



Ministerio de Relaciones Exteriores

DOING BUSINESS IN PERU

RODRIGO,
ELIAS
& MEDRANO
ABOGADOS

DOING BUSINESS IN PERU





Colonial Architecture

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Puente Villena, Lima

I. INTRODUCTION

For the past 25 years Peru has been undergoing a 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 for boosting private business activity and investment. This permanent growing process has been the best incentive to attract substantial foreign investment in diverse economic sectors.

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 increase international trade, making Peru one of Latin America's most attractive countries to invest-in (and the rising star of the region). Peru is ranked second in the region as the best place to do business in and is the fastest growing economy in South America for the 2013-2015 period, as foreseen by the IMF.¹ In this context, Peru continues to develop and enter into free trade agreements with key commercial partners, while strengthening its business ties with nations throughout the Pacific Basin, including the United States and China.

This document briefly describes the legal framework² that applies to any individual or entity interested in doing business in Peru. The reader of this paper will find regulations regarding foreign investment, alternative corporate structures, general tax treatment, and other relevant provisions for *“Doing 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 substitute appropriate legal advice.

¹ <http://www.investinperu.pe>

² This document was edited in April 2014, time in which the laws and regulations referred to throughout the report were fully in force. Legal advice on their enforcement when required, shall be sought.

II. SETTING UP A BUSINESS

A. Permanent Structures

i. Frequently Used Corporate Structures

The corporation and the limited liability company are the most important and most frequently-used company structures regulated under the General Law of Companies (Ley General de Sociedades), which was enacted in January 1st, 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 corporations; (ii) closed corporations; and (iii) open corporations. All three (3) structures share the essential features of any corporation, meaning they issue capital stock, their ownership is divided into shares, and its shareholders enjoy limited liability.

An ordinary corporation is a capital stock company whose capital is represented by share, which give their titleholders the rights set forth in the General Law of Companies and in the relevant by-laws. Specific regulations dealing with 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 satisfies one or more of the following conditions: (i) it has made an initial public offering of stock or of corporate obligations convertible into stock; (ii) it has over 750 shareholders; (iii) over 35% of its capital stock is held by one hundred and seventy five (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 have it listed in the Lima Stock Exchange, meaning that its stock may not be limited regarding its free transfer and negotiation, save for the exceptions expressly provided by the General Law of Companies. This type of corporation is subject to the supervision of the Stock Exchange.

Regulation applicable to the limited liability company (also known as “SRL”) is similar to that of the closed corporation, given the importance of personal factors involved in this type of company and which the General Law of Companies tries to preserve. This is a company whose capital is represented by participations (participaciones).

a. General Features

Please find below a comparative chart describing the most relevant features of the ordinary and closed corporation, and the limited liability company:

GENERAL FEATURES			
	Ordinary Corporation (Sociedad Anónima)	Closed Corporation (Sociedad Anónima Cerrada)	Limited Liability Company (Sociedad Comercial de Responsabilidad Limitada)
Founding Shareholders/ Partners	Two (2)	Two (2)	Two (2)
Shareholder/Partner Liability	Limited to the amount of the shareholders'/partners' contributions.		
Initial capital	<p>The General Law of Companies 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, pension funds managing companies, and employment outsourcing companies).</p>		
Capital representation	<p>Shares</p> <p>Different kinds of shares may exist. The difference may be found 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>The corporation may issue non-voting stock, which shall provide for the right to receive preferred dividends as per the terms established in the by-laws. If there are distributable profits, the corporation is required to pay the dividends to non-voting stock shareholders on a preferred basis.</p>		
Participations (participaciones).			
Maximum number of shareholders/partners	750	20	20
Limits to shares transferability and formalities	<p>None, unless expressly limited by the other shareholders right of first refusal, when that right is set forth in the by-laws.</p> <p>Transfers are private and recorded in the company's Stock Ledger Book.</p>	<p>Limited by other shareholders' right of first refusal, unless the by-laws state otherwise.</p> <p>Transfers are private and recorded in the company's Stock Ledger Book.</p>	<p>Limited by other partners' right of first refusal.</p> <p>Transfers are carried out on the basis of a Public Deed.</p>
Distribution of profits	<p>Profits are distributed amongst 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% of their after-tax profits during each fiscal year for the creation or increase of a reserve fund, until an amount is reached that is equal to one-fifth of the capital stock.</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, if requested by shareholders representing at least twenty percent of the total voting stock.</p>		
Agreements between titleholders	<p>Agreements between shareholders or between shareholders 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.</p> <p>In case there is a dispute between the said agreement and the articles of the incorporation or the by-laws, the latter shall prevail.</p>		

b. Management

MANAGEMENT			
	Ordinary Corporation (Sociedad Anónima)	Closed Corporation (Sociedad Anónima Cerrada)	Limited Liability Company (Sociedad Comercial de Responsabilidad Limitada)
Board of Directors	<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 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>Does not have a board of directors.</p>
General Manager	<p>A corporation is also managed by one or more managers.</p> <p>The manager may be removed at any time by the shareholders or by the board of directors, depending on the body making the appointment.</p>		<p>The general manager is responsible for administering and legally representing the corporation.</p>
General Shareholders' / Partners' Meeting	<p>The general shareholders' meeting is the corporation's highest governing body.</p> <p>The law states the formal notice requirements for such meeting, the minimum quorum, and the matters that are solely under the jurisdiction of that general meeting, which are decided by majority vote simple or qualified (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 rules that apply to the corporation's general partners' meeting as provided by General Law of Companies.</p>

c. Incorporation process

The process of incorporating a company takes approximately fifteen (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 fifteen (15) additional business days.

Please find below a timetable detailing the steps that need to be taken to incorporate a company in Peru:

STEPS	TIME TO COMPLETE
Powers of Attorney to incorporate the company ³	Up to fifteen (15) business days. These documents must be legalized and registered prior to the incorporation of the company.
Checking the uniqueness of the proposed company name	1 day
Preparation of incorporation documents and notarization by a Notary Public	2-5 days
Deposit at least 25% of the company's capital stock in a bank and obtain proof thereof.	1 days
Registration of the incorporation documents before the Public Registry.	2-7 business days
Registration before the Tax Authority	1 day
Legalization of corporate books	1 day

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

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

ii. Branches

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

BRANCHES	
Establishment	Through a public deed prepared by a Peruvian notary public, in which the following information (among other items) must be provided: (i) the capital assigned to the branch for its activities undertaken in the country; (ii) the activities of the branch and a declaration stating that such 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.
Liability	The parent company is liable for all obligations incurred by the branch, any agreement exempting responsibility is consider as null and void.
Capital	The total amount of assets assigned by the parent company to undertake the branch's activities is known as "assigned capital". No minimum capital is required.
Administration	Branches are required to have at least one (1) permanent legal representative in Peru.
Remittance of profits	There are no limitations on the remittance of profits by a branch to its parent company.

iii. Joint Ventures

Peruvian Law establishes two (2) 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 regulation exists in respect thereof.

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

The General Law of Companies defines the silent partnership agreement as an contract by means of which an individual or company grants to a person or persons (whether individuals or 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. Investments in/Mergers with Existing Entities

There are no restrictions to investments made by foreign companies in Peruvian companies. Foreign investment is awarded equal treatment to local Peruvian investments.

Mergers between companies are permitted and must comply with the applicable requisites and formalities provided for in the General Companies Law.

There are no merger controls currently in force except for the electrical sector, as provided in Section IV, F (6) below.

B. Agency/Reseller/Franchising/Distribution Networks

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

Franchising agreements shall be registered before the Institute for the Defense of the Competition and the Protection of the Intellectual Property - INDECOPI (Peruvian competent authority in charge of the registration of trademarks), in order to use the marks involved in such agreement.

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 banks and insurance companies. As a requirement, this type of establishments must be vested with sufficient powers of representation which allows that the agreements signed by these establishments are enforceable according to the Peruvian law.

D. Approvals and Registrations

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

E. Sensitive Economic Sectors/ Restrictions on Foreign Ownership

In general terms, Peruvian law does not establish restrictions to undertake any business activity or own property in Peru, except for the limitations on shareholding ownership by foreigners of local companies of certain sectors such as aviation, and the ownership of land referred to in literal I of Section IV below.

F. Political Risk and Related Issues

Peru has offered a stable legal and business environment for the past twenty five (25) years. As a result thereof, the country has been recently granted investment grade by major risk assessment entities. Provided they comply with certain minimum requirements, foreign investors are entitled to enter into the so called Legal Stability Agreements referred to in literal B of Section III below.

III. INVESTMENT PROMOTION AND TAX INCENTIVES

A. Legal Treatment of Foreign Investment

Peru has a general legal regime which promotes and establishes guarantees for foreign investments. In addition, specific laws regarding mining, hydrocarbons, telecommunications, agriculture and fishing (among other areas) further regulate foreign investment in those sectors.

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 free.

B. Foreign Investment Protection

Investors may benefit from Peru's legal stability regime by entering into Legal Stability Agreements ("LSAs"; in Spanish 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.

The parties to a concession agreement related to infrastructure project and/or public utilities, and their investors, may enter into LSAs for a term matching that of the relevant concession agreement.

The government is entitled to enter into law-contracts, which have the force of a law between the parties thereto. This means that the parties thereto must abide by them and cannot amend them on an unilateral basis. In particular, the government may not unilaterally modify them by passing a law or otherwise leave them without effect.

