable payroll by the employer. Comprehensive healthcare of workers and their beneficiaries is covered by EsSalud.

Income Tax

- This tax is levied on all work-related incomes. It is charged to the worker, but must be withheld and paid by the employer.
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F. Antitrust and Competition

Anticompetitive conduct is illegal pursuant to the Antitrust Law (Ley de Represión de Conductas Anticompetitivas - LRCA)⁷.

Penalties are determined and executed by INDECOPI for each case that is presented before it. The LCRA Law also sanctions individuals or entities that, even when not competing in the market under investigation, act as planners, intermediaries or facilitators of an anticompetitive conduct subject to absolute prohibition.

Three main types of conduct are penalized by the LCRA Law: (i) abuse of dominant position, (ii) horizontal collusive practices, and (iii) vertical collusive practices.

1. Abuse of Dominant Position

According to the LRCA Law, an economic agent enjoys a dominant position in a relevant market when it has the possibility of substantially restraining, affecting, or distorting the supply or demand conditions in that market, without its competitors, suppliers, or customers being able to counteract it.

Holding a dominant position, with or without affecting real or potential competitors, does not constitute an illegal conduct. Monopoly or a dominant position is not prohibited per se; only the abusive use of such a position is considered anticompetitive behavior.

⁷ Legislative Order No. 1034 dated on September 23, 2015, recently amended by Legislative Order No. 1205.

The LRCA Law provides that abuse of a dominant position is verified when an economic agent that holds a dominant position in the relevant market uses this position to unduly restrain competition, obtaining benefits and harming other competitors, in a way which would not have been possible had it not held said position.

Said practices are sanctioned even when the dominant position arises from a legal regulation or instrument, contract, or administrative regulation. Notably, all conduct entailing abuse of a dominant position gives rise to corresponding prohibitions.

2. Horizontal Collusive Practices

Horizontal collusive practices imply the joint action of several competitors as one. The reason for this is that companies sometimes find that cooperating with other competitors is more beneficial than competing with them. Collaboration enables companies to reduce their volume of production, raise their prices, and increase the benefits to each company.

According to the LRCA Law, such practices may consist of agreements, decisions, recommendations, or concerted practices among competitors with the aim or effect of restraining, preventing, or distorting competition. The law is not limited to those agreements that are legally enforceable, but also includes cooperative activities, decisions or recommendations made through business partnerships, and even an understanding between parties.

Collusive practices are regulated by absolute prohibitions or regular prohibitions. Absolute prohibitions relate to practices that are illegal per se, while relative prohibitions relate to practices that require examination to verify whether they have anticompetitive effects. Absolute prohibitions relate to concerted practices between competitors (horizontal) that are not supplementary or accessory to other legal agreements.

3. Vertical Collusive Practices

According to the LRCA Law, these are collusive practices among economic agents operating at different levels of the production, distribution, and marketing chain that are aimed at restricting, preventing, or distorting free competition. These types of practices require at least one of the parties to have a dominant position in the relevant market prior to engaging in the collusive arrangement.

Illegal vertical practices may consist of alleged abuse of a dominant position and horizontal collusive practices. All vertical collusive practices constitute relative prohibitions. In all such cases, the competition agency must demonstrate that the practice has or may have a negative impact on competition.

4. Proving Collusive Practices

Given that collusive practices are difficult to prove, the competition agency may resort to indications and presumptions in order to verify whether similar behavior exists among competitors, and that the similarity is not naturally explained by the competitive operation of the market, such as simultaneous price fluctuations, similar quality of the product offered, and comparable indications.

In this sense, the competition agency must make a careful and restrictive analysis of the alleged uncompetitive practice. For example, it must make sure that the similarity in behavior is not the result of a mere suspicion, but that it has been absolutely proved and that there is no rational alternative explanation for the concerted practice which is capable of justifying such identical behavior.

5. Sanctions and Corrective Measures

Considering that under the LRCA Law, collusion or illegal agreements are only of an administrative nature, anticompetitive practices are sanctioned by INDECOPI through the imposition of fines. Depending on the seriousness of the offense, fines may



be up to 12% of the gross sales or revenues earned by the infringing companies.

INDECOPI is also empowered to order corrective measures aimed to restore the competitive process. Corrective measures are additional to the sanctions that may be imposed for infringing the provisions contained in the LRCA.

6. Leniency Regime

Pursuant to the LRCA, and subject to certain requirements, before the beginning of the proceedings, anyone may request that INDECOPI waive the fine in exchange for providing evidence that helps identify and establish the existence of a cartel, as well as penalize the liable parties.

The leniency regime does not eliminate or limit any possible civil liability on the part of the applicant for the damages resulting from the anticompetitive conduct.

G. Environmental Issues

The right to a balanced and adequate environment is recognized by the Constitution.

The General Environmental Law (LGA) – Act No. 28611, governs the general legal framework for environmental management and protection, as well as the basic principles and rules for ensuring the right to a healthy, balanced, and adequate environment.

The LGA Law provides that any human activities involving construction, structures, services and other activities, as well public programs, policies and plans which may cause negative environmental impacts are subject to the National Environmental Impact Assessment System (SEIA) and therefore require the previous approval of an environmental management instrument.

