Country Guide
Peru

Prepared by

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Doing
Business
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About the Author

Estudio Olaechea is a full-service law firm committed to high quality, creative and efficient legal assistance sensitive to particular needs of every individual client. Founded in 1878, Estudio Olaechea is among the largest law firms in Peru. The firm places great emphasis on ethical and high professional standards, having inherited a legacy of over 144- years of legal experience.

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Preface

Peru is an attractive country to invest. The Peruvian economy grew 2.2% in 2021, surviving the global crisis that affected many countries with negative growth rates due to COVID-19. This growth pattern had its peak in 2008 when the economy grew 9.1%, the highest growth rate in 14 years and also the highest in the Latin American Regions. Peru's economic success is owed to major legal reforms made in the 1990's, whereby a free social market economy was implanted to replace the State intervention in the economy.

In Guide to Doing Business in Peru, the reader will find a presentation of the country and the climate for investment. It reviews Peru's administrative organization and its defining territorial features; its image as a nation with investment grade conditions, the framework of legal and institutional guarantees to investment, concession and foreign investment rules, placing Peru in the international scene.

A number of other topics have been reformed to promote investments in strategic sectors such as oil and gas, energy, telecommunications, water and sewerage, among others, which were previously reserved to the State ownership and/or management. Peru´s private investment policy is based on unrestricted and free access and competition in all economic sectors, including those that were reserved for the State. Private property is fully guaranteed and expropriations are only allowed after compensation, in cases of national security or public interest. Foreign as well as domestic investments enjoy the same rights and duties. Foreign investors are allowed to send foreign currency abroad freely for the full amount of their capitals. Moreover, they are guaranteed access to local sources of credit and may sign stability agreements. There is no discrimination with respect to prices, tariffs, fees, taxes or exchange rates.

Peru has attracted foreign direct investment not only through the sale of State-owned companies and the granting of concessions to the private sector but also through the new legal framework aimed at promoting and protecting such investments.

The structural reforms show consistency of government policies and the public's attitude toward private investment. Peru has built itself a new image abroad of a country prepared to deal with ongoing market globalization, internationalization of capital flows and development of communications, resulting in more efficient ways to position goods and services in an increasingly competitive world market.

Guide to Doing Business in Peru provides an overview of the legal market investors need to take into consideration when investing in Peru. It does not constitute legal advice but a basic guide to understand Peruvian laws and regulations. The services of a professional should be sought if legal advice is required.

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CHAPTER I

The Country at a Glance

CHAPTER 1
The Country at a Glance

1.1. Geography

Peru is the third largest country in South America after Brazil and Argentina with 1.28 million square kilometers. Situated in the north-west of South America, Peru is bordered by Ecuador and Colombia to the north; Brazil and Bolivia to the east, Chile to the south, and the Pacific Ocean to the west with a coastline 2,500 kilometers long. The country is roughly divided into three distinct regions separated lengthwise by the Andean mountain range.

The coastal region is a barren strip of land 60 to 100 kilometers wide and cut occasionally by shallow rivers creating fertile valleys where sugar cane, blueberries, rice, cotton, asparagus, grapes, mangoes, etc. are grown with the aid of irrigation systems. There is also an important production of fish-meal, of which Peru is one of the world's leading exporters. Temperatures are mild due to the Humboldt cold current and the coastal region receives scarce rainfall.

The Andes separate the coastal desert to the west from the jungle or Amazon basin to the east. The mountain highlands have heights ranging from 2,000 to more than 6,700 meters above sea level (m.a.s.l.). Agriculture is sparse and difficult due to the geographical conditions. On the slopes above the valleys, terraces have been built to grow potatoes and autochthonous graminae such as quinoa, olluco, and cañiwa. On the central and southern plateau's grasslands above 4,000 meters, one finds large herds of llamas, alpacas, vicuñas, and sheep. While this was a densely populated area, in the last 38 years there has been a massive migration to the coast due to terrorism, though it is now reverting. This region supports an important mining industry with copper, iron, zinc, lead, silver, and gold and generates one of the main sources of foreign exchange.

The jungle or Amazon basin is the largest region in Peru covering over 550,000 square kilometers of low-lying rain forest. Gas and oil were discovered and their exploitation begun.

1.2. Demography

Peru has a population of approximately 33.4 million. Almost 76 % of the population lives in urban areas and the rest in rural areas. The population growth rate is 1.1 % per year. 26.4 % of the inhabitants are under 14 years, 61.7 % are between 15 and 59 years and 11.9 % are 60 years and over.

Most of Peru's population (about 58 %) lives in the coastal area, while 28.1 % lives in the Andes and only 13.9 % in the Amazon basin. Almost one third of the nation's population lives in Lima and Callao Metropolitan area. Lima has over 10 million Peruvians.

1.3. Historical summary

Peru's political history is confused and violent. Since its conquest by the Spaniards in 1535, the Inca Dynasty, founded by Manco Capac around 1200 and which was a militarist, semi-feudal society, collapsed under the Spaniards. The Spanish established a system of colonial rule that exacted tribute from the local population which caused much friction between the conquerors and local inhabitants. A viceroyalty was established in 1544 until 1821 when Peru gained its independence.

The first years of Peruvian independence were marked by internal turmoil between the military and the landed aristocracy, both competing for power. The first president to exercise some real control was Marshall Ramon Castilla between 1845-1851 and 1855-1860. Under his presidency, the country was modernized and the "guano" resources were exploited, but the revenues from its exportation and borrowings were quickly dilapidated.

The War of the Pacific (from 1879 to 1884) was declared by Chile on Peru and Bolivia and was fought over the nitrate deposits on the south of Peru and Bolivia. The war was won by Chile, which annexed part of both countries. This was the background to decades of political instability and the military took charge once more.

Towards the end of the 19 century the economy was boosted by the exportation of primary products, and landowners reclaimed political control. They were ousted by Augusto Leguia who governed for three periods (from 1908 to 1912 and from 1919 to 1929) until he was overthrown in 1929. During the 1930s a labor movement emerged: APRA (Alianza Popular Revolucionaria Americana) was led by Haya de la Torre, but it was banned in 1931. In 1945, APRA supported Jose Luis Bustamante y Rivero as president, though they were ousted and banned again in 1948. In 1956, APRA regained legitimacy and contended for the first time against Acción Popular led by Fernando Belaunde. This election led APRA to shift from the political left to center-right. Acción Popular took the role of radical reformer and APRA, in order to counter the threat of Acción Popular, sought the backing of the Army and the elite. With their support, APRA won electoral deadlock by a narrow margin in 1962, which led to a period of military control. In 1963 Belaunde again was given his chance and was elected president. Dissatisfaction over the economic and political reform program led to a left-wing military coup in 1968 conducted by General Velasco. Radical reform was imposed until 1975 when he was replaced by General Morales Bermudez, who led the next five years dealing with the crisis caused by the overspending of his predecessor.

The 1980 elections were won again by Acción Popular with Belaunde as president but economic difficulties, the threat of insurgents such as Shining Path, and the natural disasters from "El Niño" phenomenon defeated Acción Popular in the 1985 elections. They were won for the first time by APRA by itself, now on the center-left led by Alan Garcia. The next five years were characterized by free spending and suspension of foreign credits when Peru was declared ineligible by the International Monetary Fund, the World Bank, and the International Development Bank,

and the government ended submerged in a political and economic crisis. Inflation reached above 7,000 % per annum in 1989. During this period, Shining Path, a Marxist-Leninist movement which started in 1980, reached its peak with attacks in the rural areas of the Andes, but later concentrated in Lima. The MRTA (Movimiento Revolucionario Tupac Amaru) also had its share in subversive actions.

In 1990, Alberto Fujimori was elected president. Peru was living through one of the worst crisis in its social, economic, and political history. President Fujimori applied a shock policy which at first resulted in a reduction in consumption and a cut-back in production. Reforms were then implemented such as a vast program to restructure the State, privatize State-owned enterprises, cut subsidies, open the market, and fight tax evasion, thus creating a clear neo-liberal policy. Fujimori also reinserted Peru in the international financing system and Peru became eligible again for loans from the World Bank and other Multilateral Agencies and Commercial Banks. Inflation began to drop dramatically (less than 3 % per annum) and the economic recuperation began. This probably would not have been possible without the dismantling of Shining Path and the MRTA, which was successfully achieved, as well as with attempts to control the narcotics business, revenue from which has financed terrorism. Fujimori was reelected as president in 1995 in response to his successful economic reforms and to his pacification strategy.

In the elections held in 2000, Fujimori was reelected again as president but the impartiality of the election was questioned. In October 2000, Fujimori resigned as President of Peru and new elections were held without his participation. Alejandro Toledo was elected president with more than 50 % of the votes and in second place, Alan Garcia with more than 45 % of the votes. Toledo's economic policy from 2001 to 2006 was successful, achieving 10.01 % accumulated inflation, international reserves of U.S.$14.2 billion, and an increase of GDP per capita from U.S.$1,449 to U.S.$1,605.

Presidential elections were held in April 2006 and Alan Garcia was again elected president of Peru in the second round with more than 53 % of the votes. Ollanta Humala obtained 46 % of the votes.

Peru´s presidential election for the term 2011-2016 was won by Ollanta Humala who obtained 51.4 % of the votes in second round, followed by Keiko Fujimori with 48.6 % of the votes.

In 2016 new presidential elections were held. Candidate Pedro Pablo Kuczynski from party Peruanos por el Kambio, obtained 50.124% of the valid votes while Keiko Fujimori of party Fuerza Popular got 49.876% of the valid votes. The final difference between both was in favor of Kuczynski by 42,597 valid votes, a 0.248% difference.

Kuczynski resigned to the presidency on March 21st of 2018 claiming having been blocked and attacked by the legislative majority conducted by Fuerza Popular. On March 23rd the presidential vacancy was approved and the position of president was assumed by the first vice president Martin Vizcarra. Kuczynski found himself under a political crisis due to the confrontation between the executive and the legislative branches, the pardon he granted to former president Alberto Fujimori and his links with Odebrecht case.

Martin Vizcarra assumed the presidency of Peru on March 2018. His government had constant frictions with the legislative branch that took him to dissolve congress and call legislative elections for a new congress. During his tenure, COVID-19 appeared and his health policy to counter the virus was and is under constant evaluation and criticism.

The presidency of Francisco Sagasti started on November 17th 2020. His tenure was deemed as a transitional government until elections were held in April 2021. Pedro Castillo was elected president with less than 19% of the valid votes in first round and about 40,000 more valid votes in favor against Keiko Fujimori of party Fuerza Popular. Castillo assumed power on July 28th 2021 until he tried to dissolve congress on December 7th 2022, resulting on the legislative branch removing him from office the same day. Dina Boluarte, Castillo's first vice president assumed presidency on December 7th 2022.

1.4. Type of government

The Republic of Peru is democratic, social, independent, and sovereign. The State is not divisible and its government is unitary, representative, and decentralized. The government of Peru is organized according to the principle of separation of powers.

The Peruvian government is divided into three separate and independent branches: the Executive, the Legislative, and the Judiciary. The Constitution defines the jurisdiction of each branch, their members, and the criteria for the selection of such members.

1.5. Political parties

Political parties must register with the National Electoral Jury to be legally eligible to run in an election. The Constitution vests the Jury with the responsibility for overseeing and ensuring the integrity of the electoral process.