LSAs 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 an LSA, such investment may be considered for fulfilling the investment commitment in both the investor and the local company's LSA, provided the agreements are entered into within twelve (12) months following the registration of the capital stock increase in the local company's accounting records.



Maras Salt Mines, Cuzco

1. Requirements for foreign investors

Investors must comply with any of the following requirements in order to receive the aforementioned benefits under the legal stability regime:

- Make contributions to the capital stock of a local company, within a term of two (2) years, in an amount equal to or exceeding USD10 million, in case of mining or hydrocarbon activities, or USD 5 million, in case of any other activities.
- Carry out risk investments along with third parties (for example, joint ventures), for the amounts and complying with the terms and conditions mentioned in the previous subparagraph.
- Acquire shares from companies that are directly or indirectly owned by the government (through a privatization process), provided that the acquisition involves more than 50% of the shares and it involves the amounts and complies with the terms and conditions mentioned in the first subparagraph.
- The portion of shares premiums that is capitalized and originates in contributions made by foreign investors may also be guaranteed through LSAs, if it involves the amounts and it complies with the terms and conditions mentioned in the first subparagraph.
- The capitalization of private obligations to foreign individuals or entities (loan capitalization) may be considered as foreign investment capable of being guaranteed through an LSA, provided that it involves the amounts and complies with the terms mentioned in the first subparagraph.

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

2. Requirements for companies receiving investments

Companies receiving investments may also enter into an LSA with the Peruvian government if they receive investments from at least one investor meeting the requirements set forth in the paragraph (1) above.

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

- The new investments exceeds 50% of the company's capital stock and reserves accounts and is allocated to the enlargement of its productive capacity or its technological improvement, meaning that such investments must be carried out through a capital increase; or
- The new investments entail the acquisition of more than 50% of the shares of a company that is directly or indirectly owned by the government (as is the case in state-owned companies that are privatized).

3. Rights guaranteed under agreements

- For investors:

LSAs guarantee foreign investors, for the entire term of the agreement and in connection with the investment commitment undertaken pursuant to the LSA, 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 entered into;
- The right to free availability of foreign currency;
- The right to freely remit abroad funds, profits, dividends and royalties, without any limitations or restrictions;

- The right to use the best exchange rate available on the market;
- The right to non-discrimination.
- For companies receiving investments:

LSAs guarantee companies receiving investments, 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): As long as the LSA remains in effect, the amendments to the Income Tax regime will not be applicable to the local company. Similarly, taxable income shall be calculated based on the same rates, deductions and scale set forth in the legislation in effect at the time of entering into the agreement. This protection exists regardless of whether such modifications prove favorable or not to the company;
- Employment regime;
- Export promotion regime;

4. Characteristics and term of LSAs

The main characteristics of these agreements are the following:

- They are legally binding on the parties and may not be unilaterally amended.
- They are governed by the provisions of the Civil Code and not by administrative law.
- They have a term of ten (10) years starting on the date of execution, except in the case of LSAs entered into by concessionaires engaged in infrastructure and public utilities projects under Supreme Decree No. 059-96-PCM, as well as by their investors, cases in which the term of the LSA is extended to match that of the Concession Agreement.
- They may be waived by investors and companies receiving investments, in which case common legislation will apply from the date on which the waiver is submitted.
- Any amendments agreed upon by the parties may not refer to the term, the extension of the two-year period for carrying out the investment, nor to the reduction of the investment commitment to an amount below the limits established by law. If the amendment provides for an increase in the amount of the investment commitment, it may be included in the legal stability regime subject to receiving authorization from the competent entity.
- Agreements may be terminated in the following cases: (i) failure by investors or companies to make or receive the contributions or purchases to which they have respectively committed, within the term set forth for such purposes; and (ii) failure by investors to obtain prior authorization for assigning their contractual rights and obligations.

5. National entity entering into the LSAs on behalf of the government

PROINVERSION is the national entity responsible for acting on behalf of the government in the execution of LSAs with foreign investors.

LSAs entered into by companies receiving foreign investment are executed jointly by PROINVERSION and by the Ministry of the sector in which the investment will be made. If Peruvian and foreign investors are investing in the same company and wish to submit their applications jointly, the relevant LSA shall be executed by PROINVERSION.

IV. LEGAL FRAMEWORK

A. Foreign Exchange

There are neither foreign exchange controls, registrations, approvals or other similar restrictions on remittance of foreign currency to or from Peru; nor, there is a requirement to have an approval to undertake foreign exchange transactions or to carry foreign currency. Any currency can be exchanged to Peruvian Nuevos 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 US Dollars and other currencies. Also, credit facilities may be agreed in US Dollars 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 without the intent of residency. While such individuals may not receive income from a Peruvian source, they may execute agreements and engage in transactions.

A business visa does not confer the right to render services (either as an employee or independent contractor) to entities domiciled in Peru, even when such 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 thirty (30) continuous calendar days or accumulated within any given period of twelve (12) months.

2. Foreign worker from a non-resident company

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

Both companies must enter into a service agreement based on which the company domiciled abroad agrees to provide a certain type of services to the company domiciled in Peru. Upon executing this service contract, the company domiciled abroad relocates some of its workers to Peru.

A foreign citizen who obtains this immigration status shall have the right to work legally for three (3) months that could be extended up to one (1) year.

3. Worker immigration status

Foreign workers 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.

C. Customs Issues

The Customs General 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 be applied. In such cases, the import is conditioned to the approval of the corresponding authorities.

Duties and taxes applied to import of goods are ad valorem, additional variable duty, ISC, Value added tax VAT, and advance VAT payments.

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

Additional variable duties apply only to certain agricultural products. The rate shall depend on the type of merchandise and the reference price established at the time of import.

ISC 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").

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

Advance VAT payment is a prepayment of the tax that will be levied on future transactions. There is a small group of products which are not subject to this payment at the time of import. The applicable rates are 10% on the first import; 5% on the import of second hand goods; and 3.5% for all other cases. VAT and VAT Advanced Payment Regime paid on the import of goods can be used as credit against the VAT obligation.

The tax base for calculation of ad valorem 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).

In general terms, customs duties and internal taxes must be paid before taking out the merchandise from the Customs Warehouse. However, importers can apply the previous guarantee system, which allows withdrawing goods from customs within forty eight (48) hours once the unloading operation is completed.

For the effective use of this mechanism it is necessary to fulfill two (2) requirements prior to the arrival of the carrier: (i) the customs import declaration should have been numbered and (ii) the specific import authorization for restricted goods must have been obtained.

2. Temporary imports

Temporary entries of goods are also allowed. Such entries can be of two (2) types: (i) for internal use and subsequent re-export (applicable to equipments and machinery included in a closed list of goods approved for this purpose); and (ii) for transforming and subsequent export of the final product obtained (applicable to raw materials). In both cases the payment

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

3. Export

Export operations are tax free and, as a general rule, there are no restrictions to the export of goods. However, the export of 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 (2) types: (i) for being used abroad returning to the country in the same conditions they were 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. This refund is a fix rate of 5% of the FOB export value up to a cap of 50% of its production value.

Only companies that manufacture or produce goods in the country (by themselves or by hiring third parties), by using imported raw materials, can obtain this benefit after that such 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 importing goods with an automatic exemption of customs duties and import taxes. The exemption is in the same amount as the value of equivalent merchandise that was previously imported (without any exemption) and was transformed to obtain goods that were exported.

By means of this regime exporters are able to replenish, free of duties and import taxes, the raw materials and inputs used in the manufacture process of goods for supplying to their foreign clients.

6. Other customs procedures

- Entry into or withdrawal from Peru of merchandise contained in parcels carried by international cargo carriers, express mail, or courier service.
- A duty free system allows the 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 a number of trade agreements to allow the free trade of goods with countries in Asia, the Pacific Basin, Europe and South America. The agreements currently in force include those signed with the Andean Community (Colombia, Ecuador and Bolivia); Latin American Integration Association and Mercosur (Argentina, Brazil, Uruguay, Paraguay, Mexico and Cuba); European Union; United States; Canada; Mexico; Cuba; Costa Rica; Panama; Chile; Venezuela; EFTA (European Free Trade Association which includes Norway, Switzerland, Island and Liechtenstein); the Popular Republic of China; Singapore; Japan; South Korea and Thailand.



Punta Coles, Moquegua

An agreement has already been executed with Guatemala and should enter in force in the near future. These agreements allow the reduction of customs duties that must be paid to import goods. For this purpose, originating rules of each agreement must be fulfilled.

8. Antidumping duties and countervailing duties

In accordance with the WTO 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 less than the production cost of exported products or from granting subventions.

An antidumping duty is levied on certain goods whose dumping prices cause or threaten to cause material injury to the Peruvian domestic industry. A countervailing duty is levied to counteract subsidies directly or indirectly granted in the country of origin when they cause or threaten to cause material injury to the Peruvian domestic industry. Antidumping and countervailing duties are imposed by INDECOPI. The customs authority is in charge of their collection.

These duties will remain in force while the causes that originated them persist. They must be terminated after five (5) years, unless the termination would be likely to lead to the continuation or recurrence of dumping or subsidization and damage of the domestic industry.

D. Taxation of Business and Cross-Border Transactions

The Tax Code is the main legislative body that governs the Peruvian tax regime; it does not contain rules applicable to specific taxes, but it does guide the application of other tax laws such as the Income Tax Law, VAT, the Municipal Tax Law, and Customs Act.

