



Ministerio de Relaciones Exteriores

# DOING BUSINESS IN PERU

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ABOGADOS

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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 (*Alianza del Pacífico*) with the leading Latin American economies (Mexico, Chile and Colombia), and in 2016 it executed the Trans-Pacific Partnership Treaty (TPP) with a number of major global economies, which is subject to ratification by the Peruvian Congress.

This paper briefly describes the legal framework<sup>1</sup> 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.

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<sup>1</sup> This document was updated on February 2016, 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 diverse international instruments which aim to attract international investment.

### Investment Treaties

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

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#### Bilateral Investment Treaties (BIT'S)

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Argentina	Japan
Australia	Malaysia
Colombia	Netherlands
Cuba	Norway
Czech Republic	Paraguay
Denmark	Portugal
Belgium-Luxembourg Economic Union	People's Republic of China
Ecuador	Romania
El Salvador	Spain
Finland	Sweden
France	Switzerland
Germany	Thailand
Italy	United Kingdom
	Venezuela

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#### Investment Chapters In Free Trade Agreements

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Canada	Mexico
Chile	Pacific Alliance <sup>2</sup>
China	Panama
Costa Rica	Singapore
Iceland	South Korea
European Free Trade Association (EFTA) <sup>3</sup>	United States
Japan	

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### Free Trade Agreements

Peru has also entered into trade agreements with several countries, as detailed in Section V. C of this document, which aim to reduce customs duties and facilitate the trade of goods.

### Double Taxation Treaties

Likewise, Peru has entered into double tax treaties, with the objective of avoiding double taxation for taxpaying residents in the contracting states. These instruments have been executed with the following countries and with the Andean Community (comprising Bolivia, Colombia and Ecuador), as detailed in Section V. D of this document:

<sup>2</sup> Mexico, Chile and Colombia. <sup>3</sup> Iceland, Liechtenstein, Norway and Switzerland.

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Brazil  
Canada  
Chile  
Switzerland  
Mexico  
South Korea  
Portugal

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## **Trans-Pacific Partnership**

Most recently, on February 4, 2016, Peru executed the Trans-Pacific Partnership Treaty (“TPP”) with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore, United States and Vietnam. This agreement sets a landmark for the twelve leading APEC economies, which have been negotiating this agreement for the past five years. As such, the TPP is the largest regional trade agreement in the world.

Peru’s involvement in the agreement enforces its strategic presence in the Asia-Pacific region, strengthens its goal of achieving free trade, and contributes to its aim of being considered a stable and investment-friendly country. Additionally, the agreement’s chapter on investment strengthens non-discriminatory policies, ensures the rule of law, and protects the right of governments to seek legitimate public policy objectives.

Among other considerations, the TPP includes a series of obligations that provide protection for TPP investors or investments, including:

- Most favored nation treatment;
- A “minimum standard of treatment” for investments based on customary international law;
- Expropriations must be in accordance with the due process of law and subject to prompt, adequate, and fully realizable and transferable compensation;
- Investment-related transfers of funds are subject to exceptions to ensure that governments retain the flexibility to manage volatile capital flows; and
- Prohibit “performance requirements”, such as local content, technology transfer or technology localization requirements.

## **Pacific Alliance (*Alianza del Pacífico*)**

Peru is firmly committed to the development and success of the Pacific Alliance, a groundbreaking and dynamic process of economic and commercial integration of Mexico, Chile, Colombia and Peru, which seeks to create profound regional integration destined to boost the economic growth and competitiveness of the member countries, and to become a platform for global economic and commercial insertion, particularly oriented toward the Asia-Pacific region.

In this regard, the aforementioned integration framework has entered into the Additional Protocol, which represents the member countries’ commitment to free circulation of goods, services, investments and individuals, which are understood as the fundamental pillars of the integration process. The Additional Protocol establishes a free commercial zone between its four members, allowing access to a larger market.

Likewise, by means of negotiated disciplines in the aforementioned document, the bilateral commercial agreements entered into between Mexico, Colombia, Chile and Peru will be enhanced and complemented with the purpose of generating more opportunities for said members' companies (especially for medium, small, and micro-enterprises) to connect with the Asia-Pacific region, to compete with broad and diverse offerings, not only of primary products but also of products with higher value added, as well as participate in the production chain and regional value chains.

In sum, the Pacific Alliance provides tools to economic operators in the four member countries by defining clear rules for the exchange of commercial assets and services, and bolstering the facilitation of commerce and generation of higher investment flows, so that they may, in turn, promote commercial and corporate strategies and actions.

Further, Peru's participation in the Trans-Pacific Partnership, the Pacific Alliance and APEC represents an important opportunity to consolidate a platform which regards the Pacific as an articulating axis of our international insertion, by participating in valuable global chains and driving competitiveness.

## 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.

## Essentials for Investing in Peru

The following chart provides potential investors with an overview of basic considerations for investing in Peru<sup>4</sup>:

Restrictions for foreign shareholders	Unrestricted
Minimum capital required to incorporate a company.	As a general rule, no minimum capital is required.
Average duration of the incorporation process	15 business days.
Restrictions on foreign investment	Unrestricted
Legal Stability Agreements (LSA)	Available to investors who meet the minimum legal amounts. Legal Stability Agreements aim to protect investors and recipient companies on matters such as income tax and the right to free availability of foreign currency, among others.

<sup>4</sup> Exceptions to this overview may apply.



Restrictions to foreign exchange	Unrestricted
VAT	18%
Restrictions for hiring foreign workers	Corporations may hire foreign workers for up to 20 percent of their total number of employees.
Limitations on foreigners' property ownership rights	Foreigners are prohibited from owning land within 50 kilometers of national borders.
Remittance of profits	Full remittance of profits is allowed.

## III. ESTABLISHING A BUSINESS

### A. Permanent Structures

#### i. Frequently used Corporate Structures

The corporation and the limited liability company are the most important and frequently used company structures regulated under the General Corporations Law (*Ley General de Sociedades*), which was enacted on January 1, 1998. In general, Peruvian regulations regarding corporations are similar to those found in other jurisdictions.