In accordance with Act No. 27446, National Environmental Impact Assessment System Law, and its Regulations, the SEIA have the purpose of creating the National Environmental Impact Assessment System as a unique system for identifying, preventing, supervising, controlling and correcting potential negative environmental impacts by establishing a uniform process comprising the requirements, phases and scope of the environmental impact assessments and ensuring citizen participation in said processes. It should be mentioned that by Legislative Order No. 1394 dated September 5, 2018, several amendments to Act No. 27446 were approved in regards to the creation of the National Environmental Certification Service for Sustainable Investments (SENACE) and the resulting transfer of authority in terms of environmental impact assessment to the Ministry of Environment. Therefore, accuracies in procedures and instruments regulated by SEIA are incorporated with respect to the environmental impact assessment process; coordination and organization between entities; reducing duplication, gaps, overlapping and terms for instrument technical assessment.

It should be mentioned, among other relevant aspects, that SEIA environmental impact classification for the investment projects has been modified, as well as the applicable environmental management instruments as follows:

CATEGORY	LEVEL OF IMPACT	MANAGEMENT INSTRUMENT
I	Low negative environmental impact	Environmental Impact Statement
II	Moderate negative environmental impact	Semi-detailed Environmental Impact Statement
III	High negative environmental impacts	Detailed Environmental Impact Statement (Environmental Impact Assessment)

Under these regulations, the execution of projects and service and trade activities shall not start without prior approval of the corresponding environmental management instrument. No national, sectorial, regional or local authority shall approve, authorize or allow these projects or activities if they do not have the pertinent environmental certification.

The Ministry of the Environment (MINAM) governs SEIA and is the primarily entrusted to propose and execute environmental policies. However, environmental authority, such as environmental management instrument approval, may be assumed by SENACE, the pertinent ministries, and the regional governments, as appropriate.

SENACE has been undertaking the approval of environmental impact assessments as follows:

- (i) On December 28, 2015, authority to approve Detailed Environmental Impact Assessments for mining and energy activities (electricity and hydrocarbons) was assumed.
- (ii) On July 14, 2016, authority to approve Detailed Environmental Impact Assessments for transportation activities was assumed.
- (iii) On August 14, 2017, authority to approve the Detailed Environmental Impact Assessments for the agricultural activities was assumed.
- (iv) On December 22, 2017, authority to evaluate environmental assessments of public and private investment projects of solid waste infrastructure under municipal management (if the service is provided to two or more regions according to their significant impact) and non-municipal or mixed management (in case they are located outside the industrial or productive facilities, concession area or lot, or owned by a solid waste operating company, taking into account their significant impact).

SENACE is expected to progressively have jurisdiction over the approval of the environmental impact assessments for other industries.

In addition, there are other public agencies with environmental authority to grant permits and/or authorizations that may be required by the titleholder of a project (depending on its nature), such as the National Protected Areas Agency, the National Water Authority, the Environmental Health Agency and the Ministry of Culture.

Also, the Environmental Assessment and Control Organization (OEFA) is the governing entity of the Environmental Assessment and Control National System (SINEFA) in charge of supervising, auditing and sanctioning compliance with environmental obligations of titleholders of activities that are under its authority. Pursuant to Executive Board's Order No. 027-2017-OEFA-CD, OEFA Sanctioning Administrative Procedure Regulation was approved in order to regulate the sanctioning administrative procedure, as well as the issuance of precautionary and remedial measures, according to its controlling and sanctioning role (applicable to any individual and legal entity, autonomous equity, irregular corporation, business association or other type pursuant to law conducting commercial activities subject to OEFA). Some ministries and regional governments also have jurisdiction to supervise and sanction regarding environmental matters, as established by current legislation.

During the last three years, the Government has enacted laws to strengthen environmental institutions and regulate the environmental aspects of the different sectors. Among the most important regulations on environmental matters are:

- (i) Act No. 30327, which among other aspects, created the Global Environmental Certification ("certificación ambiental global"), with the purpose of approving a sole administrative procedure (i.e., the EIA-d) in conjunction with several additional permits, authorizations and licenses regarding water, forestry and health issues, water areas and gravel materials, thus simplifying the procedures in place at this time. The Regulations for Section II of Act No. 30327 – regarding the Global Environmental Certification – were approved by Supreme Executive Order No. 005-2016-MINAM, dated on July 19, 2016.
- (ii) Environmental Protection Regulation for the Transport Sector, approved by Supreme Executive Order No. 004-2017-MTC.
- (iii) Supreme Executive Order draft that approves the Environmental Protection Regulation in Electrical Activities, whose publication was authorized by Resolution of the Minister's Office No. 031-2018-MEM/DM.
- (iv) Supreme Executive Order draft that approves the Environmental Protection Regulation in Hydrocarbon Activities, whose publication was authorized by Resolution of the Minister's Office No. 310-2017-MEM/DM.

- (v) Supreme Executive Order draft that approves the Environmental Management Regulation for Tourism Sector, whose publication was authorized by Resolution of the Minister's Office No. 272-2017-MINCETUR.
- (vi) Environmental Management Regulation in Mining Exploration Activities, approved by Resolution of the Minister's Office No. 042-2017-EM.

Moreover, the Framework Law on Climate Change, Act No. 30754 dated April 18, 2018 was approved in order to set the principles, approaches and general provisions in terms of public policies for climate change adaptation and mitigation measures management to reduce our country vulnerability, take advantage to low-carbon growth opportunities, and comply with international commitments assumed by the Government under the UN Framework Convention on Climate Change. Regulation thereof is pending.