1.6. Economic environment

In the economic arena with the 1993 Constitution, the basic economic rule is the establishment of a free social market economy where all controls have been excluded, mainly exchange rate and price controls. Unfair market practices are prohibited. Business competition, unrestricted investment, and free flow of capital by national and foreign investors are permitted.

The market is the agent in charge of regulating the economic activity instead of the State. Areas previously reserved

for the State exploitation were given to the private sector. Privatizations and concession processes were in effect to allow the private sector to compete efficiently in a market economy to prevent former State companies from continuing to incur in huge losses because of their inefficiency. The State was reserved to devote its efforts to social services, security, and regulatory measures. The State monopoly over natural resources, previously threatened by arbitrary expropriation, was abolished. Public services such as transportation, energy, health, tourism, education, and infrastructure can be given in concession to the private sector (for example, a public service in exchange for a tariff, an amount of investment, a fee, a decrease in prices, etc.).

1.7. Real estate

The real estate market in Peru has shown a stable and gradual growth in recent years. However, in 2020, due to the COVID 19 pandemic and the political-social situation in the country, the real estate market lost dynamism and experienced a slowdown from which it has been gradually recovering.

In the case of housing, the trend shows a preference for taller buildings and smaller apartments. In this way, by the beginning of 2022, a reduction in the average footage of the apartments has been visualized, going from 84.4 m2 to 78.3 m2. Likewise, an increase in the demand for apartments between 40 m2 and 60 m2 is observed, although homes from 60 m2 to 80 m2 continue to lead sales, but with a percentage decrease compared to the previous year.

Prices in Lima are determined per square meter, which in turn is conditioned by the type of area and the neighborhood. Thus, for September 2022, the general average price was USD 1,863.00 per square meter; however, it should be noted that the value of the square meter varies in each district. As an example, for the same period, the maximum value was USD 2,772.00 per square meter for the San Isidro district, while the minimum value was USD 549.00 per square meter for the Puente Piedra district. Notwithstanding this, since the market is dynamic, real estate companies have complete freedom to negotiate prices.

At the beginning of 2022, 47.7% of the real estate units sold in Lima and Callao were concentrated in central districts with a medium socioeconomic level, such as Jesús María, Lince, Magdalena, Surquillo and Pueblo Libre.

Outside of Lima, there are areas in the country where house prices have risen considerably in recent years. This is due to its economic and commercial growth, which has caused an increase in the supply and demand for developable land. Such is the case of the Lambayeque region, which in November 2021 was the second region with the largest number of Mivivienda loans disbursed, behind Lima. In addition, many foreign investors have opted for the construction of infrastructure for the development of the hotel activity (Cusco area) and/or for the acquisition of fields for the cultivation of grapes and, later, wine production (Ica area).

Another relevant aspect is the incentives implemented by the State such as Credito Mivivienda, Techo Propio, Bono Renta Joven that have contributed to the growth of the sector. However, the rise in the interest rate on mortgage loans, which by September 2022 stood at 9.41%, has made access to housing more expensive and reduced the disbursement of mortgage loans. As an example, in the first six months of 2022, mortgage loan disbursements from the Mivivienda Fund fell by 12.4% compared to the same period in 2021. Despite this, it is expected that as of October 2022 the interest rates adjust.

On the other hand, the prime office market was one of the most affected by the effects of the pandemic. However, in the middle of 2022, positive indicators were recorded, such as the decrease in the level of office returns, as well as an increase in the level of placements compared to the previous two years. At the end of the second quarter of 2022, the vacancy rate was 21.5%.

Additionally, districts such as Miraflores and the San Isidro Financial Center, sectors in which the largest number of offices are concentrated, have shown a faster recovery, registering 47.8% of occupations in 2022. It should be noted that, as teleworking continues, the trend in the office market is also to reduce the space footage.

In general, the projections for the real estate market for 2023 are positive, as its progressive recovery is expected to match pre-pandemic levels. Likewise, and within a context of greater economic activity, it is estimated that housing prices will remain stable and prime office prices will suffer a slight increase.

Finally, it should be noted that foreign natural and legal persons (as well as national ones) do not need to obtain any permit to acquire properties within the country, as well as enjoy the same tax regime. Only, and for security reasons, it has been provided that foreigners cannot own real estate located within 50 km of the border of the national territory, unless they have special permission.

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CHAPTER 2

The Legal System

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2.1. Overview

Peru has a hierarchical system of norms in which the Constitution and international treaties have the highest rank. In second place, are the Laws and legally equivalent norms. In third place, the regulatory norms issued by the central, regional and local governments.

Additionally, Peru has a Code of Commerce that regulates business activities, but, in practice, it has been replaced in most cases by laws issued on specific matters (i.e., Ley General de Sociedades - corporate law).

2.2. The Constitution

The Political Constitution of Peru was approved by Congress, ratified by the vote of Peruvians in a referendum held on October 31, 1993, and consequently promulgated by the executive branch on December 29, 1993. Congress had been dissolved on April 5, 1992, and a Constituent Congress was elected to approve the text of the new Constitution to be submitted to a referendum. The new Constitution was promulgated in 1993 and it has the clear objective of redefining the balance of powers established in the Constitution of 1979.

Regarding the Constitution of 1993, it is structured in 4 parts:

Constitutional recognition of fundamental human rights and freedoms,

State organization and structure,

Economic regime, and

Constitutional guarantees.

Under the Constitution, all Peruvians have the same rights before the law, such as the right to property, to work, to inherit, to participate in political, social, and economic life, to profess a religion or belief, to security, to equal treatment regardless of sex, color, religion, language, opinion, economic situation, etc.

Article 3 of the Constitution establishes an open clause so that other constitutional rights that are not expressly

recognized in it may be incorporated. Some of these rights have been mentioned by the Constitutional Court in its rulings (e.g., the right to water).

The Constitution also recognizes the Constitutional Court as its controlling body. This court exercises control over two aspects: i) the defense of the recognized fundamental rights and those derived from the Constitution; and ii) the supremacy of the Constitution over the other norms of the legal system. These two ways of control are materialized in the constitutional processes of habeas corpus, amparo (protective action), habeas data, acción popular (public interest action), acción de inconstitucionalidad (unconstitutionality action), conflicto de competencia (jurisdiction conflict) and acción de cumplimiento (compliance action).

2.3. Executive branch

The executive branch comprises the President of the Republic and the State Ministers. The President is elected for a five-year term and cannot be immediately reelected. The president can only be reelected for another five-year term after a minimum constitutional term has elapsed.

2.4. Legislative branch

The legislative is the body in charge of legislating and, also, overseeing the functions of the State bodies.

It is represented by the National Congress, which is unicameral with 130 members elected for a five-year presidential period.

2.5. Conflicts between the executive and legislative branches

Conflicts that may arise between the executive and legislative branches are regulated in the Title IV, Chapter VI, of the 1993 Constitution.

One of the mechanisms provided by the Constitution to the President of Peru is the power to dissolve Congress if this body does not give its vote of confidence twice to the Cabinet of Ministers. In that scenario, the President is obliged to call elections within four months. The President cannot dissolve Congress within the last year of his or her administration.

2.6. The judicial system

The judiciary is the State branch in charge of administrating justice in Peru. Its decisions may deal with different matters, such as constitutional, labor, civil, criminal, commercial, family and contentious-administrative.

The judiciary is divided in three levels: the Supreme Court, various superior courts, and the lower courts. For very specific and minor cases, below these levels, there are judges of peace in law and, in rural areas, judges of peace.

The judicial system is organized according to the Peruvian geopolitical divisions. The geopolitical organization of the country has been changed into several regions in order to decentralize the country. The extent and distribution of a decentralized system has been left to legislative mandate. Currently, measures are being taken with respect to this.

2.7. The judicial system—Appointment of judges

In year 2018, several members of The National Judicial Council were involved in a corruption scandal. Consequently, our executive branch proposed the modification of the 1993 Constitution of 1993 to replace this Council for the National Board of Justice. This law reform was approved by the Congress and ratified by the vote of the Peruvians at the end of year 2018.

The Constitution of 1993 was modified in January 2019 and after the election of the members of The National Board of Justice, the Board began to work in January of 2020 as the new entity in charge of appointing, ratifying and removing judges.

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CHAPTER 3

Investment

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Investment

3.1. General considerations

Peru has gone through several economic cycles throughout its history. To better understand where Peru stands now, below is a brief description of the economic history the country has gone through and where it stands at the closing of year 2021.

Peru's GDP (gross domestic product) has been on the rise for several years. Peru's GDP and inflation are quite reasonable and impressive when compared to that of other countries. Its concession and public-private association processes offer interesting projects that could lead investors to obtain higher returns than those obtained in other countries. The legal stability rules for investments, including those coming from foreign sources, have kept Peru in the loop as a very attractive place to invest.

3.2. Peruvian economic history

The territory now occupied by Peru was first inhabited 20,000 years ago by bands of hunters and gatherers who followed the tracks of the animals they hunted. Cave paintings attest to their existence. The birth of civilization in Peru started with the appearance of the Chavin culture in the second millennium before Christ. This culture had as its main center Chavin de Huantar, which is the representation of the architectural expression of a highly hierarchal society evolved far beyond agriculture, hunting, and fishing. Other cultures appeared such as Paracas, which left testimonies of the extraordinary development reached in the textile arts and mummies with trephined skulls. The Nazcas were distinguished for their ceramics and the ingenious construction of aqueducts. The Mochicas were great architects, building their temples in the shape of pyramids with sun-baked adobe bricks. The Tiahuanacos were famous for their economy based on the breeding of llamas and alpacas, and the cultivation of high Andean altitude crops (potatoes and quinua). The Chimus were excellent goldsmiths whose fabulous treasure is estimated to have been carried by the Spaniards to Spain either directly from the temples or from the Incas who subdued the Chimus.

These cultures and others not mentioned here were subdued by the Incas in 1438. One century before the arrival of the Spaniards, the Incas started an explosive expansion that enabled them to conquer successively the numerous ethnic and regional groups scattered over the Andes. The Incas formed a huge empire which extended from the South of Colombia and Ecuador to the North of Chile and Northwest of Argentina. The social-economic

Inca organization was socialist, based on the ayllu, consisting of families which were assigned a plot of land by the State for self-subsistence and for paying taxes. It is important to note that neither ceramics, weaving nor metallurgy reached during the Inca's period had the refinement and development of past civilizations. However, the Incas were outstanding in the art of civil engineering and architecture as can be seen in Machupicchu and Cuzco.

The conquest represented a change in the Inca's self-sufficient model to one of insertion into (economic communication with) the world through the exportation of minerals. Commerce and mining encouraged development of the first Hispanic cities. Commerce was mainly in food and garments as a result of the Indian's work and imports from Spain. The monopolistic commerce between Spain and Peru through Panama and the Port of Callao in Lima was supplanted in importance by the Port of Buenos Aires. The imports affected the agriculture and incipient local industry.

When Peru became emancipated from Spain in the 19th century, the greater part of the economic activity was transferred from the mountain to the coast. Great resources of guano (fertilizer) were exploited generating the most important product to be exported in the 19th century. Sugar, cotton, wool, silver, and saltpeter (salitre) were also exported. Notwithstanding the existence of this great source of income from the guano for Peru, the economic growth during this period was not high. A great part of the revenues was used for the construction of a railway linking the coast with the central mountains (once the highest railway in the world), but this was not enough, and Peru indebted itself externally. Industry could not develop adequately due to the importation of goods with the guano revenues.