1. Tax administration

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

2. Tax procedures

The outstanding tax bill issued by the Tax Administration after an audit, and the penalties imposed can be claimed by the taxpayer before such entity. Should the claim be rejected, the taxpayer may file an appeal before the Tax Court. Against the judgment of the Tax Court, an administrative suit can be filed before the Judiciary, starting the judicial phase.

3. Taxpayer identification - RUC

Every individual, corporation, undivided estate, partnership or any entity, whether Peruvian or foreign, regardless its tax domicile, must be registered in the Taxpayer Identification Record – (RUC) - upon acquiring taxpayer status or becoming responsible for taxes administrated or collected by SUNAT. The same requirement applies to a tax withholding agent. The taxpayer or tax withholding agent is identified by the SUNAT assigned 11 digit number which is used to comply with both its formal and substantive tax obligations (the RUC). Individual employees (who earn earning fifth category income), and non-domiciled subject to withholding in the country of income source, are not required to be registered in the RUC.

4. Peruvian tax system- Legal framework

Legislative Decree 771 is the Framework Law of the Peruvian National System, which comprises the Central Government and the Local Government taxes and certain non-tax contributions. Taxes attributed to the Central Government are the Income Tax, VAT, Excise Tax, Temporary Assets Tax, Financial Transactions Tax, tax on casino, gambling and slot machines, Special Mining Tax, Custom Duties, the Single Simplified Regimen Tax, and Fees for Public Services. The Local Government Taxes are the Real Estate Tax, the Real Estate Transfer Tax, the Vehicle Property Tax, the Tax on Non-Sporting Events, the Gambling Tax, the Betting Tax, Municipal Promotion Tax, Road Tax, Taxes on Recreational Vehicles, Municipal Contributions and Municipal Fees.

There are also certain non-tax mandatory contributions such as the Social Security Contribution, Contribution to the National Service for Technical Industrial Training (SENATI), and Contribution to the National Training Service for the Construction Industry (SENCICO).

The following is a description of the taxes with the broader application in Peru at the time of the issuance of this report (April 2014). This report also includes a description of certain tax issues relevant to the mining activities.

5. 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, residents in Peru are considered, 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 twelve month period; (iii) legal entities incorporated in the country; (iv) branches, agencies or other permanent establishments in Peru of non-domiciled, case in which the status of resident applies to the branch, agency or other permanent establishment as to the Peruvian source income.

- Peruvian source income

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

- Business Income Tax regime

Business entities are subject to business Income Tax regime. The definition of business entities comprises corporations, partnerships and any other form used to conduct business. The tax treatment for domiciled partnerships, limited liability companies, taxable foundations and associations as well as joint ventures, that keep independent accounting from that of the ventures, is the same as that for domiciled corporations. Business entities are subject to Income Tax – at corporate level – levied at a rate of 30%. In addition, dividend distributions made to individuals (either resident or non-resident in Peru) or non-resident corporations are further subject to an additional Income Tax levied at a rate of 4.1% on the value of such distributions.

- Determination of taxable income

i. General rule

Business Income Tax regime applies on the taxpayer's net income. The net income over which the income tax is calculated is the result of deducting the expenses incurred to produce the income and maintain its source.

ii. Non-residents

In case of non-resident legal entities, the net business taxable income will generally be the total amount paid or credited on their behalf. However, regarding income obtained from the sale of goods or rights or from the exploitation of depreciable assets, the net income will be the amount resulting from deducting the cost of the assets from the gross income. Such cost might be deducted provided that it has been previously certified by SUNAT.

There are certain business activities subject to presumptive Income Tax rules, such as insurance, ship and airplane leasing; transport from or to Peru; international telecommunications services; services provided by international news agencies; distribution of movies; and cargo ships leasing, among others.

- Deductions – losses carried forward

Resident corporations are entitled to claim depreciation deductions in respect of capital assets used in the course of carrying on business, provided they do not exceed the maximum rates set forth in the LIR and are registered in the accounting books. Depreciation term varies depending on the nature of the asset. The maximum annual depreciation rates are 20% for vehicles; 25% for hardware; 20% in the case of equipment and machinery used in mining, oil, gas and construction activities; 5% in the case of buildings; and, 10% in the case of other fixed assets. The amortization of intangibles is also deductible if the intangible asset is deemed as a limited useful life intangible, such as software, patents and author copyrights. The amortization rate might be 100% in the first year or 10% during (ten) 10 years, according to the taxpayer decision.

Peruvian resident companies are generally entitled to carry forward at least a portion of any tax losses sustained in previous fiscal years to offset taxable income earned in subsequent fiscal years. For such purposes, taxpayers may choose between one of two systems: (i) the first allows tax losses to be carried forward for four (4) years from the year in which they are incurred; and, (ii) the second allows tax losses to be carried forward indefinitely but only to offset 50% of the net income earned during the relevant fiscal year. Peruvian tax system does not permit loss carry backs.

Capital losses arising from the sale of securities are not deductible when, in a period not exceeding the thirty (30) calendar days period prior to the sale, at the time of the sale, or during the thirty (30) calendar days following such sale, the taxpayer acquires securities of the same type as those transferred or purchases an option to buy back those securities.

- Monthly payments

Resident companies must prepay Income Tax monthly, based on revenues accrued during the relevant month, according to one of the methods set forth in the Income Tax law.

According to the amendments introduced to Income Tax Law by Legislative Decree N° 1120 published on July 18th, 2012, monthly prepayments are determined as follows:

If the taxpayer did not have taxable income the previous year or started activities during the year, the monthly payments will be 1.5% of the taxpayer's monthly net income.

Otherwise, the amount of the Income Tax monthly prepayment will be given by the higher amount between: (a) the result of applying a factor to the net income; or (b) the result of applying a 1.5% rate to such income.

In general, taxpayers might modify the method for determining their monthly prepayments as of every May, based on the financial statements to April 30th (if the prepayments are being calculated by applying the 1.5%) and as of August, based on the financial statements to July 31st.

- Withholding

There are required to withhold the applicable Income Tax payers of income characterized as "second category" (income earned by individuals arising out from capital or dividends) and "fifth category" (income from employment); the individuals, companies and entities that are required to keep full accounting records of income and expenses when they pay or credit

“fourth category” income (independent personal services); the entities that pay or credit income or obligations to a bearer or other securities to a bearer; securities clearing, settlement entities, investment funds or trust administrators in the cases stated in the law; as well as any other persons as determined by SUNAT.

In case of payments of Peruvian source income to non-domiciled beneficiaries, the person making such payments must withhold and pay SUNAT the amount resulting from the application of the net rates established by the law. Generally speaking, payments of Peruvian source incomes by domiciled taxpayers to non-resident entities are subject to Income Tax withholdings levied at a rate of 30% (a 15% rate applies in the case of technical assistance provided certain conditions are met).

In the specific case of interest, under certain circumstances, a reduced withholding rate of 4.99% may apply where interest payments are made to non-resident unrelated lenders.

In addition, reduced withholding tax rates may also apply where there is a Double Taxation Treaty (DTT) in force (currently there are in force the DTTs signed by Peru with Bolivia, Brazil, Canada, Chile, Colombia and Ecuador).

- Tax return filing and payment

Annual Income Tax returns from companies (and entities subject to the business Income Tax treatment) must be filed around April, on the date determined by SUNAT, of the following year of the year subject to the tax return, which closes on December 31st. There are not available any other fiscal year closing dates.

- Individual Income Tax rules

For individuals considered as resident for tax purposes, income from capital is subject to a tax rate of 5% on the net income, while income from employment is subject to a progressive scale on the income resulting after deducting seven (7) tax units. The progressive tax rates applicable to resident individuals are 15% up to an income equivalent to 27 tax units; 21% to the excess over 27 tax units up to 54 tax units; and 30% to the excess over 54 tax units.

For non-resident individuals a flat 30% rate shall be applied over the total gross income, without deducting the mentioned seven (7) tax units.

- Taxation of mining activities

i. Special deduction rules

Pursuant to the provisions set forth in the Mining Act, the acquisition value of mining concessions shall be amortized since the fiscal year in which according to mining law, the minimum production levels must be accomplished in the term determined by the mining concession's holder at that time. Such term would be determined based on the probable life of the deposit, computed taking into account the proven and probable reserves and the minimum production obligation.

If the mining concession is abandoned or becomes extinct before complying with the minimum production levels established by law, the acquisition value might be totally amortized in the fiscal period in which any of the aforesaid occurs. In addition, exploration expenses incurred after the mining concession started the minimum mandatory production stage, may be totally deducted in the respective fiscal period or amortized since that time.

Development and preparation expenses allowing the exploitation of the site for more than one year can be wholly deducted in the fiscal period in which they are incurred, or amortized within such term and two additional years (i.e. an overall three (3) year amortization period).

ii. Mining companies tax benefits from public infrastructure investments

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

Investments must be approved by the competent authority (i.e., in case of roads, the Ministry of Transport and Communication). The amount of the investments that might be Income Tax deductible expenses would be only the amount related to the portion of the work characterized as public infrastructure. Moreover, the expenses related to maintenance, acquisition of

⁴ 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.

land, or pre-investment and investment studies (unless the taxpayer proves that they are necessary to obtain the taxable income or maintain its source) are not deductible.

iii. Special mining tax

Since October 1st 2011, mining companies in exploitation and production stage are subject to the Special Mining Tax. Companies with stability agreements in force under the General Mining Law are levied with the called Special Contribution (that is voluntarily agreed with the government).