Peruvian legislation recognizes and regulates three types of corporations: (i) ordinary; (ii) closed; and (iii) open. All three structures share the essential features of any corporation, meaning they issue capital stock, their ownership is divided into shares, and their shareholders enjoy limited liability.

An ordinary corporation is a capital stock company, said capital being represented by shares which give titleholders the rights set forth in the General Corporations Law and in the respective bylaws. Specific regulations regarding closed corporations recognize their essential nature as a capital stock company, and also provide a suitable corporate structure for a limited number of shareholders who are usually involved in managing the company. Given the importance of personal factors in owning and managing capital, its shares may not be publicly traded on the securities market.

An open corporation must satisfy one or more of the following conditions: (i) has made an initial public offering of stock or corporate obligations convertible into stock, (ii) has over 750 shareholders, (iii) over 35 percent of its capital stock is held by 175 or more shareholders, (iv) it is incorporated as such, or (v) all voting shareholders unanimously approve the motion to adopt such a structure. The open corporation must publicly register its stock in the Public Registry of Securities and be listed in the Lima Stock Exchange, meaning that its stock may not be restricted regarding its free transfer and negotiation, save for the exceptions expressly provided in the General Corporations Law. This type of corporation is subject to supervision by the Stock Exchange Superintendency (SMV, for its Spanish acronym).

Regulations applicable to the limited liability company ("SRL") are similar to those for closed corporations, given the importance of personal factors involved in these types of companies, which the General Corporations Law seeks to preserve. In these companies, capital is represented by ownership interest (*participaciones*).

## a. General Features

The table below describes the most relevant features of ordinary and closed corporations, and limited liability companies:

	Ordinary Corporation ( <i>Sociedad Anónima</i> )	Closed Corporation ( <i>Sociedad Anónima Cerrada</i> )	Limited Liability Company ( <i>Sociedad Comercial de Responsabilidad Limitada</i> )
<b>Minimum number of Founding Shareholders/Partners</b>	Two	Two	Two
<b>Shareholder/Partner Liability</b>	Limited to the amount of the shareholders'/partners' contributions.		
<b>Initial Capital</b>	<p>The General Corporations Law does not require a minimum amount of capital for the incorporation of any of these structures.</p> <p>In some cases, the law does require that corporations be formed with a minimum amount of capital based on the nature of their activities (for example, companies in the financial system, companies that manage pension funds and companies that outsource employment).</p>		
<b>Capital Representation</b>	<p>Shares</p> <p>Different kinds of shares may exist. The difference may be in the rights granted to shareholders, the obligations incurred by owners, or both.</p> <p>All shares of a single class of stock enjoy the same rights and are subject to the same obligations.</p> <p>Corporations may issue non-voting stock, which must provide the right to receive preferred dividends as per the terms set forth in the bylaws. If there are distributable profits, the corporation is required to pay the dividends to non-voting stock shareholders on a preferred basis.</p>		Ownership Interest ( <i>participaciones</i> )
<b>Maximum Number of Shareholders/Partners</b>	750	20	20
<b>Restrictions on Share Transferability and Formalities</b>	<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 the bylaws state otherwise.</p> <p>Transfers are private and are recorded in the company's Stock Ledger Book.</p>	<p>Limited by other partners' right of first refusal.</p> <p>Transfers are carried out by public deed.</p>
<b>Distribution of Profits</b>	<p>Profits are distributed among titleholders in proportion to their capital contributions, unless otherwise stated in the articles of incorporation or by-laws.</p> <p>Companies are required to set aside a minimum of 10 percent of their after-tax profits during each fiscal year to create or increase a reserve fund, 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 subtracting the amount that must be set aside for the reserve fund, at the request of shareholders representing at least 20 percent of the total voting stock.</p>		
<b>Agreements between Titleholders</b>	Agreements between shareholders, partners, or between shareholders/partners and third parties, are valid in all types of corporations and are enforceable in all matters concerning the corporation from the moment they are duly recorded with the company.		

In case of conflict between said agreements and the articles of incorporation or bylaws, the latter will prevail.

## b. Management

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

	<b>Ordinary Corporation (Sociedad Anónima)</b>	<b>Closed Corporation (Sociedad Anónima Cerrada)</b>	<b>Limited Liability Company (Sociedad Comercial de Responsabilidad Limitada)</b>
<b>Board of Directors</b>	<p>The existence of a board of directors as the governing body is prescribed 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 so stated in the by-laws. Directors may be removed at any time.</p> <p>There are no limitations established by law as to the nationality or domicile of board members.</p> <p>The person chosen as director must accept the position by means of a written document, with its signature duly legalized.</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 so stated in the by-laws. Directors may be removed at any time.</p> <p>There are no limitations established by law as to the nationality or domicile of board members.</p> <p>The person chosen as director must accept the position by means of a written document, with its signature duly legalized.</p>	<p>Does not have a board of directors.</p>
<b>General Manager</b>	<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 by the board of directors, depending on the body making the appointment.</p>		<p>The general manager is responsible for the administration and legal representation of the corporation.</p>
<b>Distribution of Profits</b>	<p>The general 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 by-laws).</p>		<p>The general partners' meeting is the limited liability company's highest governing body. Its actions are subject to the regulations that apply to general partners' meetings, as provided by the General Corporations Law.</p>

## c. Incorporation Process

The process of incorporating a company takes approximately 15 business days. Should the founding partners be non-domiciled entities or individuals that will not be in the country at the time of incorporation, registered powers of attorney will be required. These documents must be officially translated (if needed) 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 a company in Peru:

Steps	Time for Completion
Powers of attorney to incorporate the company <sup>5</sup>	Up to 15 business days. These documents must be legalized and registered prior to the incorporation of the company.
Verifying the availability of the proposed company name	One day
Preparation of incorporation documents and notarization by a Notary Public	Two - Five days
Deposit at least 25% of the company's capital stock in a bank and obtain proof thereof.	One day
Registration of the incorporation documents before the Public Registry.	Two - Seven business days
Registration before the tax authority	One day
Legalization of corporate books	One day

## 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.

<b>Establishment</b>	By public deed in which the following information (among other items) must be provided: (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.
<b>Liability</b>	The parent company is liable for all obligations incurred by the branch, any agreement exempting responsibility is consider as null and void.
<b>Capital</b>	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.
<b>Administration</b>	Branches are required to have at least one permanent legal representative in Peru.
<b>Remittance of Profits</b>	There are no limitations on the remittance of profits by a branch to its parent company.