The end of the guano boom coincided with the war with Chile in 1879 and with the boom of the sugar cane and cotton in the coast, causing a human polarization between the urban coast and the central Andes. The Peruvian economy turned into a coastal economy and the lands started to be concentrated into large, private land estates.

The sugar boom brought the need to hire a great quantity of workers, which were scarce in Peru because natives from the mountains were averse to working on the coast. Slaves were brought from Africa to work in the sugar factories until slavery was abolished in 1854. The scarcity of manpower was also resolved by bringing in 87,000 coolies from China between 1849 and 1874. In 1879, sugar commerce reached a third of all Peruvian exportations. The coastal agriculture expanded to cotton farming in Piura, Lima, and Ica, which remains until today.

3.3. Peruvian economic history-Twentieth and twenty-first centuries

In the first half of the 20th century, mining recovered by foreign investment in this sector, diversifying, besides silver, into copper, lead, and zinc. In the 1920s, petroleum was found as a new exportation product. The First World War helped the industry sector to recover with the immigration of foreign entrepreneurs (basically from Italy, England, France and Japan).

In the 1950s, mining reached its apex with the exploitation of copper, iron, silver, zinc, and lead. The coastal agriculture increased its exports of sugar and cotton; rice production increased, and in the jungle, coffee production started. The State introduced industrialization promotion policies which generated the migration from the

countryside to the great cities. This industrial dynamism was particularly important in the chemical, metallurgy, and paper sectors (they represented one third of the Peruvian Industrial Product). In the decade of the 1960s another one-third of the industry produced food and beverages and the rest was dominated by the textile industry and metallurgical products. In all, in the 1960s industry produced one-fourth of the gross national product.

During the 1960s, and until the end of the 1980s, the State greatly increased expenditure on public works, generating a financial crisis in the balance of payments and the impossibility of maintaining an artificially high consumption level. A process of agrarian reform began. The property structure was changed through major control and ownership by the State in all the economic sectors. The State applied an ambitious plan of redistribution of income, reserving for the State the strategic industries, controlling all agrarian commercialization and foreign trade, nationalizing a great part of foreign investments--including the participation of workers in the management and revenues of private enterprises, and expropriating the lands of landholders. However, industrial companies were not following the advice of the Economic Commission for Latin America and the Caribbean (CEPAL) on inside growth; instead protecting artificial and inefficient industries. To achieve the participation of companies in the industrialization scheme, innumerable subsidies and market restrictions were created. As a result of this policy, industrial enterprises were inefficient in their production compared with the rest of the world. The tariff structure was based on a protection scheme dominated by nontariff measures and tariff exemptions given to enterprises according to the priority assigned to each industry and the localization of the industrial plant.

In 1983, the balance of payments registered the impact of the fall of all Peruvian exports. This factor, combined with the decrease of internal demand and the natural disasters occasioned by the "El Niño" phenomenon, caused the fall of the gross national product (GNP) by 12.3% compared to 1982. The government decided to restore the protectionist policies of industrial products, applying once more nontariff barriers to imports. By 1988 all imports were subject to restrictions again. The national currency was overvalued to increase internal consumption in the short term. Payment of external debt was limited to only 10% of the exports value. The country's international reserves were exhausted and Peru reached a hyperinflation of about 7,000% per annum, which caused fiscal revenue to be reduced to only 4% of GNP. Public investment was reduced to less than 1% of the GNP. Peru turned into a country closed to external credit and with scarce tax revenues, generating the contraction of the State and the reversing into a deprived and black market society.

The socialist tendency of the last two decades was replaced by a neoliberal movement, led by Alberto Fujimori, who was elected president in 1990 and reelected in 1995, by Alejandro Toledo, elected in 2001, by Alan Garcia, elected in 2006, by Ollanta Humala elected in 2011 and by Pedro Pablo Kuczynski elected in 2016. The severe situation which they inherited was reversed, as noted in the following sections.

Ollanta Humala's tenure continued the economic measures taken by his predecessors Fujimori, Toledo and Garcia, increasing the State spending for social purposes such as more education, health, social security, and housing. His goal was also to reduce extreme poverty levels by encouraging social spending for the benefit of the neediest. Peru had 44.5% of its population living in poverty in 2006 when Alan Garcia took office as President of Peru. In year 2017, the monetary poverty affected 21.7% of the country's population, achieving a decrease in the levels of poverty with respect to 2006. Notwithstanding, the rate of extreme poverty increased for the first time in 2019 and it is expected to augment in 2023 as a consequence of Covid-19 and the slowness to reactivate the economy, with the subsequent increase of the informal sector to figures close to 80%.

3.4. Economic systems

Peru's gross domestic product (GDP) grew 9.1% in 2008, 1.0% in 2009, 8.5% in 2010, 6.5 % in 2011, 6.0% in 2012, 5.8% in 2013, 2.4% in 2014, 3.3% in 2015, 4.0% in 2016 and 2.5% in 2017, 4.0% in 2018 and 2.2% in 2019. GDP decreased 11.0% in 2020 and increased 13.3% in 2021. The growth in the economy is affected by the "El Niño" phenomenon, on average, every two to seven years. This phenomenon is an alteration of the oceanographic and atmospheric climatic conditions, characterized by an increase in the ocean's temperature which generates disturbances in the rain levels, causing a decrease in agriculture and fishing's GDP.

3.5. Economic systems-Agriculture

The agricultural sector has always played a leading role in Peru, generating wealth, employment, and export earnings. It employs more than a third of the economically active population. Peru is one of the most botanically and zoologically diverse countries in the world. Within its borders it can count 84 of the 103 different micro-climates classified by the World Bank. Its three distinct zones (coast, mountains, and jungle) favor particular products and methods of cultivation. The coast is especially productive. Its rare climatic combination of relative aridity, sunshine, and stable temperature allows for year-round cultivation of many different products (i.e., asparagus, blueberries). The proximity of the agricultural lands to the transport infrastructure of the coast makes exporting relatively easy and cheap to the seasonal markets of the northern hemisphere.

The nature of the mountains is not conducive to intensive production because irrigation is more difficult and the land is further from the infrastructure needed for distribution. The jungle has at least two million hectares ready that are suitable for cultivation, but the infrastructure is not yet available.

The significant agricultural presence includes the production of rice, sugar cane, corn, coffee, cotton, and potatoes. Other agricultural products include marigold flowers, asparagus, sweet potatoes, vegetables, especially tomatoes and onions, and fruits such as mangoes and lemons.

3.6. Economic systems-Fishing

The fishing sector prompted by Peru's massive coastline is one of the country's greatest assets. There is a huge diversity in the fish stocks off the coast which have yet to be developed, and even the very well-established fishmeal industry shows considerable scope for expansion. The fishing sector is developed under anomalous conditions due to the "El Niño" phenomenon. Production in 2012 decreased by 32.2% compared to 2011, increased 24% in 2013 compared to 2012, decreased 27.9% in 2014 compared to 2013, increased 15.9% in 2015 compared to 2014, decreased 10.1% in 2016 compared to 2015, increased 4.7% in 2017 compared to 2016, increased 47.7% in 2018 with respect to 2017, decreased 17.2% in 2019 with respect to 2018; in 2020 increased 4.2% with respect to 2019 and in 2021 increased 2.8% with respect to 2020.

Fishmeal and fish oil production account for the great majority of Peru's fishing activity. The country ranks as one of the three largest fishmeal exporters in the world. In 1991, Peru ranked number one. While the fishing industry accounts for less than 0.46% of GDP as of 2021, it has a greater proportional effect in exports. In 2021, total exports amounted to approximately U.S.$63.2 billion with fishing exports at U.S.$2.3 billion, accounting for around 6.1% of total exports.

3.7. Economic systems-Mining

Foreign investment has been actively encouraged in the mining sector during the last decade. Mining provided for export earnings of about U.S.$39.7 billion in 2021, representing 63.0% of all export earnings and 85.1% of the total earned by traditional exports. Peru produces six major metals: copper, zinc, lead, silver, gold, and iron. Most of the mines in Peru are polymetallic with several different ores in the same deposit.

3.8. Economic systems-Oil and gas

Since 1993, with the enactment of the Organic Hydrocarbons Law, a process of reconfiguration of the oil sector in Peru initiated, in order to promote and encourage the private-sector investment. Every hydrocarbon activity carried out in the country is regulated by the market rules, which implies no State intervention in any stage, except for the case of the public service provision for gas transportation. Export earnings of oil and gas during 2021 were about US$ 3.0 billion, representing only 8.0% of all export earnings and 5.9% of the total earned by traditional exports.

Camisea operations, located in Cuzco's jungle area, has operated since 2004 and represents the highest percentage of natural gas and natural gas liquids production in Peru. The production of crude oil has increased due to the production of Block 95, located in Loreto.

In accordance with the information provided by the state company PerúPetro, in charge of the management and negotiation of oil contracts in Peru, there are 18 oil basins in the country and only 3 carry out activities. To date, there are 13 Blocks in exploration phase and 26 Blocks in exploitation phase.

3.9. Economic systems-Manufacturing

The manufacturing sector's nontraditional exports amounted to U.S.$16.4 billion in 2021. Traditional export products (agricultural goods, minerals, fishmeal, etc.) still account for more than 73.4% of total exports. The main manufacturing industries are food and drink, textiles, fish processing, chemicals, petroleum refining, metalworking, and cement. Textiles are a sector in which Peru has a competitive advantage because of the large supply of high-grade wool, mainly from alpacas and vicuñas. In 2021, textiles were the third best performing nontraditional

product, earning U.S.$1.7 billion representing 10% of nontraditional exports.

3.10. Economic systems-Construction

During 1997, construction sector grew 18.9%, mainly due to infrastructure works oriented towards houses, commercial centers, hotels, offices, supermarkets, rehabilitation of roads, and works to prevent damage from the "El Niño" phenomenon. In 2012, it increased by 15.8%, in 2013 by 9.0%, in 2014 increased by 1.9%, in 2015 decreased by 5.8%, in 2016 decreased by 3.1%, in 2017 increased by 2.2%, in 2018 increased by 5.3%, in 2019 increased by 1.5%, in 2020 decreased by 13.3% and in 2021 increased by 34.5%. The decrease in 2020 was mainly because of COVID and the quarantine, which generated lower public investment and less development of real estate projects.

3.11. Membership in regional economic and trade groups

In a global economy such as the one of the 21st century, being a country isolated from the major economic groups is not a very viable option, not only politically, but also economically, and Peru is aware of this situation. For this reason, during the last few years the Peruvian foreign trade presence has diversified and commercial relations have been established with the Asian Pacific Economic Cooperation Association (APEC), the Andean Community (CAN), the Organization of American States (OAS), the International Labor Organization (ILO), the World Trade Organization (WTO), the European Free Trade Association (EFTA) , the Latin American Integration Association (ALADI), the Pacific Alliance, the Andean Group and MERCOSUR (Southern Common Market), among others. Recently, Peru has been strengthening relations with the Organization for Economic Cooperation and Development (OECD) and making efforts to become a member.