The Special Mining Tax is levied on the company quarterly operating profits from the sale of mineral resources, determined according to the applicable accounting rules. The Special Mining Tax effective rate ranges from 2% to 8.40%; and is determined according to the company's quarterly profits subject to the tax. There is no minimum Special Mining Tax. The tax effectively paid is a deductible expense for the Income Tax of the year in which it is paid.

iv. Mining royalty

The Mining Royalty, in force since June 2005, is a royalty charge to be paid by mining companies in favor of the regional and local governments where mining resources are located.

The legislation enacted in September 2011, in force since October 1st 2011, has modified the Mining Royalty rules. Nowadays, the Mining Royalty is now a percentage of the quarterly operating profits; the effective rates range from 1% to 12 %; and it can be a deductible expense for purposes of the annual Income Tax in the year in which it is paid. Should the Mining Royalty amount calculated by applying the formula stated in the law be lower than 1% of the respective quarterly sales revenue, the latter would be deemed as the royalty to be paid by the company. Finally, under the law currently in force there are the assignees of mining concessions also subject to Mining Royalty rules.

- 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 shall always be deemed as made at its corresponding "fair market" value. If the value determined by the parties differs from the "fair market" value, the tax authorities will make the necessary adjustments for both the purchaser and seller.

In the case of transactions entered into between "related" parties or with entities resident in tax haven jurisdictions, the corresponding "fair market" value shall be deemed equivalent to the consideration that would have been agreed with or between 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 entered into 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 to the 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 the transfer pricing study supporting information and documents; and (iii) file an annual tax transfer pricing return. If any of these requirements is not observed, the company would be subject to a fine as stated by law.

- International Tax Regime

Under the International Tax Regime (ITR), in force since January 1st, 2013, Peruvian shareholders of certain foreign corporations are subject to tax on the undistributed "passive" income earned by such companies abroad.

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

For this purpose, it is 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 will add them to its Peruvian source income. Such income will be subject to tax in the fiscal year in which it is attributed to the shareholder, regardless its actual payment.

6. Value added tax

- Scope of application

VAT is a consumption tax that 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 the designation given to the transaction in the contracts or negotiations that originated such transfer and the conditions agreed upon by the parties. The transfer of movable goods of a company for free is also considered a sale unless certain conditions are met.

The sale of “future goods” and sale transactions subject to “condition precedent” (whereby the payment is made prior to the existence of the good) are transactions subject to VAT. Likewise, earnest, deposits and guarantees that are delivered to the provider as a consequence of a sale, service or construction agreement, will also be subject to VAT if those exceed 3% of the purchase price agreed by the parties in the particular transaction. A service would be provided in the country when the service provider is a Peruvian resident subject to the Business Income Tax regime, regardless the place of execution of the contract or payment of the compensation. Services would be considered to be used in the country when the service provider is a non-resident for Income Tax purposes and the service is consumed or used in Peru. Also within VAT’s scope, but subject to exceptions, the transfers of business assets are free of charge if between related companies.

- VAT taxpayers

All individuals, companies, legal entities, irregular partnerships, associations, trusts, mutual and investment funds that perform any of the transactions subject to VAT. Also, 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 types of entities that do not carry out business activities may be subject to VAT rules if they usually import goods or carry out the activities subject to VAT, so are 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, VAT taxable base is the sale price paid for the goods or services, which may be adjusted by the Tax Administration considering their fair market value. In case of construction contracts the VAT tax base would be the construction value; in the first sale of real estate it would be the income received (excluding the 50% corresponding to the land value); and in case of imports it would be the customs value plus rights and taxes affecting the import of goods except for the VAT.

VAT tax rate is 16%. It must be added a 2% rate corresponding to the Municipal Promotion Tax which is governed by the provisions applicable to VAT, resulting in a total tax rate of 18%.

- Fiscal credit

VAT is assessed and collected on the value of goods and services that have been provided every time there is a transaction subject to VAT. 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 chain of supply charges VAT on its sales and is entitled to deduct from this amount VAT paid on its purchases (the “Fiscal Credit”). Under VAT rules, in order to give rise to Fiscal Credit the purchase of goods or services must constitute operating costs or expenses to the taxpayer according to the Income Tax rules, even if the taxpayer is not subject to such tax, and must to be used in VAT taxable transactions. Also, the tax must be separately stated on the purchase invoice; and the supporting invoice must have been issued according to the statutory requirements, among other conditions.

Notwithstanding that export operations are not subject to VAT, subject to the fulfillment of certain requirements, exporters can recover their Fiscal Credit with a maximum limit equivalent to 18% of the FOB value of the exports made during the corresponding month.

- Declaration and payment

The amount of tax to be paid is determined on a monthly basis, deducting the Fiscal Credit from the VAT of the corresponding period. If in any given period the Fiscal Credit exceeds the payable VAT, the excess will constitute a credit on the taxpayer's behalf. This excess will be applied as Fiscal Credit in the following months until it is exhausted.

- VAT early recovery regime for mining activities - Law 27623

The Peruvian Congress approved a specific VAT early recovery regime applicable to mining activities (the "mining early recovery regime"). The regime allows holders of mining concessions performing mining exploration activities, which are still in a pre-productive stage, to recover VAT paid upon the imports or local purchases of certain goods, and in the acquisition of certain services and construction contracts related to such exploration activities.

In order to be covered by the mining early recovery regime the investor must enter into an Exploration Investment Contract with the Peruvian government – with the competent authority (i.e. the Ministry of Energy and Mines) – stating its commitment to make an investment of at least USD500,000.00.

If not extended, the mining recovery regime will elapse on December 31st, 2015.

7. Net assets tax

This tax, so-called "ITAN", levies the net assets' value of companies as reflected on their corresponding balance sheets as of December 31st of the previous year.

ITAN must be paid only by companies that are already in a productive stage as of December 31st of the corresponding previous year. A company will be deemed as already in a "productive" stage whenever it has transferred an asset or provided a service related to its corporate business purpose.

ITAN is determined by applying a 0.4% rate to a net asset's value exceeding from S/. 1,000,000. Net assets with a lower value are not subject to ITAN. The tax can be paid in one installment or in nine (9) equal monthly installments between the months of April and December.

In principle, taxpayers have the possibility to consider ITAN payments: (i) as a deductible expense; or, (ii) as a credit to offset the corresponding Income Tax monthly prepayments and their annual Income Tax. If at the end of a fiscal year the ITAN paid exceeds the annual Income Tax due, taxpayers have the possibility to request the refund of such excess. The refund must be granted within a maximum period of sixty (60) business days since the date in which the corresponding application is filed.

8. Financial transactions tax

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

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

9. Selective consumption tax

The Selective Consumption tax levies the importation and local sale of certain so-called "luxury goods", such as cars, cigars, cigarettes, liquor, beer, fuel and others.

Depending on the relevant good's nature, the tax is determined based on three different systems: (i) based on the good's value (e.g. 30% in the case of used vehicles for public transportation); (ii) based on a specific basis (e.g. S/. 1.50 per liter of "pisco" – Peruvian liquor); and, (iii) based on the price to the public (e.g. 27.8% in the case of beer).

10. Banking regulations

Since 2004, companies domiciled in Peru are required to meet certain formalities when fulfilling payment obligations to third parties. One formality requires that payments be made through the Peruvian banking system when such amounts are greater



Andean Dance, Guzco

than S/.3,500 (Peruvian New Soles) or USD1,000 (depending on the currency in which the obligation was contracted), in order to document expenses, costs and/or tax credits for tax effects.

11. Tax incentives

- Tax benefits from public investment projects – Law 29230
Companies in general may enter into agreements with regional and local governments to finance or carry out public investment projects listed on the PROINVERSION priority projects list. Once finalized, the works must be transferred to the regional and local governments. The investors would be paid by the Central Government with certain certificates—the Regional and Local Public Investment Certificates (CIPRL). These certificates might be used by the company to offset its monthly and annual Income Tax payments of the relevant year up to an amount equivalent to 50% of the Income Tax of the previous fiscal year. If the certificates are not used on the respective fiscal year due to the 50% limitation, the Central Government would issue new certificates adding a credit of 2% to the amount stated on the previous ones. If the certificates are not used within a period of ten years, the company might request a reimbursement from SUNAT.
In order to be able to subscribe such agreements, the companies must be selected by the regional and local governments according to certain statutory rules. Moreover, the companies should be registered before the Companies Registry that undertakes public infrastructure projects.

- Stability agreements
See literal B above of section III.

E. Labor and Employment

In this section the most relevant labor aspects of the Peruvian legal framework will be outlined. The following four charts include: (i) a description of labor, non-labor agreements, as well as labor relationships; (ii) a brief description of the conditions applicable to labor relations; (iii) a description of the remunerations and benefits which should be paid both to employees hired for a definite period as well as to those hired for an indefinite period; and, (iv) a description of pension systems and the taxes due on compensations paid to employees.

1. Labor relationships and contracts

LABOR RELATIONSHIPS AND CONTRACTS	
Individual labor agreements	Indefinite term labor contract <ul style="list-style-type: none">As a general rule, under Peruvian law, employees are hired for an indefinite period.Fixed term contracts are only available under certain circumstances, as explained below.
	Fixed-term contracts <p>Fixed term contracts are available in the following circumstances:</p> <ul style="list-style-type: none">(i) Contracts for start-ups or new business activities (starting or increasing operations);(ii) Contracts entered into to meet business production demands (market needs);(iii) Contracts entered into to temporarily substituting a permanent employee of the company (substitution); and(iv) Contracts entered into for a specific project or service (contract with a previously-established purpose and a specific duration). <p>Maximum terms for these contracts may vary based on their type. However, none may exceed five (5) years. Fixed term contracts are also available for special sectors, i.e. nontraditional exports, construction.</p>

Part-time contracts

A contract is deemed part-time when the employee works for less than four hours a day.