On the other hand, it should be mentioned that Peruvian environmental law also promotes and force the investors to implement citizen participation mechanisms, mainly with the interest groups located in the area of influence of their investment projects. This year the Citizen Participation Regulation for Hydrocarbon Activities was approved under Supreme Executive Order No. 002-2019-EM.

Likewise, legislative and administrative measures (i.e., administrative acts allowing the start of a given activity) that may affect native or indigenous peoples require prior consultation proceedings that are carried out by the authority responsible for issuing the administrative and/or legislative measure in question.

Finally, when project development has concluded, titleholders must conduct remediation and closure activities in order to restore the affected area to its original characteristics.

H. Consumer Protection and Product Liability

The Consumer Protection and Defense Code (Act No. 29571) guarantees consumer access to suitable products and services, and to effective mechanisms to protect their rights, and establishes several criteria to reduce information asymmetry to benefit consumers. Thus, it establishes supplier obligations and consumer rights, and includes rules regarding the information that must be provided to consumers, suitability of products and services, advertising requirements, consumer health and safety, contracts with consumers, and provisions regarding specific products or services.

The first administrative instance of the National Institute for the Defense of Competition and Intellectual Property are: INDECOPI Consumer Protection Commission or Consumer Protection Expeditious Proceeding Resolution Agency, as appropriate depending on the amount or specialty. They review complaints and impose sanctions to those who breaches any disposition of the Code hereof. These resolutions may be appealed to the Consumer Protection Specialized Court of INDECOPI, in the second and the final administrative instances.

The Code hereof is applicable to all consumer relations effective in Peruvian territory or having effects therein.

I. Land Use and Real Estate

Peruvian law offers rules that guarantee the acquisition, transfer and protection of real estate. The specific measures adopted by the Government have a threefold effect. First, the protection of the right to acquire property is at the constitutional level, ensuring the free exercise of this right and enshrining it as inviolable.

Second, the Peruvian Constitution also establishes that foreigners (whether individuals or legal entities) have the same status as Peruvians with respect to the acquisition of property, with a specific exception set forth for national security reasons regarding land located within 50 km of the border zone.

Third, several legal mechanisms have been developed to ensure the safety of transactions related to the acquisition, transfer, and use of property. The restriction to the right of foreigners to own land in frontier zones is not an absolute prohibition since it can be allowed due to public necessity and subject to a Supreme Executive Order.

1. Private and Public Real Estate

Investors interested in acquiring property in Peru should first be aware of the distinction between private real estate and public real estate.

The transfer of private property is governed by ordinary rules regulated by the Civil Code. According to these rules, transactions between individuals enjoy a wide range of contractual options, even allowing the creation of new types of contracts called “atypical contracts”, which are not stipulated in the current legislation. Within the regulated legal concepts are the real rights of property: surface rights, easements, ownership, and usufruct, among others. Formal ownership is also acquired through effective possession of an asset for ten years, which is known as acquisitive prescription.

Peruvian regulations also allow the parties to enter into preliminary agreements intended for the possible acquisition of real estate. This is the case of a commitment to execute an agreement, by means of which the parties agree to enter into a future contract; the party that refuses to execute the agreement may even have to pay a penalty. The option agreement is also available, in which one of the parties agrees to perform the sale within a stipulated term, with the other party having the power to decide whether or not to execute the agreement.

With the exception of donations and mortgages, which have certain formalities, agreements related to real estate may generally be executed by simple mutual consent. Practice and the need to protect property rights encourages the completion of the formalities that evidence the execution of an agreement, either by written evidence of the agreement, by formalizing the agreement in a public deed, or by recording it in the Public Registry.

With regard to private real estate, there is a special type of property that may only be transferred through special formalities. These properties are owned by native and peasant communities, in which case the sale of property is subject to the approval of the community. According to the resolution adopted at the respective community meeting, a person who has been expressly chosen to act on behalf of the community must execute the agreement.

Public real estate may be private property of the Government or belong to the public domain. In both cases, there is a very specialized regulation in place which stipulates a number of formalities that must be met for the use of said property by any individual. State-owned properties cannot be acquired by means of acquisitive prescription.

2. Urban and Rural Land

Another relevant distinction to be taken into account is the urban or rural nature of the land. This distinction applies to both state-owned properties and private real estate.

Urban lands are located within cities, including land on which commercial, industrial, residential and other public activities take place. When urban land is intended to be acquired for a specific purpose, it is very important to first obtain the necessary certification from the corresponding local authority, i.e., either a “land development and building parameter” certificate or a “zoning and roads” certificate. These certificates, which are valid for three years, detail the permitted uses and building parameters (among other information). Notably, while the certificates are valid, the person who requested them may act according to the information contained in them, despite the fact that within the three-year period regulations may change, modifying the uses and parameters of the land.

Rural lands are those located outside urban areas, intended for agricultural use, livestock, and rural activities in general. In most cases, it is possible to modify the designation of land from rural to urban, following fairly complex proceedings before

the competent local authority.