3.12. Membership in regional economic and trade groups-GATT

In 1951, Peru joined the General Agreement on Tariffs and Trade (GATT) which was replaced by the World Trade Organization (WTO) in 1995. The GATT was created in order to decrease and eliminate international barriers. Currently, the WTO is in charge of the global rules by which trading between nations is governed. Its main function is to ensure that trade is conducted as smoothly, predictably and freely as possible. Thus, Peru as a member of WTO, applies within its trade system the GATT's functions, rules, and principles.

3.13. Membership in regional economic and trade groups-ALADI

Peru joined the Latin American Free Trade Association (LAFTA), created in 1960 for the creation of a free trade zone in Latin America, by eliminating all duties and restrictions on trade for a fixed term of 12 years. LAFTA was replaced by the Latin American Integration Association (ALADI), created in 1980, which seeks to create an area of economic preferences in the region, with the ultimate objective of a Latin American common market. That purpose

is pursued through the following general principles: pluralism in political and economic matters; progressive convergence of partial actions towards the formation of a Latin American common market; flexibility; differential treatment based on the level of development of member countries; and multiplicity in the forms of commercial instruments concentration.

3.14. Membership in regional economic and trade groups-Andean Community

Peru is a member of the Andean Community (formerly known as the Andean Pact). This trade block currently includes the South American countries of Bolivia, Colombia, Ecuador, and Peru. The goal of this organization is to maximize sub-regional Andean Integration and achieve an equitable and balanced development of the countries for guaranteeing to its members an economic position which allows them to compete in equal conditions with the world's major economies.

In 1993, Bolivia, Colombia, Ecuador, and Venezuela, took the first pro-integration direction by establishing the Andean Free Trade Zone, which implied opening their markets to each other and the elimination of their customs tariffs.

In July 1997, Peru became part of the Andean Free Trade Zone and agreed, through the schedule approved by the Decision 414, to open its market to its Andean partners by the progressive deregulation of its trade by 2005 (currently 100% has been achieved).

Likewise, through the Decision 370, the Andean Community has established a Customs Union since 1995. This Customs Union adopted by Bolivia, Venezuela, Colombia, and Ecuador created a common tariff for the importation of goods from nonmember countries. Peru did not sign this agreement; nevertheless, under the Santa Cruz de la Sierra Declaration of January, 2002, Peru committed to adopt a new common tariff. In this regard, in May 1999, the presidents of the Andean Community members committed to finally establish the Andean Common Market by 2005 at the latest, which is what has been accomplished so far.

3.15. Membership in regional economic and trade groups-MERCOSUR

MERCOSUR was set up in 1991 by the Treaty of Asunción and is a Regional Trade Agreement among Argentina, Brazil, Uruguay, and Paraguay. In 2003, after several negotiations, Peru was included in the Southern Common Market (MERCOSUR) as an associated state. This Treaty has the purpose of establishing a common market and trade policy through coordinating external tariffs as well as harmonization of the legislation in relevant areas to ensure the strengthening of the integration process. This will promote the fluid and free movement of goods, services, persons, and currency.

3.16. Membership in regional economic and trade groups-ATPDEA

In August 2002, the United States Senate passed the Andean Trade Promotion and Drug Eradication Act (ATPDEA), a regime granted by the United States to support the fight against illicit drug traffic and as an incentive for encouraging legal trade alternatives to drug production. By this trade preference system, the United States grants duty-free access to selected exports from Peru and other three members of the Andean Community (Bolivia, Colombia, and Ecuador). This preferential treatment was in force until December 2008 and was replaced with the U.S.-Peru Trade Promotion Agreement.

The U.S.-Peru Trade Promotion Agreement, a bilateral free trade agreement known as APC, was signed on April 12, 2006, ratified by the Peruvian Congress on June 28, 2006, by the United States House of Representatives on November 2, 2007, and by the United States Senate on December 14, 2007. The Agreement was implemented on February 1, 2009. The purposes of this agreement are to generate incentives for private investment, to consolidate access to goods and services between the United States and Peru, to guarantee the permanence of the preferential treatment granted by the ATPDEA and to eliminate nontariff barriers between Peruvian and U.S. markets.

3.17. Membership in regional economic and trade groups-APEC

Peru has been an active member of the Asia-Pacific Economic Cooperation (APEC) since 1998. This is an organization for Pacific Rim countries with the main purpose of promoting trade liberalization and economic cooperation establishing free and open trade and investment among the member countries to enhance economic growth and prosperity in the region and to strengthen the Asia-Pacific community. For this, its members are committed to reducing barriers to trade and investment and to facilitating the safe and efficient movement of goods, services and people within the borders of the region.

3.18. Membership in regional economic and trade groups-the Pacific Alliance

In 2012, Peru signed the Pacific Alliance Agreement which seeks to achieve the free trade and/or movement of goods, services, capital and people and to promote greater growth, development and competitiveness of the member countries' economies.

By way of reference, the Pacific Alliance Agreement was an initiative of Peru, who invited Colombia, Chile and Mexico in order to be part of a regional membership, and to consolidate a common economic platform with a worldwide impact, especially towards Asia.

The purposes of the agreement are the following: (i) to promote greater growth, development and competitiveness of the economies of Pacific Alliance's country members; (ii) to become a platform of political articulation, economic and commercial integration and of projection to the world; and, (iii) to build a regional deep integration area in

order to progressively move towards the free trade and/or movement of goods, services, capital and people.

3.19. Membership in regional economic and trade groups-Other agreements

In 2005, Peru signed a Free Trade Agreement (hereinafter, FTA) with Thailand in order to open the Asian market for Peruvian products. By this treaty, both countries endeavor to progressively liberalize and promote trade of goods and services, as well as investment between the two countries, in order to strengthen and enhance the economic partnership between them. Regarding the trade in goods, customs duties on trade in negotiated goods must be 100% eliminated in 2015. For trade in services, each party must progressively eliminate its barriers and promote trade in sectors such as tourism, health, construction, related engineering services and transportation.

The FTA between Peru and Chile known as ALC was signed on August 22th, 2006 and got in force since March 01st, 2009. This agreement is an extension of the Economic Complementation Agreement N° 38 (ACE N° 38) in force since 1998 and developed in the framework of the Latin American Integration Association (ALADI). In this regard, the tariff liberalization program provided by ACE N° 38 was remained and the services and investment disciplines were included.

Peru has also signed agreements for guaranteeing foreign investments against commercial and noncommercial risks and guaranteeing the promotion of economic development in new and emerging markets with the Overseas Private Investment Corporation (OPIC) that in December 2019 became the "U.S. International Development Finance Corporation" (DFC), the World Bank Multilateral Investment Guarantee Agency (MIGA), and the International Convention for the Settlement of Investment Disputes (ICSID).

Likewise, Peru has also entered into FTAs with Canada and Singapore, both which have been enforceable since August 2009. These agreements ensure fair competition and facilitate the entry of Peruvian products into the markets of the two mentioned countries.

Peru and the European Free Trade Association (EFTA) were negotiating an FTA, which was finally signed on July 2010. This is an important step for Peru since EFTA member countries (Iceland, Liechtenstein, Norway and Switzerland) have the highest levels of GDP per capita and the Human Development Index (HDI: a long and healthy life, education, and quality of life). This FTA will offer great opportunities to diversify exports and promote Peruvian export offers, generating more investment and jobs. The final text of the FTA must be approved by the Peruvian Congress and by the European Parliament. The FTA signed by Peru with Switzerland and Liechtenstein came into force on July 1st, 2011. Moreover, the FTA with Iceland came into force on October 1, 2011 and the FTA signed by Peru with the United Kingdom of Norway came into force on July 1st, 2012. These FTAs will open the European market for Peruvian products and will promote new investment and trade opportunities.

Furthermore, Peru signed an FTA with China which has been enforceable since March 1, 2010. This illustrates that an important step has been taken to access the Chinese market, which will benefit Peruvian commercial interests.

The negotiations of the FTA with Korea have concluded. The FTA was signed between the parties and has been enforceable since August 1, 2011. This FTA seeks to strengthen trade relations, and creates a framework and favorable conditions for trade and investment between both countries. Peru is the second Korean investment destination in Latin America, mainly in energy, mining, retail and wholesale, and manufacturing.

The negotiations of the FTA with Costa Rica and Panama concluded in May 2011. The FTA signed between Peru and Costa Rica was signed in San José, Costa Rica on May 26, 2011, and was ratified by Peru on March 27, 2012. This agreement came into force on May 1st2012. The FTA signed with Costa Rica will allow preferential access to over 80% of bilateral trade. The agreement with Panama will allow that Peruvian agricultural products have immediate access to the Panamanian market, whereas the 99.2% of imports coming from Panama shall be released in five or fewer years.

Peru has also signed an FTA with Japan, on March 31, 2011, which has been enforceable since March 1, 2012. In recent years, Peru has begun a process of rapprochement with Asia, which includes the start of negotiations with its major trading partners in that continent. Peru aims to become the most important partner in South America for the Asian countries. In this sense, the agreement represents the opportunity to establish clear, transparent, and predictable rules, which allow bilateral trade and safeguard the interests of both nations. Moreover, the agreement allows closer trade relations with a country whose market is one of the largest and most competitive in the world, and it ensures development based on trade and investment.

On December 6, 2011, an FTA was signed between Peru and Guatemala, which is not in force yet. This Agreement is part of a business strategy to (i) improve market access conditions and (ii) set clear rules and guidelines to promote the trade of goods, services and investments.

On January 7, 2012, the Partial Scope Agreement between Peru and Venezuela was signed by the Presidents and Trade Ministers of both countries. This Agreement is intended to grant reciprocal tariff preferences to import products originated from each country, in order to promote the economic development and production of both countries through the strengthening of bilateral trade under a fair, balanced and, transparent scheme.

In addition, on May 29, 2015, the Free Trade Agreement between Peru and Honduras was signed and entered into force on January 1, 2017. This agreement constitutes a commercial strategy in order to improve all market access conditions, as well as to establish the rules that promote the commercial exchange of goods and services and investments.

On February 12, 2019, Peru signed a Free Trade Agreement with Australia. This agreement is in force since February 11th, 2020 and it is one of the most ambitious bilateral trade agreements that Peru has signed, as it includes (i) commitments regarding tariff benefits, sanitary measures, technical barriers to trade, customs matters, trade in services, investments, movement of persons, electronic commerce; and, (ii) a chapter on Small and Medium-sized Enterprises (SMEs), Development and Business Facilitation, which seeks to promote the use of the benefits from this agreement.

Moreover, Peru negotiated the Trans-Pacific Partnership (TPP), which is an initiative developed by the current country members of the Trans-Pacific Strategic Economic Partnership (P4), Brunei Darussalam, Chile, New Zealand, and Singapore, along with Australia, the United States, and Vietnam. This negotiation process aims to support economic growth and development, and boost employment generation in member countries.

However, following the US decision to leave the TPP, Peru signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) together with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore and Vietnam. The CPTPP was ratified on July 19, 2021 and entered into force on September 19 of the same year. This agreement is important because it allows preferential access for Peruvian exporters to new markets: Brunei, Malaysia, New Zealand and Vietnam.

In addition to the above, on May 15, 2019, Peru and Colombia entered into a Trade Agreement with the United Kingdom, which entered into force on December 31, 2020. This agreement includes by reference the Trade Agreement with the European Union and makes some modifications in order to ensure its applicability.