- Part-time contracts are fully allowed by law.
- No previous authorization is required.
- Workers may not be entitled to some of the most relevant labor benefits such as protection against dismissal and seniority pay.

Collective agreements

Collective agreements are entered into by one or more employers and one or more unions or workers' representatives in order to regulate benefits for workers and their relationship with their employer, as well as any matters affecting such relationship.

The main source for collective agreements is collective bargaining. If the parties do not reach an agreement, the law provides for various means of resolving the conflict, such as conciliation, mediation, and arbitration. The Constitution also recognizes the right of the workers to strike.

Special agreements

Given the special characteristics of activities involved in rendering services, special regimes exist for contracting labor regarding 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.

Non-labor agreements

Trainee contracts

- The aim of these contracts is to train the work force that has not yet joined 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 legal benefits arising from work contracts, but to special ones provided by law.

Independent services contracts

- These contracts are only available for independent services provided there is no subordination or control exercised by whoever benefits from such work.
- They do not give rise to labor benefits.

Labor intermediation and outsourcing

Labor intermediation

- Labor intermediation is only allowed when there is a need for temporary, supplementary or specialized services. Transferred workers hired under this scheme may not render services that entail the ongoing performance of the employer's main activity.
- The number of workers that may be transferred to a user firm may not exceed 20% of the user firm's total workforce. This percentage will not be applied to supplementary or specialized services, as long as the service provider assumes full technical autonomy and responsibility for carrying out its activities.

Outsourcing services

- It refers to hiring to develop specialized activities. Said companies must: (i) carry out the contracted assignments on their behalf and at their own risk; (ii) have their own financial, technical and material resources; and, (iii) have workers who are under their exclusive control.
- These types of contracts do not restrict employees' individual and collective rights.
- The following do constitute outplacement services: 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 firms, as long as they carry out the contracted assignments on their behalf and at their risk; have their own financial, technical and material resources; and have workers who are under their exclusive control. If these requirements are not met, the workers will have to be registered as direct employees.
- The company that hires the service company is jointly liable with the latter for workers payment and statutory benefits.

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 can freely form or be part of a union. The form of the union will depend on the industry and sometimes on the level on which workers intend to negotiate with their employer or employers. If the employees are going to negotiate solely on a company level, they will probably form a company union, for which a minimum of twenty members

is needed. On the other hand, if they intend to negotiate with several employers, they may form a trade union, for which a minimum of fifty workers must join together.

- More than one union may coexist in a company. Only a union with a majority of affiliated workers may negotiate on such a level. Union affiliation is free and voluntary for workers and is offered based on the union's by-laws.

2. Labor conditions

LABOR CONDITIONS

Worker age	<ul style="list-style-type: none">• The minimum age allowed to start working is fourteen (14), this may vary depending on the activities performed.• Retirement age in the private pension system is sixty-five (65), at which age workers may choose to apply for a retirement pension. It is possible to fix an earlier retirement age for workers who perform risk activities (life or health).• Peruvian legal framework provides for compulsory and automatic retirement at age seventy (70), as long as the worker is entitled to a retirement pension, although the parties may reach an agreement to the contrary.
Worker nationality	<ul style="list-style-type: none">• Peruvian or foreign companies may hire foreign workers, as long as the latter do not exceed 20% of the total number of their workers.• Total payments to foreign workers may not exceed 30% of the value of the total payroll.• Notwithstanding the above, there are cases in which the aforementioned percentage limits do not apply, as in the case of a foreigner whose spouse is Peruvian or a foreigner with an immigrant visa. Similarly, there are cases of foreign workers who are exempt from such percentages because they perform work involving specialized, managerial or leadership tasks.
Work shift	<ul style="list-style-type: none">• The ordinary work shift is eight (8) hours, or a maximum of forty-eight (48) hours per week.• Work carried out before or after the work shift must be considered overtime.• Overtime work is voluntary for employees.• Overtime pay for the first two hours may not be less than 25% per hour, based on the pay received by the worker. A percentage of 35% is applied to any additional hours.• Employers must keep an "attendance register" in order to keep the information of the entrance and the departure of the workers, trainees and third party services from the work place.
Salary	<ul style="list-style-type: none">• Peruvian legislation considers salary to be the total amount received by workers for their services, whether in cash or in kind, provided it may be used freely by workers.• Specific non retributive concepts, such as special bonuses, profit sharing, and value of work conditions, among others, are also allowed.• The way in which payment is made is established by agreement between the worker and the employer.• It is also possible for employers to establish a total annual payment with those workers who receive monthly payments greater than two (2) UIT. This amount includes all legal and conventional benefits to which the company is subject, with the exception of profit-sharing.
Minimum living wage	Workers shall receive a minimum monthly income of approximately USD 267.00 (PEN 750.00). Exception is made for part time contracts.

3. Labor benefits

LABOR BENEFITS

Holidays	<ul style="list-style-type: none">• Workers are entitled to thirty (30) calendar days of paid holiday leave after each full year of service.• Vacation period must be taken in the year following the year in which it was accrued.• Should the employee not be allowed to take holiday leave in the pertaining year leads to the employer will be liable for one extra monthly wage as compensation, in addition to the holiday salary and the wages already collected by the worker.
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- Some high level employees, such as the general manager, may not be entitled to receive such compensation.

Non-working paid holidays

Employees have the right to paid rest during the following holidays: January 1st (New Year's Day), Easter (Holy Thursday and Good Friday), May 1st (Labor Day), June 29th (St. Peter and St. Paul), July 28th and 29th (Independence Day), August 30th (St. Rosa of Lima), October 8th (Battle of Angamos), November 1st (All Saints), December 8th (Immaculate Conception) and December 25th (Christmas Day).

Maternity leave and benefits

- Female workers are entitled to forty-five (45) days of prenatal leave and forty-five (45) days of postnatal leave, which are borne by the Social Security (through a reimbursement).
 - Prenatal and postnatal leave can be accumulated, at worker's choice.
 - In the event of multiple births or birth of a child with disability, there shall be an additional thirty (30) days of postnatal leave.
 - At the end of the postnatal period, the mother is entitled to a daily one-hour nursing leave until the child is one year old.
-

Family allowance

- This benefit is granted to employees whose remunerations are not regulated by collective bargaining, provided that they have one or more dependent children under eighteen (18). In some cases the benefit has to be extended for a few more years.
 - This benefit is equivalent to 10% of the minimum wage.
-

Profit sharing

- Legislative Decrees 677 and 892 establish a system of profit-sharing for personnel at private companies that employ more than twenty (20) workers.
 - 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% of taxable profits.
-

Seniority pay severance (CTS)

- All workers are entitled to seniority pay (CTS), as long as they work a minimum of four (4) hours a day.
 - This benefit is deposited semi-annually in the banking or financial institution of the worker's choice.
 - The amount of each deposit is equal to one-twelfth 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.
-

Legal bonuses

- Workers are entitled to two bonuses a year, one in July (Independence Day) and another in December (Christmas).
 - The amount of each bonus is equal to one month's pay.
-

Life insurance

- Workers have the right to life insurance paid by the employer after completing four (4) years of work with them.
 - The law regulates the characteristics of this insurance.
 - The premium is paid by the employer and its amount is negotiated with each insurance company.
-

Social security health insurance

- The social security health system offers its beneficiaries the following benefits: prevention, awareness, recovery and subsidies for health care, social welfare, work and professional illness.
 - The system is administered by a public entity known as the Social Security Health Institute (Seguro Social de Salud, or ESSALUD) and is supplemented by health plans and programs provided by employers in their own contracts or contracted through private healthcare providers (Entidades Prestadoras de Salud, or EPS), which in certain circumstances may act in place of ESSALUD.
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4. Pension systems and taxes on compensation

PENSION SYSTEMS AND TAXES ON COMPENSATION

Pension systems

There are two main pension systems. In both cases the worker must be at least sixty-five (65) years old in order to apply for 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 as a result of 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 such system, unless they are affiliated with the private pension system.

This is a collective system. The worker pays the contributions and if he complies with the minimum requirements he will collect a pension depending primarily on the time that he belonged to the system. There is a cap for the amount of a pension, which sits currently at less than USD 330.00 a month.

- **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 pension fund account at the time of his retirement.

Taxes on compensation

- **Social security health insurance**

9% of monthly salary is paid into social security health insurance and is charged to the employer.

- **National and private pension system**

In the case of the national pension system the contribution amounts to 13% of compensation. In the case of the private pension system, the contribution varies between 11% and 12% of compensation and will also generate a commission on the administrated fund. In both cases, the worker is responsible for payment, but must be withheld and paid by the employer.

- **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 UITs). For non-resident workers in the country, a general rate of 30% is applied to total gross income without any deductions being made.

F. Antitrust and Competition Issues

Acts against free competition are forbidden and sanctioned by the Repression of Anticompetitive Law (Ley de Represión de Conductas Anticompetitivas, LRCA). Sanctions are determined and executed by INDECOPi on a case by case basis.

Three (3) main types of conducts sanctioned are: (i) abuse of dominant position; (ii) horizontal collusive practices; and (iii) vertical collusive practices.

1. Abuse of dominant position

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 such market, without its competitors, suppliers or customers being able to counteract it.