<sup>5</sup>. Should 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.

### 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 General Corporations 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 venture. In this type of contract, the participating party remains hidden from third parties with whom its partner may undertake business activities.

### iv. Mergers / Investing in Existing Organizations

There are no restrictions on investments made by foreign companies in Peruvian companies. 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 for in the General Corporations Law and other regulations, as applicable.

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”, for its Spanish acronym), 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 aviation, and the ownership of land referred to in Section V.I, 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 entities. Provided they meet certain minimum requirements, foreign investors are entitled to enter into the Legal Stability Agreements referred to below in Section IV. Promotion of Foreign Investment.

# **IV. PROMOTION OF FOREIGN INVESTMENT**

## **A. Legal Framework for Foreign Investment**

Peru has a general legal regime that promotes and establishes guarantees for foreign investments. In addition, specific 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. Foreign 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 12 months following the registration of the capital stock increase in the local company's accounting records.

In the aforementioned cases, investors must channel their investment through an entity of the Peruvian financial system.

### **1. Requirements for Foreign Investors**

Generally, among other requirements, investors are required to contribute to the capital stock of a local company, within a term of two years, in an amount equal to or exceeding USD10 million (in case of mining or hydrocarbon activities) or USD 5 million (for all other activities), through the Peruvian financial system.

### **2. Requirements for Recipient Companies**

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 percent of the company's capital stock and reserves accounts, and are allocated to the expansion of its production capacity or to technological improvement, meaning that said investments must be carried out through a capital increase.
- The new investments entail the acquisition of more than 50 percent 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 Legal 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 laws 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;
  - The right to freely remit funds, 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 laws governing the following regimes and rights:

- Income Tax regime (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 local company. 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 regime;
- Export promotion regime.

## **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**

#### **1. Business Visa**

Business visas are issued to individuals who enter the country for corporate, legal or similar purposes, without seeking residency. While such individuals may not receive Peruvian source income, they may execute agreements and engage in transactions.

A business visa does not confer the right to render services (either as an employee or as an independent contractor) to entities domiciled in Peru, even when said services are performed on behalf of a non-resident entity. This rule only allows two exceptions: (i) fees as director of domiciled companies, (ii) or fees as lecturers or international consultants by virtue of a services agreement not exceeding 30 consecutive or accumulated calendar days, within any given period of 12 months.

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

#### **2. 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.

Both companies must enter into a service agreement by virtue of which the company domiciled abroad agrees to provide a certain type of service to the company domiciled in Peru. For purposes of this service contract, the company domiciled abroad may relocate some of its workers to Peru.

A foreign citizen who obtains this immigration status has the right to work legally for three months, term which can be extended for up to one year.



### 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<sup>6</sup>.

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*), Value Added Tax (VAT), and advance VAT payments.

The applicable ad valorem rates are 0 percent, 6 percent, or 11 percent, depending on the tariff category of the imported merchandise. More than 55 percent of the merchandise listed in the current customs tariff is subject to a 0 percent 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.

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 percent.

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).

### 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

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<sup>6</sup> Note that foreign citizens of Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay and Uruguay are not required to sign an employment contract beforehand.

duties and import taxes is suspended by submitting a guarantee covering the amount of such duties and taxes.

### **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.

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) for goods that will 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 export of imported goods that were required for their production. As of January 1, 2016 this refund is a fixed rate of 3 percent of the FOB export value up to a cap of 50 percent 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 must be fulfilled to obtain a refund of duties.

### **5. Replenishment of Merchandise with Customs Exemption**

This regime allows goods to be imported with an automatic exemption of customs duties and import taxes. The exemption applies for the same quantity of equivalent merchandise 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 and withdrawal from Peru of merchandise 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.

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## Agreements currently in force

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Andean Community <sup>7</sup>	Mexico
Canada	Pacific Alliance <sup>10</sup>
Chile	Panama
Costa Rica	People's Republic of China
Cuba	Singapore
European Free Trade Association (EFTA) <sup>8</sup>	South Korea
European Union	Thailand
Japan	United States
Mercosur <sup>9</sup>	Venezuela

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## Agreements that will enter into force in the near future

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Guatemala  
Honduras  
Trans-Pacific Partnership

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## 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 Indecopi. The customs authority is in charge of their collection.

## D. Taxation and Cross-Border Transactions

The *Superintendencia Nacional de Aduanas y Administración Tributaria* ("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", for its Spanish acronym) upon acquiring taxpayer status or becoming responsible for taxes administrated or collected by SUNAT. The same requirement applies to tax withholding agents. The taxpayer or tax withholding agent is identified by the 11-digit number assigned by SUNAT (the RUC), which is used to comply with both its formal and substantive tax obligations. Individual employees (who earn "fifth category" income), 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.

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<sup>7</sup> Bolivia, Colombia and Ecuador <sup>8</sup> Iceland, Liechtenstein, Norway and Switzerland <sup>9</sup> Argentina, Brazil, Chile, Cuba, Mexico, Paraguay and Uruguay <sup>10</sup> Mexico, Chile and Colombia.



Madre de Dios, Rainforest

### 3. Income Tax

#### - Scope of Application

Income tax is levied on income obtained from capital, work and from 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.

#### - 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.

#### - Business Income Tax Regime

Commercial entities are subject to the business income tax regime – at the corporate level – levied at a rate of 28 percent (which will be reduced to 27 percent in 2017 and 2018, and to 26 percent as of 2019). In addition, dividend distributions made to individuals (both residents or non-residents in Peru) or non-resident corporations are further subject to an additional Income Tax levied at a rate of 6.8 percent on the value of said distributions (this rate will be increased to 8 percent in 2017 and 2018, and to 9.3 percent as of 2019).