Likewise, Peru is in negotiations to implement the program of work known as the Doha Program for Development or simply Doha Round, which promotes multilateral trade liberalization as an essential part for the development of its members. Thus, it seeks to eliminate obstacles to greater openness; easy opening for development; address the opening under the rules of the WTO; and strengthen global integration and the multilateral trading system.

Regarding future FTA, Peru is negotiating with El Salvador, Turkey, Nicaragua and India the terms of future agreements with these countries.

Since 2014, the Organization for Economic Cooperation and Development (OECD) has established the Country Programs (Programas País) as a new instrument to support emerging and dynamic economies such as Peru, with Peru being the first country to inaugurate this program in the design of its reforms and in the strengthening of its public policies. To date, Peru has been signing agreements and complying with the advances in tax, anti-corruption and competition matters.

3.20. Recent economic data

Peru registered a phenomenal GDP growth rate of 12.9% in 1994, the highest in the world. This increase was not an isolated issue but, rather, part of a favorable tendency. In fact, between 1993 and 1996, the Peruvian economy grew a total of 32.4%, the highest rate in Latin America.

A great part of this evolution has been a result of the positive impact of the reorganization of the economy. Growth is also due to the increase of foreign direct investment and exports, the latter accumulating growth rates higher than that for the GDP since the economy stabilized. In fact, while exports were about U.S.$5.9 billion by 1996, at the end of 2021 they reached U.S.$63.2 billion; an increase of more than 1,071% in 25 years. However, imports have also grown significantly during the periods mentioned due to an increase in the demand for capital goods and

intermediate goods. Imports were about U.S.$7.9 billion by 1996, and at the end of 2021 they reached U.S.$48.3 billion; an increase of 611% in the last 25 years. GDP grew a 2.7% in 2000, 0.6% in 2001, 5.5% in 2002, 4.2% in 2003, 5.0% in 2004, 6.3% in 2005, 7.5% in 2006, 8.5% in 2007, 9.1% in 2008, 1.0% in 2009, 8.5% in 2010, 6.5% in 2011, 6.0% in 2012, 5.8% in 2013, 2.4% in 2014, 3.3% in 2015, 4.0% in 2016, 2.5% in 2017, 4.0% in 2018. 2.2% in 2019, (11%) in 2020 and 13.3% in 2021.

3.21. Recent economic data-Inflation

Peru achieved a significant economic recovery during the 1990's. Annual inflation has been reduced from more than 7,000% in 1990, to 139.2% in 1991, 56.7% in 1992, 39.5% in 1993, 15.4% in 1994, 10.2% in 1995, 11.8% in 1996, 6.5% in 1997, 6.0% in 1998, 3.7% in 1999, 3.7% in 2000, (0.1%) in 2001, 1.5% in 2002, 2.5% in 2003, 3.5% in 2004, 1.5% in 2005, 1.1% in 2006, 3.9% in 2007, 6.7% in 2008, 0.2% in 2009, 2.1% in 2010, 4.7% in 2011, 2.7% in 2012, 2.9% in 2013, 3.2% in 2014, 4.4% in 2015, 3.2% in 2016, 1.4% in 2017, 2.2% in 2018, 1.9% in 2019, 2.00 in 2020 and 6.4 in 2021.

Peru's success in fighting against inflation has been a result of its strong efforts with the International Monetary Fund to maintain fiscal and monetary discipline. The fiscal deficit decreased from 6.5% of GDP in 1990 to 2.5% of GDP in 2001, 2.2% of GDP in 2002, 1.7% of GDP in 2003, 1.1% of GDP in 2004 and 0.3% of GDP in 2005. A surplus was generated from 2006 to 2008: 2.3% of GDP in 2006, 2.9% of GDP in 2007, and 2.4% of GDP in 2008. During 2009 a fiscal deficit was generated of 1.4% of GDP, and in year 2010, the fiscal deficit decreased to 0.2% of GDP. During 2011, 2012 and 2013 a surplus of 2.0%, 2.3% and 0.3%, respectively, was obtained. During 2014 a fiscal deficit was generated of 0.3% of GDP, in 2015 a fiscal deficit of 2.1% of GDP, in 2016 a fiscal deficit of 2.7% of GDP, in 2017 a fiscal deficit of 2.7% of GDP, in 2018 a fiscal deficit of 2.3% of GDP, in 2019 a fiscal deficit of 1.6% of GDP, in 2020 a fiscal deficit of 8.9% of GDP and in 2021 a fiscal deficit of 2.5% of GDP.

3.22. Recent economic data-Currency exchange markets

Peru's currency exchange market is determined by supply and demand. The Peruvian Central Bank intervenes on a reduced basis only to stabilize the Peruvian currency's rate of devaluation or overvaluation against the U.S. dollar or to avoid short-term speculative movements of the exchange rate. It is worth mentioning that the Net International Reserves amounted to more than U.S.$78.5 billion by 2021. Investors are free to exchange local currency for foreign currency at market prices, and no governmental authorization is required for foreign exchange transactions. The local currency is the Sol and, as of April 12, 2023, one U.S. dollar is equivalent to S/3.75 Soles. The exchange rate is based on a floating rate.

Moreover, there are no restrictions on the flow of capital. Investors are allowed to use foreign currency to purchase foreign goods and cover financial obligations. Individuals and companies may maintain bank accounts in foreign currency whether these are current accounts, saving accounts, term deposits, etc., either in local or foreign banks.

3.23. Recent economic data-Peruvian external debt

During President Garcia's term (1985-1990) Peru was declared ineligible for International Monetary Fund (IMF) lending and, in 1987, was placed on nonaccrual status, regarded as a bad debtor by the World Bank. The government had unilaterally decided not to pay the external debt beyond 10% of export earnings. Anything above that amount would not be paid. In 1989, the Inter-American Development Bank (IDB) also declared Peru to be a nonaccrual country.

President Fujimori took office in 1990 when, for almost a decade, Peru had stopped paying its external debts and past due interest to its international creditors and had no access to international financial markets. Peru's outstanding debt by 1990 was about U.S.$20 billion. The external debt represented nearly 500% of Peru's yearly export earnings and about half its Gross Domestic Product.

Payment of past due interest to multilateral agencies, bilateral creditors, and commercial banks was critical to become eligible for new loans. Once standing interest was paid, Peru became fully eligible for lending and disbursement and has since then negotiated fresh loans to support reforms in agriculture, energy, health, education, and sanitation, among others

After Peru improved its relations with multilateral agencies and supplier creditors, it was possible to resume significant negotiations with the London Club, composed of commercial banks participating in the Bank Advisory Committee under Citibank's leadership. As of March 1997, Peru finalized the restructuring of its debt with the closing of the Brady Plan. The Brady Plan exchanged debt amounting to U.S.$10.6 billion for a new nominal value of U.S.$4.9 billion. This debt carried the longest standing interest, estimated at over 150% of principal. (Principal amounted to U.S.$4.2 billion and arrears to U.S.$6.4 billion).

The reduction of debt obtained with the Brady Plan has brought benefits such as a reduction in Peru's country risk, which brings lower interest rates for nationals outside Peru, access to international credit, more dynamism in the capital markets, and a better management of Peruvian international reserves' returns.

In February 2002, the Government of Peru returned to the international capital markets after 74 years of absence with the issuance of sovereign bonds.

As of the end of 2021, the public debt amounted to 35.93% of GDP compared to 35.09% of GDP in 2020 and to 26.38% of GDP in 2019.

On July 2, 2014, Moody's Investors Service upgraded Peru's sovereign rating to A3 from Baaa2. The outlook on the rating was changed to stable from positive. As of May 2021, Moody's Investors Service maintained the credit qualification of the country in A3, with stable perspective and on May 21st,2021, although the credit qualification

remained in A3, the perspective was negative. On September 1st, 2021, Moody's Investors Service adjusted Peru´s credit qualification to Baa1 with stable perspective.

3.24. Local capital markets

There is only one stock exchange in Peru: the Lima Stock Exchange (LSE). Trading on the LSE takes place, in regular hours, from 9:00 a.m. to 2:00 p.m., Monday through Friday, and in extended hours, since the second Sunday of March up to the first Sunday of November, from 8:20 am to 3:10 pm, and since the first Sunday of November up to the second Sunday of March, from 9:00 am to 4:10 pm. Trading on the LSE is conducted electronically in two simultaneous sessions: floor session ("Rueda de Bolsa") and Over-the-Counter session (OTC) ("Mercado Abierto"). During 1997, 56% was traded on the floor session and 44% on OTC session. It should be noted that Over the Counter trading was deactivated in September 1999, and gradually debt instruments were listed on the stock exchange session mechanism.

Instruments traded on the floor session include letters of credit, promissory notes, bank bills, bills of exchange, certificates of deposit, commercial papers, and bonds.

Prior to the 1990s, the LSE was relatively underdeveloped and little used. Subsidized interest rates and high levels of inflation encouraged borrowers to use the credit market rather than seek equity finance. The volume of stock market activity, both primary and secondary, as a proportion of GDP, dropped from about 13% in 1979 to 5% in the late 1980s.

Since the 1990s, several stock market reforms have been designed to increase the efficiency of the capital markets and to boost trading activity. The key changes were contained in the Securities Market Act passed under Legislative Decree No. 755 of November 1991, replaced by Legislative Decree No. 861 of October 1996. Several amendments to the Securities Market Act have passed since October 1996. Thus, in June 2002 the mentioned statute was updated by Supreme Decree No. 093-2002-EF.

As a result of these changes, as of 1997, the volume of stock market activity increased to 27% of GDP. In 1992, the LSE was ranked as the second most profitable exchange in the world with a growth of 123.7% in terms of U.S. dollars. During years 1993 and 1994, the LSE grew 89.7% and 51.2% in terms of U.S. dollars, respectively. By 1997 the total stock market capitalization of the LSE stood at U.S.$17.4 billion.

However, as a result of the complex domestic scene and the volatile international setting, the LSE lost part of the gains it achieved during the late 1990s. Nevertheless, during years 2002 and 2003 the LSE achieved favorable results in the stock market price indexes. During year 2006 the LSE was the most profitable exchange in the world, resulting in a 186.92% yield in terms of U.S. dollars.

Until December 2021, the local capital markets had the following characteristics:

1. The market capitalization in 2021 was U.S.$148,490 billion, the U.S.$165,540 billion was achieved in 2020, a figure higher than the U.S.$162.010 billion obtained on 2019. The market capitalization was U.S.$142,373 billion during 2018, while in 2017 it amounted to U.S.$162.355 billion, in 2016 it was U.S.$ 124.044 billion, a figure higher than U.S.$90.657 billion in 2015 and U.S.$120.763 billion in 2014. The market capitalization was U.S.$120.653 billion during 2013, while in 2012 it amounted to U.S.$153.404 billion, for 2011 was U.S.$121.596 billion and for 2010 was U.S.$160.867 billion. During 2009, the market capitalization was U.S.$107.32 billion, U.S.$57.23 billion in 2008, U.S.$108.22 billion in 2007, U.S.$60.20 billion in 2006, U.S.$36.2 billion in 2005, U.S.$20.11 billion in 2004, U.S.$16.08 billion in 2003, U.S.$12.6 billion in 2002, U.S.$10.9 billion in 2001 and U.S.$10.5 billion in year 2000.
2. The LSE has 264 listed companies in 2021 as opposed to the 259 companies listed in 2020, and 260 in 2019.
3. The traded volume in 2021 was US$5.672 billion, in 2020 reached US$5.778 billion, which was higher than US$5,473.3 billion obtained on 2019 and lesser than US$6,207.6 billion in 2018. The traded volume until 2017 was U.S.$8.944 billion, as opposed to U.S.$4.566 billion reached on 2016, U.S.$3.516 in 2015, U.S.$5.7 in 2014 and U.S.$6 in 2013. In year 2012 the traded volume was U.S.$7.6 billion.

