

RODRIGO,  
ELIAS  
& MEDRANO  
ABOGADOS

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ANIVERSARIO

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# **BANKRUPTCY REFINANCING EXPEDITED PROCEDURE REGULATION**

**RESTRUCTURING AND INSOLVENCY ALERT**

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# 1. ASPECTOS INTRODUCTORIOS

On May 11, 2020, the Peruvian Government enacted Legislative Decree N° 1511 ("Legislative Decree") which creates a Bankruptcy Refinancing Expedited Procedure (*Procedimiento Acelerado de Refinanciación Concursal*, "PARC"). This procedure establishes an exceptional and transitory insolvency regime to legal entities negatively affected by the economic crisis generated by the outbreak of the COVID-19 to negotiate with their creditors and agree rescheduled payment of the debt, in order to avoid insolvency and bankruptcy.

By means of Supreme Decree N°02-2020-PCM, on June 7, 2020, the Peruvian Government approved the regulations of the Legislative Decree (the "Regulation"), defining various aspects related to the PARC. The most important aspects will be developed on the following lines.

All legal entities that meet the established requirements may join the PARC from June 8 to December 31 of this present year.


**In order for a legal entity to apply to initiate the PARC, it must meet the following conditions:**

- 1 Executive summary explaining clearly how the origin of the crisis is due to the impact generated by COVID-19.
- 2 A digital copy of the communication by means of which the legal representative of the legal entity informs the Shareholders' Meeting, partners or other equivalent body of its decision to submit the application to the PARC.
- 3 Tax identification number.
- 4 Identity card number of the legal representative.
- 5 Entry number of the public registry where the powers of attorney are recorded.
- 6 E-mail address to which notifications shall be sent, as well as a contact telephone number, and the corresponding authorization to send all notifications by that means.
- 7 A digitalized copy of the certificate or report issued by a risk center, issued no more than two (2) months before the date of submission of the application to the PARC, assuring that the legal entity maintains the classification of "Normal" or "With Potential Problems".

1 If on the application date, the legal entity does not have a credit classification, then the legal entity shall have not had a classification other than "Normal" twelve months prior to the application date.

2 Legal entities that do not have any classification in the last twelve months will also be considered as classified under "Normal".

3 Bankruptcy Bulletin is published digitally by INDECOPI and it contains the notice of initiation of the bankruptcy proceedings in Peru -including PARC-, as well as other relevant information, such as the call for the Meeting of Creditors (Link: <https://enlinea.indecopi.gob.pe/boletinconcursal/>).

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- 8** Digitized copy of the Statement of Financial Position, Income Statement, Statement of Changes in Equity and Cash Flow Statement, with their respective notes, as of the end 2019 and a monthly closing statement issued no more than two (2) months before the date of submission of the application to the PARC, signed by the legal representative and a certified public accountant. Such financial statements do not necessarily have to be audited.
- 9** A statement of obligations, including the name of the creditor and the amount owed for principal, interest and expenses, as the case may be, indicating which of these are related to the debtor.
- 10** Digitized copy of the sworn statement under civil and criminal liability, using to the form provided by INDECOPI declaring that:
- a) The information presented is true;
  - b) The legal representative has sufficient powers;
  - c) The origin of the crisis is due to the impact of COVID-19;
  - d) The legal entity is not in any of the impediments to join the PARC;
  - e) The debtor undertakes to submit the PRE within the time limit established in this Regulation; and,
  - f) Indication of the date of payment of the processing fee and the transaction number.

## 2. CREDIT RECOGNITION STAGE

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Once the notice of the commencement of the PARC is published in the Bankruptcy Bulletin, the creditors have a maximum term of ten (10) business days from the day after the aforementioned publication to file the proof of their claims. Filing after this date will be declared inadmissible.

Labor credits, contingent credits, and credits derived from a consumer relationship are not legible to be recognized, but shall be incorporated in the PRE, according to their specific provisions.