3. Registry System

The National Administration of Public Registries (SUNARP) is the entity that governs the real estate registration system. It is through SUNARP that any person may obtain a property registry certificate (Certificado Registral Inmobiliario - CRI). This document enables the purchaser to verify the existence and the attributes/description of the property (land and construction), the identity of the owner, and to check whether the title is free from attachments, mortgages, or any encumbrances of a judicial or extrajudicial nature.

The effectiveness of the real estate registry system is guaranteed by legal order. All the information published and contained in the records is presumed known by all, without admitting evidence to the contrary. Persons that appear as owners in this system are duly empowered to sell the properties of which they are titleholders.

4. Expropriation

Property rights are well protected and enjoy guarantees for their defense, but are not absolute. The Peruvian Constitution provides that a person may only be deprived of his/her property (expropriated) in case of national security or public necessity, declared as such by a law enacted by Congress, and prior payment in cash of an indemnity for the value of the property and profit loss. The owner of the land subject to expropriation may discuss the amount of the indemnity before the Judiciary or in an arbitral proceeding. Expropriation is only in favor of the Republic of Peru.

Recently, the government has resorted to this mechanism frequently to take over land to be used for infrastructure works, such as highways, ports, airports, mass transit systems, etc. The overall deficit in this area explains the use of expropriation.

J. Intellectual Property

1. Trademarks

Andean Community's Resolution No. 486 and Legislative Order No. 1075, amended by Legislative Orders No. 1309 and No. 1397, govern the protection of distinctive signs in Peru.

In Peru the right to the exclusive use of a trademark is acquired by registering it before INDECOPI Distinctive Sign Office. Any sign or mark that can be subject to graphic representation to distinguish products or services in the market can be registered as a trademark.

If the registration application of a mark is filed in compliance with all formalities required by law and no oppositions are filed, the procedure will take approximately three to four months. If oppositions are filed, the procedure – at first instance – would take six to eight months approximately. The decisions made by INDECOPI Distinctive Sign Office can be appealed at the Distinctive Sign Commission if they involve non-contentious proceedings (registrations that are denied ex officio) or at INDECOPI Intellectual Property Court in case of contentious proceedings.

The registration will be in force for ten years from the date it is granted and may be renewed for successive periods of ten years.

The registration of a trademark may be cancelled at the request of any interested person, if it has not been used in any of the member countries of the Andean Community (Bolivia, Colombia, Ecuador or Peru) during the three years prior to the filing date of the request for cancellation.

Commercial slogans, trade names, collective marks, certification marks and designations of origin are also considered distinctive signs subject to registration.

Trade names are the only distinctive signs that are protected by their actual use in the market, with registration being merely declarative.

Assignments, amendments and other acts affecting registered rights must be registered with the Distinctive Sign Office to be enforceable against third parties. License agreements may be registered.

On the same way, by virtue of Legislative Order No. 1397, two new constitutive elements of Industrial Property: (i) geographical indications; and (ii) indications of traditional specialties guaranteed.

This regulation states that indications of traditional specialties guaranteed are intended to protect traditional recipes and production or processing methods corresponding to traditional practice applicable to a product or food. Thus, added value is given to traditional products trading, production or processing; as well as their characteristics may be informed to consumers.

Distinctive Sign Office will be the entity to know and solve at first instance all concerned about these two new elements. However, it was established that these provisions will be effective once the pertinent regulation is published.

2. Patents and Industrial Designs

Andean Community's Resolution No. 486 and Legislative Order No. 1075, amended by Legislative Orders No. 1309 and No. 1397, govern the protection of new creations in Peru.

Patents for inventions are granted, whether for products or procedures, in all fields of technology, provided that they are new, involve inventive steps, and are capable of industrial application. Uses and second uses cannot be patented. If the patent application is filed in compliance with all formalities required by law and no oppositions are filed, procedures will take approximately four years. If oppositions are filed, procedures will take about five to six years. The registration lasts 20 years from the date the application is filed.

The right to the exclusive use of an invention is acquired by obtaining a patent before INDECOPI Inventions and New Technologies Office, the national agency responsible for granting and protecting patents. It has technical, administrative and operational autonomy to exercise the duties entrusted to it, and issues first-instance rulings on contentious and non-contentious issues submitted to it, including infringement actions, either at the request of a party or ex officio. Its decisions can be appealed before INDECOPI Inventions and New Technologies Office in case of non-contentious proceedings (patents that are denied ex officio), or at INDECOPI Specialized Administrative Intellectual Property Court in case of contentious proceedings. Annual fees must be paid in order for the patent to remain in effect, or where applicable, to continue with the patent application process.

Utility models, industrial designs and layout-designs of integrated circuits also can be protected. The registration of these creations is valid for a term of 10 years from the date the application is filed and cannot be renewed. Assignments, licenses, amendments, and other acts affecting patent rights must be registered with the Inventions and New Technologies Office to be enforceable against third parties.

Peru is a member of the Patent Cooperation Treaty (PCT) as of June 6, 2009. Therefore, all PCT applications filed after that date could enter the "national phase" in Peru.

Additionally, Peru has executed agreements on Accelerated Patent Procedures with Spain, Chile, Colombia, Mexico, Uruguay, Argentina and Brazil, to allow applicants for patents, with a positive patentability test or a registration grant patent in these countries, to request the acceleration of their procedures in Peru, as long as certain requirements are complied with, such as that the claims of both applications are equal.