3.25. Local capital markets-Superintendence of Securities Market (SMV)

The Peruvian capital market is regulated and monitored by the Superintendence of Securities Market (SMV), an agency similar to the United States Securities and Exchange Commission (SEC). Once equity and/or debt securities are registered in the Securities Market Registry of the SMV, the issuer has an ongoing obligation to disclose all material information and its trading and financial results to the SMV and to the LSE. All listed companies must disclose their financial statements to the SMV and to the LSE quarterly and annually.

An application (Registration Statement) to register a primary public offering must be filed with the SMV. The Registration Statement must include, among other items:

1. Information regarding the issuer's legal status, its financial health, and the scope of its activities.
2. The type of security and offering mechanism to be used.
3. If bonds are to be offered, then the prospectus must describe the collateral backing the issue (if any) and give a proper outline of the rights and obligations of future bondholders.

It should also be noted that shares not registered with the SMV may not be traded or listed on the stock exchange.

In July 2006, a special and more flexible regime was enacted applicable to offerings to accredited investors, which was entirely amended on December 2008. On July 2012, through SMV Resolution No. 031-2012-SMV-01, a new Regulation for the Registration and Exclusion of Securities on the Securities Public Registry of Peru and on the Stock Exchange was approved. This regulation established a new proceeding for the registration of foreign issued securities listed on a stock exchange or other organized market in the Securities Public Registry of Peru for being listed in the LSE.

3.26. Local capital markets-Stockbroker firms

Stockbroker firms must be registered with the SMV and must have a minimum paid-in capital of approximately U.S.$.520.122. Currently, there are 20 brokerage firms registered with the SMV.

These firms charge a commission freely established by each brokerage firm. In addition, the stock exchange levies 0.021% on each transaction, 0.0075% for a guaranty fund, and 0.00% for a liquidation fund; the SMV requires a further 0.0135% and the Institution for Compensation and Liquidation of Securities (CAVALI ICLV) —the clearing and settlement institution in Lima— 0.04095%. A sales tax of 18% (VAT) is then charged on the total commissions/fees.

3.27. Local capital markets-Public tender offers

The Securities Market Act (the Act) contains provisions regarding tender offers. A special regulation was passed to rule the tender offer processes. Therefore, in Peru it is mandatory to make a Public Tender Offer ("OPA") whenever there is an onerous transfer of a number of shares with voting rights, convertible bonds, subscription rights, or other securities which may confer the right to subscribe or to acquire shares with voting rights, which will grant the acquiror a significant stake in the target corporation.

"Significant stake" is defined as any direct or indirect beneficial ownership of 25% or more of the voting shares of a publicly traded corporation. "Significant stake" also includes:

1. The power to exercise the voting rights of shares representing 25% or more of a listed corporation (without having a direct or indirect beneficial ownership); or

2. The acquisition of any amount of voting shares or the power to exercise political rights of shares which enables a person (individual or entity) to either: (a) Remove or appoint the majority of the board of directors; or (b) Amend the bylaws of the corporation.

Thus, if a person (individual or entity) acquires or reaches a beneficial ownership of 25% or more of the voting shares of a listed corporation, then an OPA must be made. An OPA must also be made if a beneficial ownership of

50% or more or 60% or more of the voting shares of a listed corporation is acquired.

3.28. Local capital markets-Mutual funds

The Act also regulates the establishment of mutual funds, which are subject to some diversification criteria.

Accordingly, investments of mutual funds must comply with the following restrictions:

1. No more than 15% of the total equity in a single company.
2. No more than 15% of the total debt in a single company.
3. No more than 15% of the total assets of a mutual fund may be invested in equity or debt securities issued by a single company.
4. No more than 30% of the total assets of a mutual fund may be invested in equity or debt securities issued by the same economic group.

It has also been established that after a period determined by the SMV, which may not exceed twelve months from the start of activities of the funds the latter must have secured at least 50 registered holders, unless the SMV sets a lower number according to the nature and financial structure of the fund. Likewise, it prohibits any participant from holding more than 10% of the net worth, save for the following cases:

1. Founders of the mutual fund, during the first two years of operations.
2. An increase in the percentage in the net worth as a consequence of the decrease of the number of quotas due to the retrievals made by other holders.
3. Other cases as the criterion of the SMV.

Up to December 2021, global mutual funds administered U.S.$8.060 billion and there were 141 operative mutual funds. As of December 2020, the mutual funds administrated US$12.618 billion and there were 167 operative mutual funds. The number of participants in 2020 was 389,959 in contrast to the number of 437,026 in 2018 and 435,973 in 2019.

In the past, few bonds were issued in the Peruvian capital market. They were issued basically by State bodies such as those issued by the Development Financial Corporation (COFIDE) and some on behalf of leasing companies. The law exempted the interest and income on leasing company bonds from income tax. Securities' regulations allow debt to be issued in U.S. dollars or Peruvian Soles and interest payments to be linked to a variety of references (such as the Tax Reference Unit (UIT), a tax unit used to determine tax liability, GDP growth rates, etc.).

Corporate bond issues have started to increase in the Peruvian market since 1993 when the 37% tax on interest income was repealed. Interest earned on bond issues is now exempt from income tax provided the bonds are listed and issued by a Peruvian corporation. The only income which is subject to income tax is the interest on bonds from banks and financial institutions.

The level of market activity in the local fixed income market (i.e., debt securities) has increased from U.S.$13 million in 1990 to approximately U.S.$872.56 million in 2013 and U.S.$1.051 billion in 2014. On the other hand, the negotiation of equity instruments (i.e., shares) increased from U.S.$1.19 billion in 2002 to approximately U.S.$3.847 billion in 2014. In 2020 has increased to U.S.$5.778 billion and in 2021, negotiations for U.S.$5.672 billion have been recorded.

The most important investments by mutual funds up to December 2019 were reflected in deposits in the financial system.

3.29. Privatization between 1991-2022

Peru has taken aggressive steps to privatize State-owned enterprises since 1991. In 2021, the private investment flow reached US$ 46 billion and it is projected that by the end of 2022, the flow of private investment will exceed U.S.$50 billion.

3.30. Recent major direct investments

As of December 31, 2021, the total amount of direct investment registered at the local Private Investment Promotion Agency (ProInversion) is about U.S.$29.231 billion, compared to US$29.194 billion as of December 31, 2020, US$29.010 billion as of December 31, 2019, U.S.$25.931 billion as of December 2018; U.S.$25.684 billion as of December 2017, U.S.$ 25.679 billion as of December 2016, U.S.$25.324 billion as of December 2015, U.S.$24.258 billion as of December 2014, U.S.$23.171 billion as of December 2013, U.S.$22.659 billion as of December 2012 and U.S.$22.016 billion as of December 2011.

In late 2021, Spain, the United Kingdom, Chile and the United States were the main sources of investment in Peru, generating an investment of 15.2 billion as foreign investment.

In 2021, the main sectors where the most important foreign investment has been made is mining (U.S.$7.0 billion), finance (U.S.$5.8 billion), communications (U.S.$5.5 billion), energy (U.S.$3.5 billion) and industry (U.S.$3.5 billion).

3.31. Recent major direct investments-Telecommunications sector

The most important foreign investment of the last years was the one made in the telecommunications sector by Telefónica de España in 1994, which purchased most of the shares of Compañía Peruana de Teléfonos (CPT) and Empresa Nacional de Telecomunicaciones (ENTEL). The amount invested was U.S.$2 billion of which U.S.$1.4 billion were used to buy the shares from the State and U.S.$600 million were used as capital contribution for the development of the company. In 2004 Telefónica bought the mobile operations of BellSouth in Peru. In 2005, América Móvil Peru acquired 100% of the operations of TIM Peru which had been controlled by Telecom Italia Mobile S.p.A. América Móvil operates in Peru through its brand "Claro". In 2011 the Vietnamese group Viettel Group became the fourth operator of mobile telephony after being awarded with the bidding process to become the concessionaire of a band of 1,900 MHz. In 2013, Telefónica and Americatel had been awarded the two bands of mobile operations 4G LTE (Long Term Evolution). The band of 1.710 – 1.770 MHZ was awarded to Telefónica after offering US$152.2 million. The band of 2.110 – 2.170 MHZ was awarded to Americatel after offering US$105.5 million. Besides, Entel Chile acquired 100% of the operations of NEXTEL Peru, which had been controlled by NII Holdings.

In the period 2011-2020, the main foreign investors that have made capital contributions registered in companies in the telecommunications sector established in Perú were (i) Empresa Nacional de Telecomunicaciones S.A. (Chile); (ii) NII Mercosur Telecom, S.L. (Spain); (iii) Invests Entel Inversiones S.A. (Chile); and (iv) Telefónica Latinoamérica Holding, S.L. (Spain). In the first 3 cases, the receiving company was Entel Perú S.A., while in the last Telefónica del Perú S.A.A.

3.32. Recent major direct investments-Mining sector

The Peruvian mining sector has been able to maintain an acceptable flow of investment in the past years. In this sector several important State-owned companies have been sold to foreign investors. Worthy of mention are:

1. The sale of Hierro Peru to the Chinese company Shougang Corp. for U.S.$120 million;
2. The Quellaveco copper deposit to the Chilean company Mantos Blancos for U.S.$12 million;
3. The Cajamarquilla zinc refinery to Cominco Ltd. and Marubeni for U.S.$193 million;
4. The Ilo refinery to Southern Peru Copper Corporation for U.S.$66.6 million; and
5. The Tintaya mining company to Global Magma Ltd. and Magma Copper for U.S.$246.9 million.

As of September 16, 1998, the Canadian consortium Noranda-Teck-Rio Algom had signed an investment agreement with the government to invest U.S.$2.2 billion in the formerly State-owned Antamina mining concern during the following three years. This was in addition to the U.S.$300 million already invested in it for exploration. On March 15, 2005, Brazilian Companhia Vale do Rio Doce was awarded with the right to exploit the phosphates mining concession of Bayóvar, in the Northern Province of Piura. Brazilian group Gerdau acquired a majority interest in

SiderPeru as part of a privatization process. Likewise, Compañía Minera Milpo acquired a majority stake of mining company Atacocha; Southern Peaks Mining acquired Compañía Minera Condestable from Trafigura.

In August 2010, Votorantim (Brazil) increased its participation in the mining company Compañía Minera Milpo S.A.A. after acquiring 16.4% of the voting shares in an operation valuated in U.S.$420 million. Currently Votorantim has 80.24% of the voting shares of the Peruvian mining company.

In March 2011, Gold Field Corona BVI Limited announced the placement of a purchase order to acquire in the Floor Session 100% of the common and investment shares issued by Goldfields La Cima S.A. for US$420 million, in order to obtain the remaining 8% of the shares of Goldfields La Cima S.A.