### 3. CREDITOR'S MEETING AND PRE

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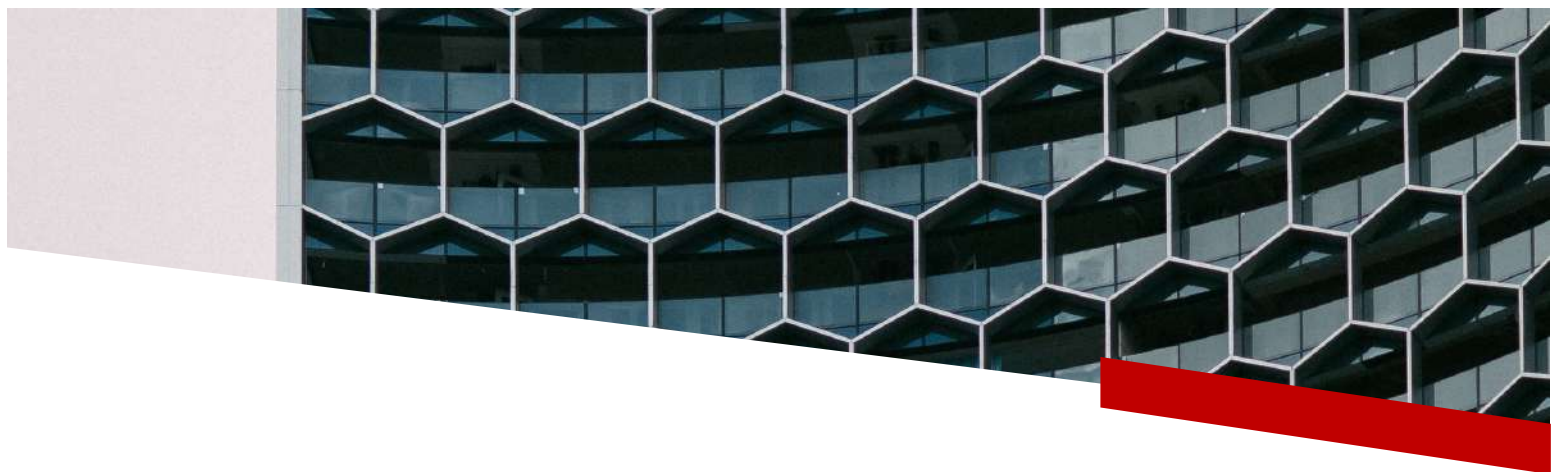
All creditors approved by the Insolvency Authority, excluding related creditors, will hold will participate in a virtual Creditor's Meeting in order to approve the PRE, which will be recorded electronically. A notary public shall participate to certify the agreement. The remote participation of a representative of INDECOPI in the Creditor's Meeting shall be subject to the discretion of the Commission.

The required quorums and majorities are the following:

1. The installation of the Meeting of Creditors requires the remote participation of creditors who represent more than fifty percent (50%) of the total recognized credits.
2. The favorable vote of creditors representing more than fifty percent (50%) of the total recognized credits is required for the approval of the PRE.

**The proof of claims filing must contain, among others, the following documentation and information.**

- 1** Indication of the origin and amount of the debt owed for capital, interest and expenses, attaching the digitalized supporting documentation, if applicable.
- 2** The indication of being, or not, a secured creditor in the terms of Article 42 of the General Law of the Bankruptcy System, indicating the sum guaranteed and, in case the debts are subject to registration or shall be registered, the number of the respective entry and registry in which they have been registered;
- 3** Affidavit of relationship with the debtor.



Once approved, the PRE obligates the debtor and all its creditors, even if they have voted against it or have not timely requested the recognition of their credits.

The approval or disapproval of the PRE determines the conclusion of the PARC, without the Commission's decision being necessary for this purpose.

## 4. BENEFITS AND OTHER CONSIDERATIONS



**1. Control of the debtor:**

The control of the legal entity will be maintained by the administration and the shareholders (or partners).



**2. Suspension of enforceability of obligations and Assets Protection Framework:**

Once the notice of initiation of the PARC is published in the Bankruptcy Bulletin, the enforceability of all the debtor's obligations accrued at that date is suspended and, therefore, all the judicial and extrajudicial collection processes against the debtor are suspended, not being possible to affect the Company's assets.



**3. Credit rating:**

The Legislative Decree establishes that banking entities are not obliged to lower the credit rating of debtors that get in a PARC during the term of this procedure, and if the PRE is approved, during its compliance. Given that financial entities will not be required to make the corresponding provisions, this will allow said debtors to have easier access to financing.



**4. Ordinary insolvency proceeding:**

If after requesting the initiation of the PARC, another creditor requests the commencement of an ordinary insolvency proceeding, this will be declared inadmissible; if said request was presented before the PARC, the ordinary process will be suspended.



**5. Related creditors:**

Related creditors will have no voting rights.



**6. PRE's disapproval:**

The sole disapproval of the PRE does not enable creditors to request the initiation of an ordinary bankruptcy procedure or the liquidation of the debtor.



**7. PRE's supervisor:**

Altogether, thirty percent (30%) of creditors have the right to appoint, at their expense, a supervisor of the PRE.





#### **8. Negative administrative silence:**

Applies to decisions on the PARC application, requests for recognition of credits, appeals and objections to the PRE's approval or disapproval agreement.



#### **10. Presentation of false information:**

Notwithstanding the ex officio declaration of the nullity of the PARC and the PRE, if the debtor presents false information a sanction of up to 50 UITs may be applied.



#### **9. Registration:**

The digital certificate issued by the Insolvency Commission which states the approval of the PRE is registered in the Registry File of the debtor. The public registrar cannot demand a certified copy of the digital certificate. It may be verified by sending an electronic request to the Insolvency Commission.

**For more information, please  
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