### 4. Tax Return Filing and Fiscal Year

Annual income tax returns for companies (and legal entities subject to the business income tax regime) must be filed around April, on the date determined by SUNAT, of the year following the year subject to the tax return, which closes on December 31.

### 5. Individual Income Tax Rules

For individuals considered residents for tax purposes, income from capital is subject to a tax rate of 5 percent on net income, while income from employment is subject to a progressive scale calculated on income after deducting 7 tax units (“UIT”, for its Spanish acronym)<sup>8</sup>.

The progressive tax rates applicable to resident individuals are 8 percent up to an income equal to 5 *UIT*; 14 percent for any income from over 5 *UIT* up to 20 *UIT*; 17 percent from over 20 *UIT* to 35 *UIT*; 20 percent from over 35 *UIT* to 45 *UIT*; and 30 percent to income over 45 *UIT*.

For non-resident individuals, a flat 30 percent rate is applied over total gross income, without deducting the aforementioned 7 *UIT*.

<sup>8</sup> As provided by law, in 2016 the value of the tax unit (UIT) is S/. 3,950.00 (approximately USD 1,135). An exchange rate of S/.3.48 per 1 USD has been used throughout the document. This exchange rate may change at any time.

## 6. Taxation of Mining Activities

### - 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 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 becomes extinct 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.

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).

### - 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).

### - Special Mining Tax

Mining companies are subject to Special Mining Taxes in the exploitation and production stages. Companies with stability agreements in force under the General Mining Law are subject to the so-called Special Contribution (which is voluntarily agreed upon with the Government).

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 percent to 8.40 percent, and is determined according to the company's quarterly taxable profits. 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.

### - Mining Royalties

Mining Royalties are a royalty charge to be paid by mining companies in favor of the Regional and Local Governments where mining resources are located.

Mining Royalties are currently a percentage of the quarterly operating profits, with effective rates ranging from 1 to 12 percent, 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 percent 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.

## 7. 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 for both the purchaser and seller.

“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 operations and/or the tax will only be adjusted if the payable tax in the country is less (a fiscal damage), or if the adjustment results in the application of a higher tax to transactions between the taxpayer and its related parties.

Peruvian transfer pricing rules are based on the OECD arm’s length principle. The Peruvian tax authority is allowed to adjust the prices of transactions between related parties when they are not consistent with transfer pricing rules. Generally speaking, for purposes of the application of the transfer pricing rules, related parties must (i) have a technical transfer pricing study; (ii) keep all transfer pricing study supporting information and documents; and (iii) file an annual transfer pricing tax return. If any of these requirements are not met, the company would be subject to a fine as stated by law.

## **8. International Transparency Regime (ITR)**

Under the ITR, Peruvian shareholders of certain foreign corporations are subject to taxes on the undistributed “passive” income earned by said companies abroad.

The ITR applies only to shareholders of “controlled foreign corporations” which are i) entities incorporated or domiciled in tax havens, or ii) those corporations whose passive income is not subject to tax or which is subject to a tax rate lower than 75 percent of the Peruvian Income Tax rate. Moreover, shareholders subject to the ITR are those who own more than 50 percent of the stock, economic benefits, or voting power of the foreign entity.

For this purpose, the following are considered “passive income”: income from dividends, interest, royalties, capital gains from the sale of rights, real property and stock, as well as from rental activities. Except in certain cases, “passive income” from Peruvian source income (such as dividends paid by Peruvian companies) is not subject to the ITR.

The “passive” income obtained by the controlled foreign entity will be attributed to the shareholder at the end of the fiscal year, who must add it to its Peruvian source income. Said income will be subject to tax in the fiscal year in which it is attributed to the shareholder, regardless of its actual payment.

## **9. 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.

There will be a taxable sale in case of a transfer of movable goods for a price, regardless of the designation given to the transaction in the contracts or negotiations that originated said transfer and the conditions agreed upon by the parties. The transfer of a company’s movable goods for free is also considered a sale unless certain conditions are met.

### **- VAT Payers**

All individuals, companies, legal entities, irregular partnerships, associations, trusts, and mutual and investment funds that carry out any of the transactions subject to VAT. Also, the following may be subject to VAT rules as responsible parties: the purchaser of the goods, when the seller is not a Peruvian resident; individuals, companies or entities of any type designated as such by Law or regulation; the trustee – in case of a securitization trust – for the operations that the securitized property carries out according to its purpose, among others.

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, as well as joint ventures, consortiums and other forms of business cooperation contracts that keep independent accounting from that of the investors or ventures.

### **- VAT Calculation**

As a general rule, the taxable base for VAT is the sale price paid for the goods or services, which may be adjusted by the tax administration based on their fair market value. The VAT tax rate is 16 percent. A 2 percent 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 percent.

- Fiscal Credit

VAT is assessed and collected on the value of goods and services provided each time a transaction subject to VAT takes place. It applies to every stage of the production and distribution cycle, and has no cumulative effects. Generally, each seller of goods or services in the supply chain charges VAT on its sales, and is entitled to deduct from this amount the VAT paid on its purchases (“fiscal credit”). Under VAT rules, in order to obtain fiscal credit, the purchase of goods or services must constitute operating costs or expenses to the taxpayer pursuant to Income Tax regulations, even if the taxpayer is not subject to said tax, and must be used in transactions subject to VAT.

- VAT Early Recovery Regime for Mining Activities - Law N° 27623

The VAT early recovery regime applicable to mining activities (the “early recovery mining 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.

If not extended, the early recovery mining regime will expire on December 31, 2018.

## 10. Tax on Net Assets (ITAN)

This tax levies companies’ net asset value as reflected on their corresponding balance sheets as of December 31 of the previous year.

ITAN must be paid only by companies that are already in a production stage as of December 31 of the corresponding previous year. ITAN is determined by applying a 0.4 percent 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: (i) as a deductible expense; or (ii) 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.

## 11. Financial Transaction Tax (ITF)

The ITF applies, among others, to any transfer, movement, debit or credit transaction made on bank accounts held by individuals and companies in the Peruvian banking system. It also applies to acquisitions of cashier’s checks, bank certificates and similar instruments made without using funds held in a local bank account.