3. Copyrights

Andean Community's Resolution No. 351 and Legislative Order No. 822 (Copyright Law, amended by Legislative Orders No. 1076) govern copyright protection in Peru. Copyright protection applies to any original intellectual creation of an artistic, scientific or literary nature, which can be disclosed or reproduced in any form.

Registration is merely declarative. Solely by creating it, the author of the work has the original ownership of an exclusive right that is enforceable against third parties and includes moral and economic rights. The INDECOPI Copyright Office is the national administrative entity responsible for administrative monitoring and protection of copyrights and related rights in the first administrative instance. Meanwhile, the Intellectual Property Specialized Court of INDECOPI represents the second and the final administrative instances.

K. Insurance

Insurance, reinsurance, intermediaries and insurance auxiliary companies are required to be duly authorized to operate locally. Their activities are supervised by the Banking, Insurance and Private Pension Fund Administration Superintendence ("SBS" for its Spanish acronym) in accordance with Act No. 26702, Financial System and Insurance and Organic System of the Superintendence of Banking and Insurance General Law.

However, in terms of insurance agreements, the applicable regulation is primarily contained in Act No. 29946, Insurance Contract Law (LCS), in force on May 2013. The application of this law is imperative, except where indicated otherwise, and applies to all types of insurance, without exceptions, including insurance that covers large risks. Likewise, this law will be of supplementary application should there be mandatory insurance, regulated by special laws, such as the Complementary Occupational Risk Insurance.

An important aspect of the aforementioned law is its protectionist scope in favor of the insured, having included the interpretation of the terms of the insurance policy in favor of the insured as a fundamental principle of insurance agreements, in case of doubt. Additionally, it has set forth a number of rules whose main objective is the defense of the interests of the insured, such as, among others, the consent of loss, abusive clauses and forbidden clauses.

Complementary to provisions set forth in the Insurance Contract Law, the SBS periodically issues several regulations and resolutions applicable to companies under the insurance system in order to establish terms and conditions of their activity; as well as regulations being complied with by SBS to supervise such companies. Among the most relevant regulations, the Transparency of Information and Contracting of Insurance Regulation (approved by SBS Resolution No. 3199-2013) protects the right of users to access information about products and services commercialized by insurance companies. It should be mentioned the Reinsurance and Coinsurance Contracting and Management Regulation (approved by SBS Resolution No. 4706-2017). It is applicable to insurance companies, reinsurance brokerage companies and foreign reinsurance company representatives. This regulation establishes the requirements for entering into reinsurance contracts, as well as a number of criteria to improve reinsurance contracting and supervision.

Finally, it shall be noted that different regulations under the Peruvian legal framework impose to representatives of different economy sectors the obligation to purchase different types of insurance regarding the type of activity being carried out and the involving risks, such as mandatory insurance for traffic accidents, personal accident and civil liability insurance for aviation activities, among others.

L. Internet / E-Commerce

The Civil Code recognizes the use of electronic and digital means as valid means to manifest the will and to perfect the consent in every legal act.

Peru has already regulated matters such as the use of electronic and digital signatures that is expressly allowed in accordance with Act No. 27269, Digital Signatures and Certificates Law and its Regulation, as well as the use and basic characteristics of electronic money as an instrument of financial inclusion, in accordance with Act No. 29985.

Likewise, for tax purposes, this type of commercial transactions carried out through the Internet is regulated as "digital services", and depending on how they have been carried out, they may be subject to income tax.

In recent years, various topics have been regulated related to the Internet, e-commerce and new technologies such as data protection, domain name registration, electronic government, computer crimes, etc. However, most of these transactions, including FinTech and equity crowdfunding, are self-regulated according to the terms agreed by the parties and, in a supplementary manner, by the legislation that is applicable.

M. Financing Issues Payments

The execution of financing agreements with foreign financial entities is not subject to any restriction and does not require any prior authorization or registration with the Central Bank of Peru or any other authority. Payment of debt abroad under such agreements is equally free of authorizations or restrictions, provided that applicable Income Tax withholdings are made on any interest paid.

Financial leasing activities are restricted to authorized Peruvian entities.

N. Regulación sobre operaciones con valores

Securities are mainly regulated by the Securities Market Law (SML). This law applies to securities that are massively issued, freely negotiable, and give their holders credit, equity or similar rights of an economic nature. Securities may be offered publicly or privately.

1. Security Offerings

All publicly offered securities must be previously registered with the Public Securities Market Registry (SMPR), which is managed by the SMV, and meet other requirements.

The SML Law, along with other regulations issued by the SMV, establishes certain standards such as transparency and timely disclosure of material information for potential investors. All information disclosed to the market through the SMPR systems for public disclosure of information must be accurate, clear, sufficient and timely. The information contained in the SMPR is freely accessible unless it is declared confidential under certain circumstances provided in the legislation.

Securities Market legislation mainly regulates the following types of public offerings: (i) public offering for the primary placement or sale of securities, (ii) tender offer (oferta pública de adquisición – OPA), and (iii) purchase offer (oferta pública de compra de valores por exclusión del RPMV- OPC).

2. Initial Public Offering or Sale of Shares

Our legislation defines a public offering of securities as any offer that is directed to the general public or to a determined segment of non-institutional investors for the sale or placement of securities. Any offer is presumed public if it is addressed to over 100 prospective investors.