A dominant position in a market generally occurs as a result of factors such as:

- A significant participation in the relevant market.
- The characteristics of the supply and demand of goods or services.
- The technological development or services involved.
- The competitors' access to financing and supply sources, as well as to distribution networks.
- The existence access barriers of a legal, economic or strategic type.
- The existence of suppliers, customers or competitors and their power of negotiation.

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

Abuse of 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, which would not have been possible if such position had not been held.

The main conducts considered to be abusive by the LRCA are:

- Unjustified refusal to enter into a contract.
- Discrimination among competitors (does not include generally accepted discounts or practices).
- Tie-in clauses.
- The unjustified hindrance of access to or permanence in an intermediation association or organization.
- The establishment of exclusive distribution or sales agreements, no competition or similar clauses, without justification.
- The abusive and reiterated use of judicial or administrative proceedings, the effect of which is to restrict competition.
- Inciting third parties not to provide goods or services, or not accept them.
- In general, all those conducts that prevent or hinder the access or permanence or current or potential competitors in the market due to reasons other than a greater economic efficiency.

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

2. Horizontal collusive practices

Horizontal collusive practices imply the joint action of several competitors as if they were one. Sometimes companies 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 benefits for each company.

Such practices may consist of concerted agreements, decisions, recommendations or 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 cooperation activities, decisions or recommendations made through business partnerships and even an understanding between parties.

Within the sanctioned practices we may find the following:

- Direct or indirect concerted pricing or establishment of other business or service conditions.
- Concerted limitation or control of production, sales, technical development or investments.
- Concerted distribution of clients, suppliers or geographical areas.
- Concerted action to fix the quality of products, when they do not conform to technical standards and negatively affect the consumer.
- Concerted application of discriminating practices among competitors.
- Unjustified concerted tie-in clauses.
- Concerted and unjustified refusal to enter into contracts.
- Concerted and unjustified hindrance of access or permanence of a competitor in a market, association or intermediation organization.
- Concerted or coordinated offers, positions or proposals or refraining from them in public or private biddings processes or tenders or other forms of public contracting or procurement contemplated in the current legislation, as well as in public auctions.
- Other practices with an equivalent effect aimed at obtaining benefits for reasons other than a greater economic efficiency.

Collusive practices are regulated by absolute prohibitions or relative 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 are those horizontal agreements between competitors that are not supplementary or accessory to other licit agreements, which purpose is:

- Fixing prices or other business or service conditions;
- Restricting production or sales, particularly through quotas;
- Distribution of customers, suppliers or geographical areas, or
- Establishing positions or abstentions in public or private biddings processes or tenders or other forms of public contracting or procurement contemplated in the current legislation, as well as in public auctions.

Those practices which do not fall under the aforesaid, are considered relative prohibitions.

3. Vertical collusive practices

These are collusive practices among economic agents operating at different levels of the production, distribution or marketing chain, aimed at restricting, preventing or forging 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 therein.

Illegal vertical practices may consist of those practices considered illicit both due to the cases of abuse of dominant position and due to the cases of horizontal collusive practices detailed above.

All vertical collusive practices constitute relative prohibitions. In such cases, the competition agency must demonstrate in all cases that the practice has or may have a negative impact on the competition.

4. Proving collusive practices

Given that collusive practices are difficult to prove, the competition agency may resort to signs and presumptions in order to verify whether a 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 analysis of the alleged uncompetitive practice. For example, it must make sure that the anticompetitive practice is clearly identified based on indicia which reveal the existence of an anticompetitive conduct, which may not be otherwise explained under an alternative rational conduct which is absolutely licit.

5. Sanctions and corrective measures

Anticompetitive practices may be sanctioned by INDECOPI through the imposition of fines, which, depending on the seriousness, may reach up to 12% of the gross sales or revenues earned by infringing companies.

INDECOPI is also empowered to order corrective actions aimed at reestablishing the competitive process and are additional to the sanction that may be imposed for infringing the provisions contained in the LRCA. These may be:

- Cessation or performance of activities.
- Obligation to enter into contracts.
- Non-enforcement of anticompetitive clauses or provisions of legal instruments.
- The access to an intermediation association or organization.

Likewise, INDECOPI has the attribution to sanction the individuals who intervene in taking the decision referred to the anticompetitive conduct.

Currently, the anticompetitive practices are not considered a criminal offence, contrary to what occurred in the prior legislation.

6. Mergers control

Until now, merger control has only been in force for the electric sector. However, some initiatives have been promoted in Congress with the aim to include merger control in the general system governing free competition.

The Antimonopoly and Antioligopoly Law for the electricity sector (LAASE) provides that vertical or horizontal concentrations that may arise in electric power generation and/or transmission and/or distribution will be subject to a procedure of prior authorization to be issued by the Commission on Free Competition of INDECOPI, in order to avoid concentration practices resulting in a decrease, damage or prevention of competition and free presence in the energy market.

G. Environmental Issues

Peruvian environmental legislation and institutionalism have undergone significant development aimed at preventing negative environmental impact that could be caused by companies undertaking diverse economic activities, supervising the fulfillment of environmental legislation, strengthening the governmental entities and creating a less bureaucratic system in which business may be conducted with environmentally sustainable standards.

In May 2008, the Ministry of the Environment (MINAM) was created as the government's environmental sector leader. 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 economical sector of the country, the Regional Governments and the Municipalities.

Along with the MINAM, the Environmental Evaluation and Supervision Agency (OEFA,) was created as the leader of the environmental supervising and sanctioning activities. This entity's role is to verify the fulfillment of the environmental legislation and to sanction its breaching, although the Regional Governments and the Municipalities kept their competences for certain projects and activities.

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

The General Law on the Environment (Law 28611) regulates the legal framework for environmental management and the principles and rules for ensuring the right to a balanced and adequate environment for life.

The Law on the National Environmental Impact Assessment System (Law 27446), imposes the obligation of having an approved environmental management instrument prior to development of investment projects (whether public or private), the criteria under which such projects should be qualified (depending on their capacity of generating negative environmental impacts) and the environmental management instruments applicable in accordance with the qualification. 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)

Environmental management instruments must be approved by the sector's competent authority or by the corresponding Regional Government or Municipality, depending on the project's characteristics. However, the government has recently created the National Service for the Environmental Certification of the Sustainable Investments (SENACE), which will be responsible for the approval of Detailed Environmental Impact Assessments.

Peruvian environmental legislation also compels investors to perform mechanisms for citizen participation with the people located near the investment projects. Moreover, governmental consents approving the execution of activities that may affect native or indigenous peoples require a prior consultation proceeding in charge of the government.

Finally, when projects development has concluded, their titleholders are obliged to perform remediation and closure activities in order to restore the affected area to its original characteristics.



Cathedral of Lima, Main Square

H. Consumer Protection and Products Liability

The Code of Protection and Defense of the Consumer (Código de Protección y Defensa del Consumidor) guarantees consumers access to suitable products and services and to all effective mechanisms to protect their rights, establishing several criteria to reduce the information asymmetry in favor of consumers. Thus, it establishes the obligations of suppliers as well the rights of consumers and includes rules regarding the information that must be provided to consumers, suitability of products and services, advertising requirements, health and safety of consumers, contracts with consumers, and provisions regarding specific products or services.

The Consumer Protection Commission (Comisión de Protección al Consumidor) is in charge of reviewing claims for infringement of any of the code's regulations.

The Code of Protection and Defense of the Consumer is applicable to all consumer relations that are entered into the Peruvian territory or when the consumer relations have 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 thrust. 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 Constitution also establishes that foreigners (whether natural 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 lands located within fifty (50) km from 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 limit to the right of foreigners to own land in frontier zones is not an absolute prohibition since this 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 wide contractual possibilities, even allowing the creation of new types of contracts, called 'atypical contracts' that 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 actual possession of an asset for ten (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 preliminary agreement may even have to pay a penalty. There also is the option agreement, by means of 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 are invested with certain formalities, agreements related to real estate may generally be executed by simple mutual consent. The practice and the need to protect property rights, encourages to abide by 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.

In relation to private real estate, there is a special type of property that may only be transferred by observing special

formalities. These are properties owned by native and peasant communities, in which case the sale of property must be approved by the corresponding community meetings. According to the resolution adopted at this meeting, a person who has been expressly chosen to act on behalf of the community must execute the agreement.

Public property could be private property of the government or could 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 such property by any individual. A private entity may purchase state-owned property, execute agreements on exchange, easement, surface rights, or usufruct, or lease the property for a specific purpose of public relevance. In these cases, it will be necessary to follow administrative procedures relevant to the entity owning the public property; to comply with the requirements legally set forth for each type of operation; and, depending on the case, to take part in auctions or public bids, competing with other bidders for the acquisition of the intended right. State owned properties are not acquired by prescription.

2. Urban and rural land

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

Urban lands are located within the cities, including lands on which commercial, industrial, residential, public service activities and, other activities typical of development in urban area 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, either a 'land development and building parameters' certificate or a 'zoning and roads' certificate. These certificates, which have a three (3) year validity, detail (among other information) the use and building parameters that must be observed. Notably, while the certificates are valid, the person who has requested them may put into effect the information contained in them, despite the fact that within the three (3) year period normative changes may arise, modifying the uses and parameters of the land.

Rural lands are those located outside urban area, 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 a fairly complex procedure before the competent local authority.

3. Registry system

The National Superintendecy of the Public Registry (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 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 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 awarded with guarantees for their defense, but are not absolute. The Peruvian Constitution sets forth 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 the 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. The expropriation is always in favor of the Republic of Peru.