The tax rate is 0.005 percent and must be withheld by the corresponding local bank.

## 12. Selective Consumption Tax (ISC)

The ISC (*Impuesto selectivo al consumo*) levies the import and local sale of certain so-called “luxury goods”, such as cars, cigars, cigarettes, liquor, beer, fuel and others.

Depending on the respective good’s nature, the tax is determined based on different systems: (i) on the good’s value (e.g., 30 percent in the case of used vehicles for public transportation); and, (ii) on a specific basis (e.g., S/.1.50 per liter of “*pisco*” – a Peruvian liquor).

## 13. Tax Incentives

- Tax benefits for public investment projects – Law N° 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 Central Government with Regional and Local Public Investment Certificates (CIPRL for its Spanish acronym). These certificates may be used by the company to offset its monthly and annual Income

<sup>4</sup> As provided by law, in 2014 the value of the tax unit (UIT) is PEN 3,700 (approximately USD 1,321). An exchange rate of S/.2.80 per 1USD has been used throughout the document. This exchange rate may change at any time.



Tax payments for the respective year, up to an amount equal to 50 percent of the Income Tax for the previous fiscal year. If the certificates are not used in the respective fiscal year due to the 50 percent limitation, the Central Government will issue new certificates, adding a credit of 2 percent 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.

- Stability Agreements
- See Part B above of Section IV.

**14. Double Taxation Treaties**

Peru has entered into double taxation conventions with Brazil, Canada, Chile, South Korea, Mexico, Portugal and Switzerland, which are currently in force and are mainly based on the OECD Model Tax Convention. Generally speaking, the first right to tax is given to the taxpayer’s country of residence. If any tax is applied or withheld in the source country, said tax may be used as a credit in the country of residence.

In addition to the above conventions, Peru has a multilateral agreement with the Andean Community (Bolivia, Colombia, Ecuador and Peru). According to this agreement, the first right to tax is given to the source country (the country in which the income arises or is generated).

**E. Labor 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 labor relationships; (ii) the conditions applicable to labor relations; (iii) remunerations and benefits which must be paid to both workers hired for a fixed-term and those hired for an indefinite term; and (iv) pension systems and taxes due on compensations paid to workers.

**1. Labor Relationships and Contracts**

<b>Employment Agreements</b>	<b>Indefinite-Term Employment Contract</b>
	<ul style="list-style-type: none"> <li>• As a general rule, under Peruvian law, employees are hired for an indefinite term.</li> <li>• Fixed-term contracts are only available under certain circumstances.</li> </ul>
	<p><b>Fixed-Term Contracts</b></p> <p>Fixed term contracts are available in the following circumstances:</p> <ul style="list-style-type: none"> <li>(i) Contracts for start-ups or new business activities (starting or increasing operations);</li> <li>(ii) Contracts executed in order to meet business production demands (market needs);</li> <li>(iii) Contracts executed in order to temporarily substitute a permanent employee of the company (substitution); and</li> <li>(iv) Contracts entered into for a specific project or service (contract with a preestablished purpose and a specific duration).</li> </ul> <p>Maximum terms for these contracts may vary depending on their type. However, none may exceed five years. Fixed-term contracts are also available for certain industries (i.e., non-traditional exports, construction).</p>
<b>Part-Time Contracts</b>	
	<p>A contract is deemed part-time when the employee works for less than four hours on average.</p> <ul style="list-style-type: none"> <li>• No previous authorization is required.</li> </ul>

- Part-time employees are not entitled to some of the major labor benefits, such as protection against dismissal and Compensation for Length of Services.

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## Collective Agreements

Collective agreements are entered into by one or more employers and one or more unions or workers' representatives in order to regulate working conditions (i.e. workers' benefits).

If the parties do not reach an agreement through collective bargaining, the law provides for various means of resolving the conflict, such as conciliation, mediation, and arbitration. In addition, the Peruvian Constitution recognizes workers' right to strike.

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## Special Agreements

Special labor regimes exist for mining, agriculture, civil construction, foreign employees, micro- and small business employees, among others. Each regime is governed by special legislation establishing its characteristics and specifications.

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## Non-Employment Agreements

### Trainee Contracts

- The purpose of these contracts is to train the work force that has not yet entered the labor market. This category includes the following contracts: apprenticeship contracts, internship contracts, youth trainee contracts, clerkships, and labor re-insertion.
- Individuals rendering these services are not entitled to the legal benefits arising from work contracts, but instead to special ones established by law.

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### Independent Services Contracts

- These contracts are only available for independent services provided under no subordination or control exercised by the party benefitting from said work.
- The service provider is not entitled to labor benefits.

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## Labor Intermediation and Outsourcing

### Labor Intermediation

- Labor intermediation is only allowed when there is a need for temporary, supplementary or specialized services. Workers hired may not render services that entail the ongoing performance of the employer's core business.
- The number of personnel that may be transferred to a user company may not exceed 20 percent of the user company's total workforce. This percentage does not apply to supplementary or specialized services, as long as the service provider assumes full technical autonomy and responsibility.

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### Outsourcing Services

- The purpose of outsourcing is to decentralize or externalize part of a company's core business by hiring a contractor (i.e. management contracts; project contracts; contracts for the purpose of placing a third party in charge of an integral part of a company's production; and services rendered by contracting and sub-contracting companies).
- The following requirements must be met by the outsourcing contractor: (i) be in charge of an integral part of the company's activities in its entirety, (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) its employees are under its exclusive subordination.
- These contracts cannot restrict employees' individual and collective rights.
- The company that hires the contractor is jointly liable with the latter for workers' payment and statutory benefits.

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## Unions

- Unions represent employees in a specific company or industry in face of conflicts or complaints of a collective nature. They have sufficient powers to act on behalf of its members and enter into collective agreements with their employers.
- Employees may freely form or join a union. The type of union will depend on the industry (i.e. construction and port workers), and sometimes on the level on which workers intend to negotiate with their employer(s) (i.e. company-level and trade unions). A minimum of 20 members is needed for a company-level union. Trade unions require a minimum of 50 members.
- More than one union may coexist in a company. Only a union with a majority of affiliated workers may negotiate on a company-wide level. Union affiliation is free and voluntary for workers and is offered based on the union's by-laws.