Shares subject to a public offering must be registered before the SMPR, for which, as a general rule, an Information Memorandum, all information considered relevant to investors, audited financial statements for the last two fiscal years, and

a number of other documents and information described in the applicable regulations must be filed with the SMV.

Issuance programs remain registered during a term of six years, and the Information Memorandum must be updated in year three. Placement of securities may be made within the three years that follow the date of registration of the securities.

Peruvian law provides simplified registration mechanisms and lesser information disclosure requirements for offerings of securities in certain multilateral institutions that are exclusively launched to institutional investors, and for international offerings of securities registered with the United States Securities and Exchange Commission (SEC) issued under Rule 144A, under Regulation S, or authorized by the Securities Administrations in Chile or Colombia or other countries that have executed a Memorandum of Understanding under the Integrated Latin American Market (Mercado Integrado Latinoamericano - MILA

3. Tender Offer (OPA)

According with the rules for the OPA, if a person or company intends to directly or indirectly acquire or increase a significant equity stake (defined as any acquisition of shares with voting rights equal to or over 25%, 50% or 60% of the capital stock subscribed and paid up represented by shares with voting rights, the acquisition by any means of voting right capacity equal to 25% of the voting capital, or the ability to elect the majority of the issuer's Board of Directors or amend the issuer's bylaws) in a company whose shares are listed on the Peruvian Stock Exchange, said acquisition requires the launching of a tender offer, except as otherwise indicated.

If the acquisition of a significant equity stake is intended to be made in no more than four transactions over a three-year period, the OPA shall be launched within a specified period after the acquisition of said equity stake by a share percentage pursuant by law and under a minimum value set by the valorization entity appointed by SMV. The offering must be addressed to shareholders with voting rights and securities that give its holders the right to acquire said shares within a specified period, which did not participate in the previous acquisition. In other cases, the OPA should be the mechanism for acquiring a significant shareholding.

4. Purchase Offer (OPC)

Rules relating to OPCs provide that if the issuer of securities registered with the SMPR or in the Lima Stock Exchange requests the cancelation of said registration, or approve a transaction with a similar effect (e.g., a split whereby investors end up holding unregistered securities), a purchase public offer must be launched unless an exemption applies.

The OPC must be addressed to all investors that did not participate in the cancelation of the registration or the approval of the transaction of similar purpose, at a minimum price set by a valorization entity.

5. Investments in Securities by Local Institutional Investors

The acquisition of domestic or foreign securities by institutional investors is subject to certain regulations that may apply. For example, in the case of investments by pension funds or insurance companies, they must comply with the regulations approved by the Banking, Insurance, and Private Pension Fund Administration (SBS). On the other hand, in the case of investments by local mutual funds, they must comply with the regulations established by the SMV.

6. Lima Stock Exchange

The Lima Stock Exchange (BVL) is currently the only stock exchange in Peru. It has mechanisms for the regular procedure for listing of foreign-issue shares and other securities, as well as simplified listing mechanisms for securities that are already listed in other markets (dual listing). The BVL has also implemented a special segment for the listing of junior mining companies.

part of the Integrated Latin American Market (MILA), in order to facilitate the trading of securities in said stock exchanges among investors in their respective countries. Through the MILA, investors can sell and purchase securities in any of these three markets through an intermediary from their country of origin.

In addition, the BVL is currently committed to the development of mechanisms for negotiating new products such as negotiable bills, sovereign bonds and "green bonds" (debt instruments used to finance "green" projects, which are projects that do not affect the climate or environment).

7. Stock Exchange Intermediaries

Stock brokerage firms are in charge of all transactions undertaken on the Lima Stock Exchange. Said entities are required to obtain a license from the SMV and are subject to its control and supervision.

For operations within the MILA, local intermediaries can carry out operations in other stock exchanges (Peru, Chile and Colombia) through the broker platforms of the respective stock exchange.

Other mechanisms have also been implemented to allow investors direct access to the market to carry out stock exchange transactions through their intermediaries' systems.

8. Securities Clearing and Settlement Institutions – CAVALI

CAVALI is the entity in charge of clearing and settling all transactions undertaken on the Lima Stock Exchange, as well as the registry of ownership or encumbrance of security and other financial instruments, for which it has previously obtained a license from the SMV. CAVALI is also subject to the control and supervision of the SMV.

For purposes of negotiations under the MILA, CAVALI has executed agreements with the relevant clearing and settlement institutions in the MILA countries.

CAVALI has also entered into agreements with other clearing and settlement institutions from other countries for the purpose of trading securities simultaneously at the BVL and other markets (dual listing).

9. Taxes

Capital gains from the sale of securities by a non-resident entity are subject to a 5% rate or even 0% depending on compliance with certain requirements, provided that the shares are transferred through Peruvian Stock Exchange mechanisms. Otherwise, a 30% rate applies.

O. Guarantees

There are no restrictions for security interests being held by foreign individuals or entities in Peru. The most commonly used types of guarantees under Peruvian law are mortgages and pledges.

1. Mortgage

Real estate may be mortgaged.

In order to create a security under a mortgage the following essential requirements must be met:

- Expressed consent of the owner or his representative duly authorized.

- Secure compliance of a specified or determinable obligation.
- Secured amount must be fixed or determinable.
- It should be given under a Notarially Recorded Instrument, pursuant law otherwise.
- Registration of the Notarially Recorded Instrument containing the mortgage agreement in the Registry of Real Estate Property.