Also, in 2014 MMG Limited, subsidiary of China Minmetals Corp., acquired the mining project Las Bambas from Glencore for U.S.$7.005 billion. This was the biggest sale of a greenfield or non operation project in the history of the mining industry.

In May 2015, the Ministry of Energy and Mining estimated that the mining investment portfolio was composed of 51 mining projects, which investment was more than U.S.$63.114 billion. From this amount 66.95% were oriented to the exploitation of copper.

In June 2017, Minera Chinalco announced the expansion of the Toromocho copper mine, in which approximately U.S.$1.300 billion will be invested, in order to increase current production by 45% by 2020. With this investment, the value of the Toromocho production will exceed U.S.$2 billion annually. Also, towards the end of 2017, Glencore launched a public tender offer for up to 48.19% of the voting shares of Volcan Compañía Minera. This operation, in which approximately U.S.$734 million were invested, allowed Glencore to finally acquire 36.92% of the shares, thus becoming the controlling shareholder of Volcan Compañía Minera with 55.03%.

Currently, Peru is experiencing a new wave of mining investment, as the sector is recovering driven by greater business confidence and the better prices of minerals. In this way, until the end of 2017, approximately U.S.$2.372 billion had been invested in various mining projects nationwide. In June 2018, after having been postponed for approximately five years, the Anglo American-Mitsubishi consortium announced the start of execution of the Quellaveco mining project, in which U.S.$5.5 billion are estimated to be invested.

Since 2019, Minera Poderosa Corporation has been carrying out the construction of the Santa Maria expansion project in the department of La Libertad with an investment of US$121 million. On the other hand, for 2020 the Corani project carried out by the Canadian mining Bear Creek Mining Company was announced (US$579 million), the San Gabriel project developed by Compañía de Minas Buenaventura in Moquegua (US$431 million); and, the Yanacocha Sulfides Project announced by Newmont Mining Corp. (US$2,100), among others. Likewise, by the end of 2020, the Mina Justa mining project, the second largest mining project in Peru, is expected to start operations, which will be carried out by Minsur's subsidiaries, Marcobre S.A.C and Cumbres Andinas S.A.C.

As of December 2021, there has been an annual investment in the mining sector of US$5.2 billion.

3.33. Recent major direct investments-Finance sector

The high percentage obtained by the financial sector is related to the economic boom and to the entrance of new banking entities to the market. In this sector, the main capital contributions have been made by:

1. Banco Bilbao Vizcaya from Spain for the purchase of Banco Continental for U.S.$256 million;
2. Banco Santander S.A. from Spain for U.S.$97 million for the purchase of two local banks;
3. International Financial Holding for the purchase of Interbank for U.S.$51 million;
4. Banque Sudameris from Italy for the purchase of Banco de Lima for U.S.$100 million and then for the purchase of Banco Wiese; and
5. Scotiabank from Canada for the purchase of Banco Wiese Sudameris, Banco del Trabajo, and Profuturo AFP.

Pension fund Prima AFP acquired AFP Union Vida from Santander group. Banks such as HSBC and Deutsche Bank decided to enter the Peruvian market as greenfields. A "Greenfield" is a form of foreign direct investment where a parent company starts a new venture in a foreign country by constructing new operational facilities from the ground up.

In 2010, Morgan Stanley opened its first representative office in Peru to expand its Latin America operations.

In 2012, GNB Sudameris from Colombia purchase banco HSBC Perú for US$ 400 million.

Locally, in 2014 Mibanco acquired Edyficar. Mibanco's new portfolios will reach approximately U.S.$2.36 billion, which will convert it in the fifth bigger bank of the system.

In the same area, in 2015, the net worth of La Positiva Seguros increased by 63% compared to 2014, due to the strengthening of its capital stock after CF Inversiones Perú, a Peruvian Subsidiary of Consorcio Financiero S.A. (Chile), acquired a participation of 40.1% in the Peruvian insurance company.

In 2017, Intercorp acquired 100% of Seguros Sura e Hipotecaria Sura, for an approximate amount of U.S.$268 million.

In 2018, Caja Rural de Ahorro y Crédito Los Andes absorbed Edpyme Solidaridad y Desarrollo Empresarial. In addition, Banco Financiero del Perú absorbed Technology Outsorcing Servicios Operativos S.A.C.

In 2019, BNP Paribas Cardif S.A Compañía de Seguros y Reaseguros increased its capital by US$22 million. Furthermore, Bank in China (Peru) was incorporated in 2019 and started operations in 2020.

Currently, Banco de Crédito de Inversión (BIC) is expected to start operations in the Peruvian market.

3.34. Recent major direct investments-Energy, oil and gas sectors

Since 1992, foreign investment has been significant in the energy sector. State-owned holdings in energy companies were sold and other assets were granted in concession to the private sector. The website of "ProInversion" the agency that promotes the investments1 establishes that investment commitments of more than US$ 5.5 billion have been achieved, and currently, the coverage of the National Electric System - "SEIN" reaches 22 of the most important cities in the country. For example:

1. In February 2000, the Camisea Gas development was awarded to Pluspetrol-Hunt-SK Consortium, and Techint-Pluspetrol-Hunt Pipeline Company of Peru-SK Corporation and to L'Enterprise Nationale Sonatrach-Graña y Montero Consortium the distribution stage was awarded in October 2000.

2. In April 2001, the Peruvian Government granted in concession the electric transmission lines "La Oroya-Carhuamayo-Paragsha-Derivación Antamina and Aguaytía-Pucallpa" in favor of Interconexión Eléctrica S.A. E.S.P. and Transelca S.A. E.S.P. Both of them are Colombian.

3. In December 2001, PSEG acquired Electroandes, through Transamerica Energy and PSEG Americas.

4. In June 2002, the electric transmission systems of ETECEN and ETESUR were granted in a 30-year concession to Colombian firm Interconexión Eléctrica S.A., which offered U.S.$241.58 million and a projected investment of U.S.$10.5 million.

On the other hand, ENERSUR, currently ENGIE "Energía del Perú S.A." was awarded with the use contract of Yuncan (Contract for Use of Assets) offering U.S.$205 million. The Yuncan project consists on the construction of a hydroelectric plant with 130 MW installed power, including the installation of three generators of 44.5 MW each to produce 901 Gwh per year. The construction of 50 km of transmission lines is also required for interconnection to

[1] https://www.proyectosapp.pe/modulos/JER/PlantillaProyectosResumenes.aspx?are=0&prf=2&jer=5408&sec=22

the National Electric System.

In March 2011, the Peruvian Government granted 911 MW of total capacity for the construction of hydroelectric plants to three companies: Consorcio Generadora Pucará, Cerro del &Águila S.A. and Empresa Generación Huallaga S.A. This will represent an investment of US$1.7 billion.

In July 2013, the Peruvian Government granted in concession the electric transmission lines "Tintaya – Socabaya" in favor of REI-AC consortium. In the same year, Royal Dutch Shell acquired Repsol's operations of natural gas for U.S.$4.9 billion. Likewise, the Chinese petroleum company CNPC acquired the assets in Peru of Petrobras for U.S. $2.6 billion.

During 2016, the American private equity I Squared Capital (ISC) acquired assets from Duke Energy (today, Oroazul Energy). The assets purchased by ISC include hydroelectric power and natural gas plants, with an installed capacity of 2,300 MW of electricity generation and transmission lines and gas processing operations.

During 2017, US private equity I Squared Capital (ISC) acquired assets in Latin America and the Caribbean from IC Power, a subsidiary of Kenon Holdings (Israel), for U.S.$1.77 billion. As part of this operation, ISC will acquire approximately 75% shareholding in the Kallpa Generación and Samay I thermoelectric plants, as well as in the Cerro del Águila hydroelectric plant, all of them located in Peru.

In September 2017, the construction of the first wind park of the company Enel started, through its subsidiary, Enel Green Power Peru, in the district of Marcona in the Region of Ica. The plant has a capacity of 132 MW and will be the largest wind park in Peru. The plant is currently in operation, and plans are underway to extend it.

In October 2017, the Enlace 500kv Mantaro-Nueva Yanango-Carapongo and Associated Substations Project and Enlace 500 kv Nueva Yanango-Nueva Huánuco and Associated Substations were awarded to the Colombian company Interconexión Eléctrica S.A.E.S.P.

On the other hand, in March 2018, Enel Green Power Peru started operations in the Rubí solar photovoltaic power plant, the largest in Peru, which required an investment of approximately U.S.$165 million. This project will contribute to strengthen the generation of energy in south of the country, increasing by 10% the production of electricity with renewable energies in said geographical area.

In addition, in the same year, the Intapampa Solar Power Plant of Engie company, which is located in Pampa Lagunas in the region of Moquegua, began to operate. This plant has an area of 322 hectares and is equipped with 138,120 solar panels. This plant has an installed power of 40 MW.

In October 2018, Enel invested around US$ 13 million in distribution networks: expansion of residential, commercial and industrial customer networks, electrification of human settlements, expansion of public lighting and quality

assurance of supply. Additionally, it invested in transmission line security, loss control and others.

In October 2019, Chinese Yangtze Power International Co., Limited (CYP) acquired from Sempra Energy 83.6% shareholding in Luz Del Sur for US$3.59 billion.

Likewise, in October 2019, Cobra Instalaciones y Servicios S.A., which belongs to the Cobra Group, of Spanish origin, was awarded the Good Pro for three projects called for that same year. The works included in the projects are: (i) 500kV La Niña - Piura link, Substations, Lines and Associated Expansions; (ii) 220 kV Pariñas - Nueva Tumbes link, Substations and Associated Expansions; and (iii) kV Tingo María - Aguaytía link, Substations, Lines and Associated Expansions. In February 2020, the closing act took place, which is the signing of the contract.

In addition, in mid-2019, Grupo Energía de Bogotá completed the acquisition of Dunas Energía S.A.A., which made a public offer for the acquisition at the Lima Stock Exchange. Electro Dunas distributes and sells electrical energy in Ica, and partially in Ayacucho and Huancavelica.

According to the Annual Memory published in the website of the Sociedad Nacional de Minería, Petroleo y Energía - SNMPE, the energy companies engaged in generation, transmission and distribution, had an investment portfolio of U.S.$ 8.0 billion. There are more than 50 projects in portfolio and 22 regions in the country will benefit.

In regard to the hydrocarbons subsector, in accordance with the legal provisions regarding the private investment and the Orderly Unique Text of the Organic Hydrocarbons Law (OUT of the Organic Hydrocarbon Law) since 1993 hydrocarbon activities have been and can be carried out by any natural or legal person, national or foreign, who may execute contracts within national territory. To date there are significant investments in Peru, such as:

1. The Camisea operations, located in Cuzco's jungle area, which License Contract for exploitation of hydrocarbons in Block 88 was signed in February 2000 with the Camisea Consortium composed of the companies PlusPetrol, Hunt Oil Company of Peru, SK Corporation, and Hidrocarburos Andinos. These operations represent 81.7% of the total production of gas and natural gas liquids in Peru, which is why said operation is the country's main energy operation consisting of the exploitation, transportation and distribution of the previously mentioned hydrocarbons from one of the most important Latin America reserves.

   The extracted hydrocarbons from the Camisea fields are processed at the Malvinas separation plant, where dry natural gas is also separated from natural gas liquids; once separated, both products are transported through different pipelines down to the coast. Natural gas is distributed for residential, commercial, industrial purposes, as well as for electricity generation; and the liquids are transported to the fractioning plant in Ica, where various products to supply the national and international market will be obtained.