## 2. Labor Conditions

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- Age**
- The minimum legal working age is 14. Some activities require a greater age in order to be performed.
  - Retirement age in the private pension system is 65, age at which workers may choose to apply for a retirement pension. An earlier retirement age may be established for workers who perform high-risk activities (to life or health).
  - The Peruvian legal framework provides for compulsory and automatic retirement at age 70, provided that the worker is entitled to a retirement pension, although the parties may reach an agreement to the contrary.
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- Nationality**
- Hiring foreign workers is subject to two limitations: no more than 20 percent of the employer's workforce, and no more than 30 percent of the payroll value may be foreign workers.
  - There are several cases in which the aforementioned limitations do not apply (i.e. professional and specialized personnel or management personnel of new companies, and foreign citizens married to Peruvians or with Peruvian children, parents or siblings, or with an immigrant visa, among others).
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- Work Shift**
- The ordinary work shift is eight hours, or a maximum of 48 hours per week.
  - Work carried out before or after the work shift is considered overtime.
  - Overtime work is voluntary for employees.
  - Overtime pay for the first two hours may not be less than 25 percent per hour, based on the pay received by the worker. A percentage of 35 percent is applied to any additional hour.
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Employers must keep an "attendance record" with information regarding the entrance and exit of workers, trainees, and third party service providers from the workplace.

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- Salary**
- Peruvian legislation considers salary to be 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.
  - Specific non-remunerative benefits, such as extraordinary payment, conventional profit sharing, and the value of working conditions, among others, are also allowed.
  - The parties may agree upon a total annual payment with workers who receive monthly payments greater than 2 *UIT*. This amount includes all legal and conventional benefits to which the company is subject, with the exception of profit-sharing.
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**Minimum Living Wage** Workers must receive a minimum monthly wage of approximately USD 258.00 (S/.850.00). Part-time employees are not entitled to minimum wage.

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## 3. Labor Benefits

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- Vacation**
- Workers are entitled to 30 calendar days of paid leave after each full year of service.
  - Vacation leave must be taken within the year immediately following the year in which it was accrued.
  - Unused leave accumulates during the year following the one in which it was accrued. Workers with unused leave will be entitled to the equivalent of 2 monthly remunerations in addition to his or her normal monthly pay. Some high level employees, such as general managers, may not be entitled to said compensations.
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**Non-working Paid Holidays** Employees have the right to paid holiday leave during the following holidays: 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. Rosa of Lima), October 8 (Battle of Angamos), November 1 (All Saints), December 8 (Immaculate Conception) and December 25 (Christmas Day).

<b>Maternity Leave and Benefits</b>	<ul style="list-style-type: none"> <li>• Female workers are entitled to 49 days of prenatal leave and 49 days of postnatal leave.</li> <li>• Prenatal and postnatal leave may be accumulated, at the worker's request.</li> <li>• In the event of multiple births or birth of a child with disabilities, there is an additional 30 days of postnatal leave.</li> <li>• At the end of the postnatal leave, the mother is entitled to a daily one-hour nursing leave until the child is one year old.</li> </ul>
<b>Family Allowance</b>	<ul style="list-style-type: none"> <li>• This benefit is granted to employees whose remunerations are not regulated by collective bargaining, provided that they have one or more dependent children under 18. In some cases, the benefit may be extended for several more years.</li> <li>• This benefit is equal to 10 percent of the minimum wage.</li> </ul>
<b>Profit Sharing</b>	<ul style="list-style-type: none"> <li>• Employees working under the private labor regime in activities that generate corporate income ("third category") are entitled to profit sharing. Companies with less than 20 workers are exempted of said duty.</li> <li>• The workers' share is based on annual income calculated in accordance with Income Tax regulations. The percentage which must be distributed by the employer depends on the employer's activity, and varies from 5 to 10 percent of taxable profits.</li> </ul>
<b>Compensation for Length of Services (CTS)</b>	<ul style="list-style-type: none"> <li>• All workers are entitled to CTS, provided they work a minimum of four hours a day.</li> <li>• This benefit is deposited semi-annually in the banking or financial institution of the employee's choice.</li> <li>• The amount of each deposit is equal to one-twelfth (1/12) of the computed monthly pay for each of the months worked during the semester. Computed pay is the total amount that the worker regularly receives as compensation for his work, whether in cash or in kind.</li> </ul>
<b>Mandatory Legal Bonuses</b>	<ul style="list-style-type: none"> <li>• Workers are entitled to two mandatory legal bonuses a year, one in July (Independence Day) and another in December (Christmas).</li> <li>• The amount of each bonus is equal to one month's pay.</li> </ul>
<b>Life Insurance</b>	<ul style="list-style-type: none"> <li>• Workers have the right to life insurance paid by the employer after completing four years of work with said employer.</li> <li>• The premium is paid by the employer and its amount is negotiated with each insurance company.</li> </ul>
<b>Workers with Disabilities</b>	<ul style="list-style-type: none"> <li>• Employers with more than 50 workers must hire employees with disabilities totaling no less than 3 percent of their payroll.</li> <li>• Employers must provide reasonable accommodations to disabled workers, unless doing so would impose an undue economic burden to the business.</li> </ul>
<b>Workers' Termination</b>	<ul style="list-style-type: none"> <li>• As a general rule, workers can only be dismissed from the job for a fair/justifiable cause under law.</li> <li>• Employees dismissed without fair cause may choose between two remedies: (i) reinstatement, or (ii) an indemnity for arbitrary (unfair) dismissal equal to 1.5 salaries per year of service for indefinite employment contracts, and 1.5 salaries per month left in the contract for those hired on a fixed-term basis. In both cases, said indemnity is subject to a 12-salary cap.</li> </ul>

#### 4. Pension Systems and Taxes on Compensation

##### Pension Systems

There are two main pension systems. In both cases the worker must be at least 65 years old in order to apply for a retirement pension, and in the National Pension System, the worker must have contributed for a minimum number of years. In special cases, both the retirement age and the longevity requirement may be reduced for high-risk activities performed by workers.