The experience in the recent years reveals that the Republic of Peru resorts in very few occasions to this figure and it basically does it for territorial security and in order to perform public infrastructure works. This is the last resort when a property is required.

J. Intellectual Property

1. Trademarks

Decision 486 issued by the Andean Community and Legislative Decree No. 1075 rule distinctive signs protection in Peru.

In Peru the right to the exclusive use of a trademark is acquired by registering it before INDECOPI's Distinctive Signs Directorate (Trademark Office). Any sign which can be subject to graphic representation to distinguish products or services in the market can be registered as a trademark.

A multi-class application can 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 (6) months. If oppositions are filed, the procedure takes approximately one and a half years.

The registration will be in force for ten (10) years from the date of its granting and may be renewed for successive periods of ten (10) years.

The renewal of the registration of a trademark has to be applied for within the six (6) months before or after the expiry of the registration. For the renewal application use of the trademark should not be proved.

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 countries member of the Andean Community (Bolivia, Colombia, Ecuador or Peru) during the three (3) years preceding the filing date of the cancellation application.

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

Trade name is the only distinctive sign that is protected by its actual use in the market being the registration merely declarative.

Assignments, amendments and other acts affecting registered rights shall be registered before the Trademark Office to have effect against third parties. License agreements may be registered.

2. Patents and industrial designs

Decision 486 issued by the Andean Community and Legislative Decree No. 1075 rule new creations protection in Peru.

In Peru, patents for inventions are granted, whether they are for product or for procedures, in all fields of technology, provided that they are new, involve an inventive level and are susceptible 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 (4) years. If oppositions are filed, procedures will take about five (5) to six (6) years.

The registration lasts twenty (20) years from the date the application is filed.

If the Office of Inventions and New Technologies (Patent Office) deems that the invention is not patentable or that it does not comply with any of the requirements established for granting of patent, it shall notify the applicant. If the applicant fails to

respond to the notification within the legally prescribed period, or if in spite of the response there are still obstacles to grant the patent, the Patent Office shall deny the patent.

If the final examination is favorable, the patent will be granted. If it is partially favorable, the patent will be granted only regarding the patentable claims accepted.

To maintain the patent in force or, where appropriate, the patent application in process, annual fees must be paid.

Utility models, industrial designs and layout-designs of integrated circuits can also be protected. The registration of these creations last ten years from the date the application is filed and cannot be renewed.

Transfers, licenses, amendments and other acts affecting registered rights must be registered before the Patent Office to have effect against third parties.

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

3. Copyrights

Decision 351 issued by the Andean Community and Legislative Decree No. 822 governs copyright protection in Peru. Copyright protection falls on any original intellectual creation of artistic, scientific or literary character susceptible of disclosure or reproduction in any form.

Unlike industrial property rights, these works are protected without having to be registered. Registration is merely declarative. The author of a work has by the mere fact of its creation, the original ownership of an exclusive right, opposable against third parties, which includes moral and economic rights.

K. Internet Regulations/ E-commerce

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

Peruvian legislation does not include any other rules about internet transactions and e-commerce. Accordingly, any such relationship will be governed by the terms agreed by the parties in connection with transactions performed through 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 on any interest paid are made.

Financial leasing activities are restricted to Peruvian authorized entities.

M. Securities Law Issues

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 economic nature. Securities may be offered publicly

or privately.

1. Offerings involving securities

All securities publicly offered must be previously registered with the Securities Market Public Registry (SMPR), 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 the dissemination of information must be true, 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 different 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).

- Primary public offering or sale of securities

Our legislation regards as public offering of securities 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. Every offer is presumed public if it is addressed to more than one hundred (100) prospective investors. However, Peruvian legislation provides for certain safe harbors, and deems as private offers (i.e. not a public offering) those that are directed to institutional investors or those in which the lowest unitary value of the offered securities equals or exceeds a determined amount that is adjusted in accordance with the figure indexed to inflation (currently equivalent to approximately S/. 459,000.00 for 2014, or USD 164,000.00).

Securities that are subject to a public offer shall be registered before the SMPR, for which, as a general rule, an Information Memorandum, financial statements from the latest two (2) fiscal years and certain other documents and information described in the applicable regulation shall be filed with the SMV. The registration of securities may be done individually or, through a fast track procedure, under previously registered securities issuance programs.

The Information Memorandum shall contain information such as the characteristics of the securities being offered, rights and obligations to be granted to investors, relevant risk factors, issuer's financial statements, information about the structuring entity and the placement agent, the placement procedure and other information considered material for the potential investors. The SMV may determine any additional information that shall be made available.

Issuance programs remain registered during a term of six (6) years, with the obligation to update the Information Memorandum in year three (3). Placement of securities may be made within three (3) years that follow the date of registration of the securities.

Peruvian legislations include special provisions in case of securities publicly offered in exchange for other securities and in the case of international public offerings.

Peruvian law provides simplified registration mechanisms for offerings exclusively launched to institutional investors, of securities of certain multilateral institutions, and 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 Supervisory of Chile or Colombia.

- Tender offer (oferta pública de adquisición – OPA)

According with the rules for the OPA, if a person or company intends to acquire or increase, directly or indirectly, a significant participation (defined as any acquisition of shares which reaches or exceeds 25%, 50% or 60% of the voting capital, the

acquisition by any means of the capacity of voting rights equivalent to 25% of the voting capital, or the ability to elect the majority of the issuer's Board of Directors or to amend the issuer's by-laws) in company which shares are listed in a Peruvian stock exchange, such acquisition would require the launching of a tender offer, unless applicable exceptions.

If the acquisition of significant participation is intended to be made in no more than four acts in a period of three (3) years, the OPA shall be launched within a certain period after the acquisition of the significant participation, by a percentage of securities provided under the legislation and at a minimum price set by a company designated by the SMV. The offering shall be addressed to the holders of shares with voting rights and securities that give right to its holders to acquire such shares within a specified period, which did not participate in the previous acquisition.

In other cases, the acquisition of significant participation must be made through a previous tender offer (prior OPA). In this case, the percentage of acquisition and the price are fixed by the offeror, having the right to participate all holders of shares with voting rights and holders of securities that give right to its holders to acquire such shares within a specified period, applying the rule of prorata acquisition in case it is necessary.

- Purchase offer (oferta pública de compra de valores por exclusión del RPMV - OPC)

Rules of the OPC provides 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 shall be launched, unless an exemption is available.

The OPC shall be addressed to all investors that did not participate in the cancelation or the approval of the transaction at a minimum price fixed by a valuation entity, appointed by the SMV.

2. 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 to them. For example, in the case of investments of pension funds or insurance companies, they should follow the rules approved by the Superintendency of Banking, Insurance, and Private Pension Fund Administrators. On the other hand, if it is an investment of a local mutual fund, it shall follow the rules established by the SMV.

3. Stock exchanges – the Lima Stock Exchange

Stock exchanges are entities that manage centralized trading mechanisms, which simultaneously connect buyers and sellers willing to engage in securities transactions. The Lima Stock Exchange (Bolsa de Valores de Lima) (BVL) is currently the only stock exchange in Peru.

The BVL has mechanisms for the regular procedure for listing of shares and other securities of foreign issuances, but also has simplified listing mechanisms in case of securities that are already listed in some other markets (dual listing). The BVL has also implemented a special segment for the listing of junior mining companies.

Additionally, the BVL is part, jointly with the Santiago Stock Exchange and the Colombia Stock Exchange, of the Integrated Latin American Market (MILA), in order to facilitate the trading of securities of such stock exchanges among investors in their respective countries. Through MILA, investors can sell and purchase securities in any of these three markets by means of a local intermediary.

4. Stock exchange intermediaries

Stock exchange brokerage houses 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, Colombia and Chile) through the broker's platforms of the respective stock exchange.

5. Institutions for the clearance and settlement of securities - 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 this latter governmental entity.

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

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

6. Tax matters

Capital gains from the sale of securities by a non-domiciled entity are subject to a 5% preferential Income tax rate provided that the securities are in fact traded in the BVL (otherwise a 30% rate applies).

N. Secured Transactions

There are no restrictions for security interests being held by foreign individuals or entities in Peru.

The most vastly used types of guarantees under Peruvian law are the mortgage and the security interest (garantía mobiliaria).

1. Mortgage

Real estate and any immovable assets can be mortgaged.

In order to create security under a mortgage the following essential requisites should be complied with:

- Expressed consent of the owner or its legal representative.
- Secure compliance of an already determined obligation or an obligation which can be determined.
- Secured amount must be determined or able to be determined.
- 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 as legally valid and effective.

2. Security interest

The security interest (garantía mobiliaria) creates a security interest on any personal goods or assets as long as there is written evidence thereof. Registration of the security interest thus created will allow its enforceability against third parties. Enforcement of the security interest (garantía mobiliaria) can be made directly by creditor without having to resort to courts if so agreed in the corresponding security agreement.



Madre de Dios, Rainforest

O. 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 courts types 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, constitutional disputes and the challenge of administrative decisions, while criminal courts deal with any matter that is considered as a crime under our Criminal Code or other applicable laws.

Procedural matters pertaining to civil and commercial matters are contained in the Code of Civil Procedure (Código Procesal Civil), while criminal procedures are dealt with by the Code of Criminal Procedure (Código de Procedimientos Penales). Please note that the aforementioned code is being replaced by a new code (Código Procesal Penal), which is already in force in some provinces of the country and it is scheduled to enter fully in force in April, 2016. In turn, certain constitutional procedural matters are regulated by the Code of Constitutional Procedure, while the challenge of administrative decisions is ruled by the Administrative Contentious Proceeding Law (Ley del Proceso Contencioso Administrativo).