Once the mortgage is registered in the abovementioned registry, it is considered legally valid and effective. Mortgage foreclosure is normally executed through court proceedings.

2. Security Interest

A security interest attaches any personal property provided by Peruvian law. For its validation, it should be in written. Security interest may comply with required formalities; and to be enforceable as to third parties applicable disclosure mechanisms is required (generally, registration in the pertinent Public Registry Division).

Enforcement of the security interest can be made with no need of courts, except as provided otherwise in security agreement.

P. Litigation / Dispute Resolution Systems

Peruvian law allows the resolution of disputes either through the Judiciary or through arbitration courts. Foreigners are subject to the same rights and legal guaranties that apply to nationals. Due process and effective jurisdictional protection are recognized as constitutional rights.

1. Judicial System

The Peruvian judicial system is integrated by different types of courts that are specialized in different areas of law and have a determined jurisdiction defined by matters of law, location, amounts involved in the dispute, among other factors. Civil courts are in charge of civil, commercial and constitutional disputes, and challenges to administrative decisions, while criminal courts deal with any matter that is considered a crime under our Criminal Code or other applicable laws. Peru has a Civil Law System, unlike Common Law. Nevertheless, jurisprudence is mandatory if the Constitutional Court expressly determines that a case is considered "jurisprudence" under Peruvian Law.

Procedural regulations applicable to civil and commercial matters are contained in the Code of Civil Procedure (Código Procesal Civil), while criminal procedures are governed by the Code of Criminal Procedure (Código de Procedimientos Penales). The latter is being progressively replaced by new regulations called the Criminal Procedure Code (Código Procesal Penal), which is already in force in some provinces of Peru and is expected to be applied nationwide as of July 2020. In addition, certain constitutional procedural matters are regulated by the Code of Constitutional Procedure, while challenges to administrative decisions are governed by the Contentious Administrative Proceeding Law (Ley del Proceso Contencioso Administrativo).

The Judiciary is organized into 34 judicial districts around the country. First instance courts include both civil and criminal judges. In each judicial district, a Superior Court acts as the second instance court of appeals. There are specific proceedings for constitutional, criminal and civil matters in which the Superior Court acts as the court of first instance. In those proceedings, the Supreme Court acts as the court of appeals. The Supreme Court is the highest court and usually hears final reviews of cases only in matters of law.

In the case of protection of constitutional rights such as life, health, non-discrimination, employment, due process, property, assembly, secrecy of communications and private documents, bank secrecy, among others, the final review of the complaint corresponds to the Constitutional Court. The Constitutional Court is an independent court which is not part of the Judiciary.

2. Jurisdiction of Courts

There are two main categories to determine the organization of the judiciary system: by territory and by specialty. Jurisdiction is determined solely by law. However, it is a common practice that jurisdiction or grounds of territory may be modified by the parties through an agreement prior to trial.

3. Enforcement of Foreign Judgments

Peruvian law recognizes foreign judgments, enforcing them with the same effects given to Peruvian judgments. For said purpose, foreign judgments need to be recognized through a judicial procedure (exequatur).

Enforcement of foreign judgments is subject to satisfaction of the following requirements: (i) the judgment to be enforced does not resolve matters under the exclusive jurisdiction of Peruvian courts; (ii) the court issuing the judgment had jurisdiction under its own conflict of laws rules and under international rules on jurisdiction; (iii) the defendant was served with process in accordance with the law of the place where the court sits, was granted a reasonable opportunity to appear before said foreign courts, and was guaranteed due process rights; (iv) the judgment has the status of res judicata in the jurisdiction of the court issuing it; (v) there is no pending litigation in the Republic of Peru between the same parties for the same dispute, that was initiated before the commencement of the proceeding that concluded with the foreign judgment; (vi) the judgment is not incompatible with another enforceable judgment in Peru, unless the foreign judgment was issued first; (vii) the judgment is not contrary to generally accepted moral standards or public policy of the Republic of Peru; and (viii) if there is a treaty between the Republic of Peru and the country in which said judgment was issued, the provisions of said treaty will apply.

In the absence of a treaty, the reciprocity rule is applicable (said reciprocity being presumed), under which a judgment issued by a competent foreign court will be admissible in the Peruvian courts and will be enforceable thereby, except if according to said foreign law: (a) judgments issued by Peruvian courts are not admissible in said foreign country, or (b) judgments issued by Peruvian courts are subject to re-examination by said competent court of the issues addressed therein. Currently, there is no treaty between the Republic of Peru and the United States of America on the enforcement of foreign judicial resolutions.

4. Arbitration

Any civil or commercial dispute can be submitted to arbitration if the parties thereto agree to do so.

When arbitration takes place, any matters not expressly provided for by the parties will be ruled by the Arbitration Law, which contains provisions regulating both domestic and international arbitration carried out in Peru.

Foreign arbitral awards will be recognized and enforced in Peru, pursuant to the following instruments, even if they are based on a foreign law:

- Convention of Reconnaissance and Execution of Arbitral Decisions, approved in New York on June 10, 1958; or
- Inter-American Convention on International Commercial Arbitration, approved in Panama on January 30, 1975.