- **National Pension System**

This system is administered by the Government through the Office of Pensions. All workers subject to labor regulations in the private sector must adhere to this system, unless they are affiliated to the private pension system.

This is a collective system. Workers pay contributions, and if they meet the minimum requirements, will collect a pension depending primarily on the time that he or she was affiliated to the system.

- **Private Pension System**

Workers subject to labor regulations in the private sector may choose to be affiliated to the private pension system administered by private pension fund managers.

This is an individual capitalization system. The pension will depend solely on the amount that the worker has collected in his or her pension fund account at the time of retirement.

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## Taxes on Compensation

- **Social Security Health Insurance**

Nine percent of the employee's monthly salary is paid into social security health insurance. It is paid exclusively by the employer.

- **National and Private Pension Systems**

In the case of the national pension system, the contribution amounts to 13 percent of compensation. In the case of the private pension system, the contribution varies between 11 and 12 percent of compensation, and will also generate a commission on the administrated fund. In both cases, the payment is withheld by the employer from the worker's salary.

- **Income Tax**

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

For resident workers in the country, the tax is based on a progressive scale applied to net income (total payments received in the year, minus 7 UIT). For non-resident workers in the country, a general rate of 30 percent is applied to total gross income without any deductions.

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## F. Antitrust and Competition

Anticompetitive conduct is illegal pursuant to the Antitrust Law ("LRCA", for *Ley de Represión de Conductas Anticompetitivas*)<sup>9</sup>.

Penalties are determined and executed by Indecopi for each case that is presented before it. The LCRA 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: (i) abuse of dominant position, (ii) horizontal collusive practices, and (iii) vertical collusive practices.

### 1. Abuse of Dominant Position

According to the LRCA, 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.

The LRCA 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, 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, 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, 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 percent 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 Peruvian environmental framework aims at preventing potential negative environmental impact that could be caused by companies undertaking economic activities, as well as creating a less bureaucratic system in which business may be conducted with environmentally sustainable standards.

The Ministry of the Environment (“MINAM”) is the government’s environmental sector leader. However, certain legal competences on environmental matters (such as the approval of environmental management instruments and special regulations, among others) are still being managed by the Ministries corresponding to each domestic economic sector, and the Regional and Local Governments. Likewise, the Environmental Evaluation and Supervision Agency (“OEFA” for its Spanish acronym) supervises and penalizes unlawful activities.

In addition, there are other public authorities with environment-related competences, such as the Natural Protected Areas Service, the National Water Authority, the General Direction of Environmental Health, and the Ministry of Culture, among others, from whom – depending on the characteristics of the investment project to be executed – it may be necessary to obtain certain authorizations.

The General Environmental Act (Law N° 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 for the full development of life.

The National Environmental Impact Assessment System Act (Law N° 27446) and its Regulations have the purpose of creating the National Environmental Impact Assessment System (“SEIA” for its Spanish acronym) 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.

Thus, in this context, the SEIA comprises regulations that provide the criteria under which the environmental impact of investment projects may be qualified, as well as the environmental management instruments applicable according to the qualification of the projects in terms of environmental impact. The categories in which the investment projects can be qualified, and their corresponding environmental instruments, are the following:

Category	Level of Impact	Management Instrument
I	Non-significant negative environmental impacts	Environmental Impact Statement
II	Moderate negative environmental impacts	Semi-detailed Environmental Impact Assessment
III	Significant negative environmental impacts	Detailed Environmental Impact Assessment (or Environmental Impact Assessment)

Under these regulations, the execution of projects and service and trade activities cannot begin and no national, sectoral, regional or local authorities may approve, authorize, allow or grant those projects or activities, without previously having the approval of the corresponding environmental management instrument.

There are also specific environmental regulations applicable to the various industries, such as mining, energy (electric power, oil and gas), and manufacturing. The Government updates these regulations depending on the particular nature, scope, characteristics and needs of each industry.

Environmental management instruments must be approved by the industry's competent authority or by the corresponding Regional or Local Government, depending on the project's characteristics. However, since December 28, 2015, the National Environmental Certification Service for Sustainable Investments ("SENACE" for its Spanish acronym) has jurisdiction to approve Detailed Environmental Impact Assessments (EIA-d) for the mining and energy (electric power, oil and gas) industries. It is worth mentioning that the SENACE is expected to progressively have jurisdiction over the approval of EIA-d for other industries.

In addition, it is important to mention that during the last 3 years, the Government has enacted laws and policies to promote private investment and reactivate the economy, including those addressing environmental matters or having environmental implications. Among the most important regulations on environmental matters are:

i. Law N° 30327, which among other aspects, creates the Global Environmental Certification ("*certificación ambiental global*"), with the purpose of approving 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 Global Environmental Certification will be effective as soon as the Regulations for Law N° 30327 take effect, which has yet to occur.

ii. Law N° 30230, which aims to establish a more favorable and temporary regime for the supervision of economic activities.

Peruvian environmental legislation also requires investors to carry out mechanisms for citizen participation with residents located near investment projects. Moreover, governmental approvals for the execution of activities that may affect native or indigenous peoples require prior consultation proceedings that are carried out by the government.

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 Products Liability

The Consumer Protection and Defense Code (*Código de Protección y Defensa del Consumidor*) 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 Indecopi Consumer Protection Commission (*Comisión de Protección al Consumidor*) is responsible for reviewing claims of infringement of the Code's regulations.

The Consumer Protection and Defense Code is applicable to all consumer relations that take place 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 Decree.

### 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 10 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 Superintendency of Public Registries (*Superintendencia Nacional de los Registros Públicos, 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, several legal provisions regarding the expropriation of buildings intended for infrastructure projects have been issued in order to expedite the expropriation procedure for said projects. Nevertheless, the abovementioned constitutional guarantees remain effective.

## **J. Intellectual Property**

### **1. Trademarks**

Decision N° 486 issued by the Andean Community and Legislative Decree N° 1075 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's 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.