The Judiciary is organized in thirty-one (31) judicial districts around the country. First instance courts include both civil and criminal judges. In each judicial district, a Superior Court acts as second instance court of appeals. There are specific proceedings on constitutional, criminal and civil matters in which the Superior Court acts as first instance. In those proceedings the Supreme Court acts as court of appeals. The Supreme Court is the highest court and usually has the final review of the cases only in matters of law.

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

2. Enforcement of foreign judgments

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

Enforcement of foreign judgments in Peru is subject to compliance with the following requirements: (i) the judgment to be enforced does not resolve matters under the exclusive jurisdiction of Peruvian courts; (ii) the court rendering such 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 such court sits, was granted a reasonable opportunity to appear before such foreign courts and was guaranteed due process rights; (iv) the judgment has the status of res judicata in the jurisdiction of the court rendering such judgment; (v) there is no pending litigation in the Republic of Peru between the same parties for the same dispute, which shall have been initiated before the commencement of the proceeding that concluded with the foreign judgment; (vi) such judgment is not incompatible with another enforceable judgment in Peru, unless such foreign judgment was rendered first; (vii) such judgment is not contrary to the public order or good morals of the Republic of Peru; and (viii) there is a treaty between the Republic of Peru and the country in which such judgment has been rendered, and the provisions of such treaty shall apply. In the absence of a treaty, the reciprocity rule is applicable (such reciprocity being presumed), under which a judgment given by a foreign competent court will be admissible in the Peruvian courts and will be enforceable thereby, except if according to such foreign law (a) judgments issued by Peruvian courts are

not admissible in such foreign country, or (b) judgments issued by Peruvian courts are subject to re-examination by such competent court of the issues dealt with therein. As of this date, there is no treaty between the Republic of Peru and the United States of America on the enforcement of foreign judicial resolutions.

3. 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 shall be ruled by the Arbitration Law, which contains provisions regulating both domestic and international arbitration carried out in Peru.

Foreign arbitration awards will be recognized and enforced in Peru, according 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
- Interamerican Convention of International Commercial Arbitration, approved in Panama on January, 30th, 1975.

V. WINDING UP/RESTRUCTURING A BUSINESS

A. Dissolution/Liquidation

The General Law of Companies sets forth the causes and procedures for dissolution and liquidation of corporations and companies in general. However, there are some entities which based on their particular activity have to follow specific liquidation regimes, such as financial entities.

1. Dissolution

The voluntary dissolution process under the regulations of the General Law of Companies can be decided by the shareholders in any of the following scenarios:

- Expiration of the term provided for in the by-laws of a company for its existence.
- Conclusion of its corporate purpose or not fulfilling it for a prolonged period of time or evident impossibility to accomplish it.
- Continued inactivity of the general shareholder's meeting.
- Incur in losses that reduce the net assets value to less than one third of the company's paid-in capital, unless such capital is duly increased or reduced.
- Agreement approved by creditors in case of bankruptcy or insolvency, according to the procedure determined by law.
- Lack of plurality of shareholders for a period longer than six (6) months.
- Judicial resolution adopted by the Supreme Court.
- Agreement approved by the shareholders.
- Any other cause established in the corporate by-laws or in a shareholder's agreement duly registered before the company.

When a corporation falls into one of the foregoing events of dissolution, the board of directors or any shareholder must call within thirty (30) days to a general shareholder's meeting so the corporation decides to approve the dissolution or to adopt all necessary measures that allow it to overcome such dissolution cause. It shall be noted that although corporations are ran

by shareholders and its government bodies, the Peruvian government may force the continuation of a company's activities due to domestic security or public necessity reasons.

Once a decision is made to dissolve a company, all representation and responsibilities of directors, administrators, managers and others representatives cease, and are transferred to the appointed liquidators. However, said former officers must provide information or assistance in order to facilitate the liquidation of the company.

2. Liquidation

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

The liquidation process is conducted by one or more liquidators, whose main tasks include the elaboration of financial statements upon initiation of the liquidation, the keeping of proper accounting, paying all outstanding debts, enforcing and collecting all credits to shareholders and third parties, and preparing the final financial statements upon completion of the liquidation. Liquidators cannot distribute any remaining assets to the shareholders before the corporate creditors have been completely paid off.

Liquidators must keep the shareholders informed over the financial statements and the progress of the liquidation. Shareholders that represent at least 10% of the capital may require the liquidators to inform regularly on the liquidation process.

Once the remaining assets have been distributed, the liquidators shall request the extinction of the company before the Public Registry. If there are pending debts to corporate creditors after the extinction, those creditors can enforce their payment against the shareholders but only up to the remaining assets distributed thereto in the liquidation process. If unpaid obligations exist once the realization of all assets has been completed, the liquidator shall request to the civil court the declaration of Bankruptcy (Quiebra) of the debtor, 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, shall be ruled by the General Bankruptcy Law (Ley General del Sistema Concursal). INDECOPI is the government administrative agency in charge of, and with exclusive and mandatory competence over bankruptcy matters. Banks, insurance companies and governmental institutions (Ministries, Tax Authority, Local Governments (Municipalities) and the like, are not subject to this Law).

A bankruptcy proceeding may be begun voluntarily by the debtor when it has losses in excess of 1/3 of its paid-in capital or past due obligations in excess of 1/3 of the total debtor's liabilities. Bankruptcy can also be initiated by the creditors when their credits exceed from fifty (50) Tax Units, and are past due for more than thirty (30) days. The bankruptcy proceeding seeks to provide an orderly scenario so as 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 such credits are acknowledged by INDECOPI. In the Ordinary Bankruptcy Proceeding (the most common one) which is mostly used, the creditors meeting decides on the outcome of debtor taking into account the following alternatives:

- The debtor's restructuring through restructuring or reorganization plan, which consists in the refinancing of the debtor's liabilities while continuing the debtor activities, eventually changing the administration and adopting all necessary agreements so as to achieve such result.
- The dissolution and liquidation of the debtor estate.

Unlike other bankruptcy legal frameworks, there is no intervention or need for review and approval by a court or INDECOPi with respect to the economical or financial soundness, reasonability or feasibility of the restructuring or liquidation agreements and, in general, of the creditors meeting decisions and, therefore, the Peruvian insolvency system is highly “privatized” in its core.

Creditors’ meeting’s agreements and decisions can only be challenged by the debtor or by creditors representing at least 10% of the total credits allowed in the proceeding, based on the breach of insolvency regulations, formalities or in case of abuse of rights.

In addition, preferential payments or fraudulent conveyances, in addition to eventual criminal liability, can be civilly challenged and pursued through a specific judicial action when: (i) those acts were committed within one (1) year prior to the commencement of the bankruptcy proceeding; and (ii) the acts carried on negatively affected the debtor’s estate.

In liquidation, payment of allowed credits will follow the following preference order:

- First: Salaries and labor benefits owed to workers, as well as contributions to Pension Funds.
- Second: Alimony credits (only applicable to the bankruptcy of individuals).
- Third: Credits secured by mortgage, movable assets guarantees (pledges), warrants or precautionary measures over the debtor patrimony as long as such 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 in the precedent orders.

If liquidation within a bankruptcy proceeding ends with the liquidation of the entire debtor’s estate, and credits remain unpaid, then the debtor shall be judicially declared bankrupt at the liquidator’s request before the civil courts.

VI. BASIC CONSIDERATIONS FOR INVESTING IN PERU*

Limitations to foreigners acting as shareholders	There are no restrictions.
Minimum capital required to incorporate a company.	No minimum capital is required.
Average time of incorporation	15 business days.
Restrictions to foreign investment	There are no restrictions.
Legal Stability Agreements (LSA)	LSA may be entered into in connection with investments in the form of cash contributions to a Peruvian company for an amount of USD10 million in the case of mining and hydrocarbons activities, or USD5 million in the case of other activities. LSAs grant foreign investors stability of the laws on the following matters: Income Tax regime applicable to dividends, the right to free availability of foreign currency, the right to freely remit abroad funds, profits, dividends and royalties, the right to use the best exchange rate available in the market and the right to non-discrimination.
Restrictions to foreign exchange	There are no restrictions.
VAT	18%
Restrictions to hiring foreign workers	Corporations may hire foreign workers for up to 20% of the total number of their employees.
Limitations to foreigners' property ownership rights	Foreigners are not allowed to own land within 50km of the border.
Remittance of profits	Full remittance is allowed.

* Please take note that this chart intends to provide a general description of selected relevant aspects to foreign investors. It is possible that one or more of the general statements contained herein are not applicable to particular industries.

VII. RELEVANT INTERNATIONAL TREATIES

BILATERAL INVESTMENT TREATIES (BIT'S)

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

INVESTMENT CHAPTERS IN FREE TRADE AGREEMENTS

Canada	Mexico
Chile	Norway
China	Panama
Costa Rica	Singapore
Iceland	South Korea
Japan	Switzerland
Liechtenstein	United States

FREE TRADE AGREEMENTS

Canada	MERCOSUR
Cuba	Mexico
Chile	Panama
China	Singapore
Costa Rica	South Korea
European Free Trade Association - EFTA	Thailand
European Union	United States
Japan	Venezuela

Peru is member of:

Andean Community - CAN
Asia Pacific Economic Cooperation Forum - APEC
World Trade Organization - WTO

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