In addition to the previous mentioned conventions, Peru has upheld several multilateral instruments, standing out the ICSID Convention and the Montevideo Convention.

Peru has also entered into bilateral treaties regarding the recognition of foreign awards.

VI. WINDING UP / RESTRUCTURING A BUSINESS

A. Dissolution / Liquidation

The LGS Law sets forth the grounds and procedures for dissolution and liquidation of corporations and companies in general. However, certain entities, such as financial entities, must apply specific liquidation regimes, based on their particular activity.

1. Dissolution

A corporation will be obliged to dissolve in the case of any of the causes established in article 407 of the LGS Law.

Pursuant to the provisions of the LGS Law, the voluntary dissolution process can be agreed upon by the shareholders in a general meeting, without a legal or bylaw cause.

In any case, the board of directors, or when such a board does not exist, any manager, administrator or shareholder, must call a general shareholders' meeting within 30 days, in order for the corporation to approve the dissolution or agree to adopt all necessary measures to allow it to overcome the grounds for dissolution.

It is worth noting that although corporations are run by the shareholders and its governing bodies, the Peruvian Government may compel the company to continue its activities due to reasons of national security or public necessity, even if the dissolution has been agreed.

2. Liquidation

The liquidation process is initiated as an immediate consequence of the decision to dissolve the company, which maintains its corporate existence until the liquidation process is duly completed and its extinction is recorded in the Public Registry.

The liquidation process is conducted by one or more liquidators, individuals or legal entities, designated by the shareholders' meeting.

Liquidators must keep the shareholders informed regarding the financial statements and the progress of the liquidation. It's important to notice that the remaining assets cannot be distributed between shareholders before corporate creditors are completely paid off.

Once the remaining assets have been distributed, the liquidators will request the extinction of the company before the Public Registry. Once the extinction is declared, if there are pending debts to creditors, those creditors can enforce their payment against the shareholders, but only up to the amount of the remaining assets distributed thereto in the liquidation process.

B. Insolvency / Bankruptcy / Restructuring

All insolvency, bankruptcy and restructuring processes involving companies or individuals who are Peruvian residents and perform business activities are governed by the General Bankruptcy Law and complementary regulation.

INDECOPI, through its Bankruptcy Procedures Commission, is the government administrative agency with exclusive and mandatory competence over bankruptcy matters. Banks, insurance companies, private pension fund administrators, autonomous equity, and governmental institutions such as ministries, tax authorities, local governments (municipalities), and similar are not subject to this law.

The General Insolvency Law establishes two types of procedures: (i) preventive bankruptcy procedure and (ii) ordinary bankruptcy procedure.

The preemptive bankruptcy proceeding shall only be initiated at the request of the debtor when its accumulated losses, after deduction of the reserves, are less than one third of the paid-in capital stock and do not have more than one third of its obligations due and unpaid for a longer period to 30 days. Through this procedure and with the approval of the creditors' meeting of the Global Refinancing Agreement, the debtor can obtain a rescheduling of their debts, lower interest rates and other financial benefits.

The ordinary bankruptcy proceeding may be filed by the debtor (voluntary petition) when it has losses in excess of one-third of its paid-in capital, or past due obligations in excess of one-third of the debtor's total liabilities for a period longer than 30 days. Bankruptcy can also be initiated by creditors (involuntary petition) when their credits exceed 50 tax units (UIT), and are past due for more than 30 days. The ordinary bankruptcy proceeding seeks to provide an orderly scenario to allow creditors to decide whether to restructure or liquidate the estate's debtor.

A creditors' meeting is formed by all creditors who hold claims against the debtor, provided that said credits are acknowledged by INDECOPI. In the ordinary bankruptcy proceeding most commonly used, the creditors' meeting decides whether to restructure or liquidate the debtor.

Unlike other legal frameworks for bankruptcy, there is no intervention or need for review and approval by a court or by INDECOPI with respect to the economic or financial soundness, reasonability or feasibility of the restructuring or liquidation agreements, or of the creditors' meetings decisions in general, and therefore, the Peruvian insolvency system is highly "privatized" at its core. INDECOPI only fulfills a role of supervision and control of legality (requirements and approval of majorities, mandatory regulation, compliance with bankruptcy regulation, non-existence of abuse of rights, etc.).

The creditors' meeting's agreements and decisions can only be challenged by the debtor or by creditors representing at least 10% of the total credits recognized by INDECOPI Bankruptcy Procedures Commission, based on the non-observance of the provisions contained in the legal system, breach of legal formalities, or in case of abuse of law.

In liquidation, payment of allowed credits will have the following order of precedence:

- First: Salaries and labor benefits owed to workers, as well as contributions to pension funds and required debt to the Social Security of Health.
- Second: Alimony credits (only applicable for bankruptcy of individuals).
- Third: Credits secured by mortgages, guarantees involving movable assets (pledges), warrants or precautionary measures against the debtor's assets, provided that said guarantees or liens were duly registered and the precautionary measures were attached before the commencement of the bankruptcy process.
- Fourth: Tax debts including taxes, fees, rates, contributions, interests and fines.
- Fifth: All remaining unsecured credits that were not considered above.

If liquidation within a bankruptcy proceeding ends with the liquidation of the entire debtor's estate and credits remain unpaid, then the debtor will be declared bankrupt at the liquidator's request in civil court.



VII. CONTACTS

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