A multi-class application may be filed for products and for services. If the registration application is filed in compliance with all formalities required by law and no oppositions are filed, the procedure will take approximately six months. If oppositions are filed, the procedure takes approximately one and a half years.

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.

### **2. Patents and Industrial Designs**

Decision N° 486 issued by the Andean Community and Legislative Decree N° 1075 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's Inventions and New Technologies Office, the national entity responsible for monitoring 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 the Indecopi Tribunal Administrative Intellectual Property Court. Annual fees must be paid in order for the patent to remain in effect, or where applicable, to continue with the patent application process.



Cathedral of Lima, Main Square

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.

### **3. Copyrights**

Decision N° 351 issued by the Andean Community and Legislative Decree N° 822 (the Law on Copyrights) 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.

## **K. Internet Regulations / E-Commerce**

The Civil Code provides that, in contract formation, assent can be manifested by electronic means. Furthermore, the use of electronic and digital signatures is expressly allowed and regulated in Law N° 27269 (*Ley de Firmas y Certificados Digitales*) and its regulations.

Currently, regulation on e-commerce is mainly found in the provisions of the Consumer Protection and Defense Code, which provides that in cases where the supplier provides additional information on its products or services through the internet, the information must be clear, understandable, accurate and easily accessible.

The Data Protection Act also regulates data processing carried out in Peru or on behalf of a Peruvian company. It establishes certain obligations that must be fulfilled in order to safeguard private information stored in databanks.

Peruvian legislation does not include any other rules on internet transactions and e-commerce. Thus, any such relationship will be governed by the terms agreed by the parties in connection with transactions carried out by electronic means.

## **L. 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.

## **M. Securities Law**

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.

The SML, along with other regulations issued by the SMV, establishes certain standards such as transparency and timely disclosure of material information. All information disclosed to the market through the SMPR's 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, 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 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 Superintendencies in Chile or Colombia).

## 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 shareholding (defined as any acquisition of shares equal to or over 25 percent, 50 percent or 60 percent of the voting capital, the acquisition by any means of voting right capacity equal to 25 percent of the voting capital, or the ability to elect the majority of the issuer's Board of Directors or amend the issuer's by-laws) 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 shareholding is intended to be made in no more than four transactions over a period of three years, the *OPA* shall be launched within a specified period after the acquisition of said shareholding. In other cases, the acquisition of a significant shareholding must be made through a previous tender offer (prior *OPA*). 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.

## 4. Purchase Offer (OPC)

Rules relating to *OPCs* provide that if the issuer of securities registered with the SMPR requests the cancelation of said

registration, or approves a transaction with a similar effect (e.g., a split whereby investors end up holding unregistered securities), a purchase offer must be launched unless an exemption applies.

The *OPC* must be addressed to all investors that did not participate in the cancelation or the approval of the transaction.

## **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 Superintendency of Banking, Insurance, and Private Pension Fund Administrators. 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 (*Bolsa de Valores de Lima-BVL*)**

The 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.

Additionally, together with the Santiago Stock Exchange and the Colombia Stock Exchange, the BVL is part of the Integrated Latin American Market (MILA for its Spanish acronym), 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 a local intermediary.

## **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.

## **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, 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 Colombia and Chile.

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 percent rate, provided that the shares are transferred through Peruvian Stock Exchange mechanisms. Otherwise, a 30 percent rate applies.

Notwithstanding, according to the recently enacted Law N°30341, capital gains arising from transfers of shares through the Peruvian Stock Exchange will be Income Tax exempt between January 1, 2016 and December 31, 2018, provided certain

conditions are met (i.e., the relevant seller and its related parties must not transfer a shareholding in the issuer of the shares of over 10 percent within a 12-month period; and, the shares being transferred are considered to have material presence – shares that are regularly quoted – in the Stock Exchange).

Further regulations are expected to be issued by the Peruvian Ministry of Finance with respect to this exemption.

## **N. Secured Transactions**

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 and any immovable assets can be mortgaged.

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

- Expressed consent of the owner or its legal representative.
- Secure compliance of a specified or determinable obligation.
- Secured amount must be fixed or determinable.
- Registration of the public deed 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.

### **2. Security Interest (*Garantía mobiliaria*)**

A security interest attaches any personal goods or assets provided there is written evidence thereof. Registration of the security interest thus created will allow its enforceability against third parties and its realization through swift procedures.

Enforcement of the security interest can be made directly by creditor without having to resort to courts if so agreed in the corresponding security agreement.

## **O. Litigation / Dispute Resolution Systems**

Peruvian law allows for the resolution of disputes either through courts or arbitration. 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*). 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 33 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, 10th, 1958; or
- Inter-American Convention on International Commercial Arbitration, approved in Panama on January 30, 1975.

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

## **VI. WINDING UP / RESTRUCTURING A BUSINESS**

### **A. Dissolution / Liquidation**

The General Corporations 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**

Pursuant to the provisions of the General Corporations Law, the voluntary dissolution process can be agreed upon by the shareholders, as provided by law, in the event of grounds for dissolution.

In that 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.

#### **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 designated by the shareholders' meeting. Liquidators cannot distribute any remaining assets to the shareholders before corporate creditors have been completely paid off.

Liquidators must keep the shareholders informed regarding the financial statements and the progress of the liquidation.

Once the remaining assets have been distributed, the liquidators will request the extinction of the company before the Public Registry. If there are pending debts to creditors after the extinction, 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. If unpaid obligations remain once all assets have been liquidated, the liquidator will request that the debtor be declared bankrupt in civil court, and the company will cease to exist.

### **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. Indecopi is the government administrative agency with exclusive and mandatory competence over bankruptcy matters. Banks, insurance companies and governmental

institutions (such as ministries, tax authorities, local governments (municipalities), etc.), are not subject to this law.

A 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. 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 bankruptcy proceeding seeks to provide an orderly scenario to allow creditors to decide whether to restructure or liquidate the 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.

The creditors' meeting's agreements and decisions can only be challenged by the debtor or by creditors representing at least 10 percent of the total credits recognized in the proceeding, based on the breach of insolvency regulations, 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 private and public pension funds.
- 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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