   Likewise, Block 95, located in Loreto and operated by the company PetroTal, has an approximate investment of more than US$ 350'000,000 (Three hundred fifty million) that would be executed in the next 4 years.

Block 192, operated by the company Frontera Energy, deserves special mention because it is the largest crude oil producer in the country, but its contract expires in September 2020; in that sense and by legal mandate, the state company PetroPerú must assume the operations of said Block for the next 30 years, for which it requires a strategic partner.

During 2020, China Yangtze Power Co. Ltd, a subsidiary of China Three Gorges Corporation, completed the acquisition of Luz del Sur, Peru's leading electric company dedicated to the distribution and sale of energy, and the Australian company Orica finalized the acquisition of shares of Exsa S.A. and Breca Soluciones de Voladura S.A.C., companies dedicated to the commercialization of explosives and blasting systems.

3.35. Recent major direct investments-Mergers and acquisitions

The mergers and acquisitions activity in the country have stood out in the last few years; a clear example is set by the acquisition of Colombian brewery Bavaria by SABMiller plc, with the latter acquiring control of Peru's largest brewery, Union de Cervecerías Peruanas Backus y Johnston S.A.A. Within the same brewery sector, Ransa Comercial acquired 30% of Compañía Cervecera Ambev Peru's holding company. Additionally, Grupo Gloria acquired a majority stake in the sugar company Empresa Agroindustrial Casa Grande, and many acquisitions have occurred in the fishing industry, such as the purchase of Grupo Sindicato Pesquero del Peru (SIPESA) by Tecnológica de Alimentos (Tasa) for U.S.$130 million. In addition, in late 2007 Chilean Cencosud acquired Supermercados Wong S.A., Citibank sold its interest in Profuturo AFP, Rank Group acquired Alcoa's packaging business, Mexican company Sigma Alimentos acquired Peruvian Braedt S.A., Central Parking System sold its 70% interest in its Peruvian subsidiary to Grupo Delosi, and 3M del Peru S.A. acquired 100% of the common stock of Peruvian firm Abrasivos S.A. Likewise in 2010, Talma, a Peruvian company which provides airport services, acquired 100% of Aeropuertos del Perú (AdP) which was awarded with the concession for the first group of regional airports in Peru. In 2011, Grupo Interbank (Peru) acquired 100% of Inkafarma, one of Peru's most important chain of pharmacies, and 100% of Bembos, the leading fast food Peruvian chain with more than 60 premises in Peruvian Territory. In addition Teva Pharmaceutical Industries from Israel, the biggest global manufacturer of generic medicine, acquired Corporación Infarmasa, a Peruvian laboratory. In 2013, China Fishery acquired Copeinca for U.S.$810 million.

It is important to mention that during the period 2010-2014, the number and the value of the operations were increased by year an average of 15.6% and 21.7%, respectively. Only from January 2014 to July 2014, the volume of the transactions added approximately US$10.7 billion, exceeding the total volume of US$10.1 billion of 2013. Obviously, the Peruvian economy was benefited by this context because it received an increase of the mergers and acquisitions processes. Some of the reasons of this growth are the market dynamism, the domestic consumption, the greater protection given to the investments, and the legal and tax stability of Peru.

In 2017, the Peruvian market registered a total of twenty eight mergers and acquisitions, of which fourteen totaled around U.S.$2.893 billion. In 2018, operations have been carried out in various sectors of the economy, including legal, industrial and educational, among others. We can highlight the acquisition of Quicorp by Inkafarma for the amount of U.S.$583 million, the purchase of the majority control package in Corporación PECSA by Primax, and the acquisition of Industrias de Aceite S.A., by Alicorp for approximately U.S.$293 million.

The expectations about the merger and acquisitions in the country are positive, considering that this sector will have a significant increase. By 2017, the investment rate reached by Peru was about 22% of its gross domestic product, which prevails over the Chilean, the Bolivian and the Paraguayan, which reach approximately 21%, 20% and 19%, respectively. In 2017, Perú was the eleventh country in Latin American with the highest rate of private and public investment.

In 2019, Inca Rail S.A. absorbed Servicios Ferroviarios S.A.C. and Alicorp acquired Intradevco, a manufacturer of hygiene products, as part of its expansion strategy in Peru. During 2020, the M&A market was affected as a consequence of the restrictions in international mobility and the high level of uncertainty about the future recovery of the industries. However, in 2021 the market understood the new normality which implied an increase of 15% of operations and a growth of 184% in the amount of operations compared to December 2020. In this context, InRetail Perú Corp (Inretail) acquired Makro Supermayorista S.A. with the intention of consolidating the modern market of retail in Peru.

According to the TTR - Transactional Track Record quarterly report, the M&A market in Peru has closed in 2021 with 115 transactions and US$4,128 billion in capital mobilized. Technology was the sector with the most deals in the year (19), followed by Finance and Insurance (14), Real Estate (12) and mining (11).

3.36. Recent major direct investments-New investments

During the last few years Peru has attracted many new investments such as Grupo Slim (América Móvil), Enap, Votorantim, Scotiabank, Latina Holding, China Fishery Group, Ashmore, Parque Arauco, SABMiller, Cencosud Internacional Limitada, Gold Fields Corona BVI Limited, Global Crossing International, Teva Pharmaceutical Industries, Viettel Group, APM Terminals, and the consolidation of others such as Telefónica, Freeport-McMoran Copper & Gold, Phelps Dodge, Xstrata, among others. Likewise, new companies entered the market as Greenfields, which is a form of direct investment where a parent company starts a new venture in a foreign country by constructing new operational facilities from the ground up: Ambev, HSBC Bank, Deutsche Bank, Banco Santander Central Hispano S.A., Dubai Ports, and Grupo Gea. Companies such as Sumitomo, Odebrecht, Andrade Gutierrez, Repsol, Pluspetrol, which are already established in Peru, increased their investments in the country.

Some major investors made capital movements through contributions or acquisitions of shares during the period 2008-2020, such as Cencosud International Limitada (Chile), Endesa Latinoamericana S.A. (Spain), Golds Field Corona BVI LMI (UK), SN Power Perú PTE.LTD (Singapore), Compañía Minera Latino--América (CLA) (Chile), Perenco LTD. (France), Gerdau S.A. (Brazil), Anglo American PLC (UK), Invercable S.A. (Chile), Asa Iberoamérica S.L. (Spain), Carlyle Group (United States) and Orica (Australia).

According to the Peruvian Central Bank, it received U.S.$6.201 billion for foreign direct investment in 2021, which increased 28.74% with respect to 2020 as a result of the economic recovery following the Covid-19 mandatory lockdown. We matched Ecuador (U.S.$620 million) surpassed Bolivia (U.S.$1.048 million), Uruguay (U.S.$1.403 million), Colombia (U.S.$1.753) and Venezuela (U.S.$0).

Throughout 2020 and 2021, Peru has managed to sign a large number of legal stability agreements with investors such as Yangtze Andes Holding Co. Limited, Banco Santander, Cosco Shipping Ports Limited and Centro Empresarial Juan de Arona. These agreements will allow energy expansions to reach their maximum capacity and new projects in the financial, real estate and port sectors to enter into production.

CHAPTER 4

Mercantile Organizations

CHAPTER 4

Mercantile Organizations

4.1. Introduction

There are different structures that foreign investors may use according to their needs as investment vehicles in Peru. They range from setting up any of the seven different types of companies or a foreign branch to forming two types of joint ventures: association in participation or a consortium.

Peruvian Corporate Law (hereinafter, Corporate Law) provides for several forms of corporate organizations. The most widely adopted forms are: the Corporation (Sociedad Anónima) and the Limited Liability Company (Sociedad Comercial de Responsabilidad Limitada). Besides these two, the Corporate Law recognizes the existence of the General Partnership (Sociedad Colectiva), Simple Limited Partnership (Sociedad en Comandita Simple), Limited Partnership with Shares (Sociedad en Comandita por Acciones) and the Civil Company (Sociedad Civil). As of 2021, the Corporate Law introduces a new adopted form, the Collective Interest Corporation (Sociedad de Beneficio e Interés Colectivo).

This chapter discusses the various types of corporate vehicles used to undertake businesses in Peru.

4.1. Corporations

Corporations are the most common type of business used in Peru. Their main characteristic is the limited liability of their stockholders, who are liable only to the extent of their contributions to the corporation.

The capital stock is represented by shares and there is no minimum or maximum capital set forth in the law, except for certain specific types of corporations (e.g., banks, insurance companies, stockbrokers, etc.).

The corporation must be composed of at least two shareholders, which can be natural and/or legal entities. The duration can be for a fixed or indefinite term.

Incorporation of the company may be carried out through simultaneous or successive subscription of shares. Simultaneous subscription occurs when the incorporators subscribe all the shares for themselves. Successive

subscription occurs when the promoters offer the shares to the public. The shares of stock must be fully subscribed and at least 25% of each share must be effectively paid-in.

The board of directors and one or more managers are in charge of the administration and management of the corporation. The board of directors is comprised of at least three members and their term of office is at least one year with a three-year cap. Reelection of directors is permitted.

The shareholders' meeting is the primary corporate body, and it is composed of all the corporation's stockholders; they must hold a meeting at least once a year. This mandatory annual meeting must be held within the first three months of each year in order to decide the financial results of the previous year, among other issues. These annual meetings and all subsequent meetings can also be held through online sessions via electronic methods with the same validity as in person meetings guaranteeing the shareholder's identity, communication, participation, the exercise of voice and vote and the correct development of the session.

Different types of shares may be created, including nonvoting shares. Shares of stock may be freely transferred; however, restrictions on their transferability may be set forth in the bylaws (e.g., rights of first refusal).

Peruvian Corporate Law distinguishes three specific types of corporations, the closely held corporation, the publicly (or openly) held corporation and the standard corporation. The standard corporation results when the corporation does not comply with any of the requirements established for the closely or openly held corporation.

4.2.1. Closely held corporations

The closely held corporation ("Sociedad Anónima Cerrada" or S.A.C.) must be composed of no more than 20 shareholders. Their shares of stock cannot be registered in the Securities Market Public Registry, and thus cannot be listed on the stock exchange. The establishment of a board of directors is optional, and the shareholders have the right of first refusal to acquire shares of stockholders who wish to transfer their shares. This right of first refusal may be eliminated if it is expressly agreed to in the bylaws. Moreover, specific causes for exclusion of stockholders can be established.

4.2.2. Openly held corporations

A corporation is considered as an openly held corporation ("Sociedad Anónima Abierta" or S.A.A.) when the corporation meets at least one of the following requirements:

- Has more than 750 stockholders.

- Has made an initial public offering of equity or convertible debt securities.
- More than 35% of its capital stock belongs to 175 or more stockholders, without considering in this number those shareholders whose personal tenancy of shares does not reach two by one thousand of the capital or exceed five percent of the capital.

The transfer of shares cannot be restricted or limited; hence they do not have first refusal rights.

The articles of incorporation and bylaws cannot contain clauses restricting the free transferability of shares or any type of restriction to stock negotiation. They also cannot contain clauses giving a shareholder or corporation the right of first refusal to acquire shares when these are transferred.

The openly held corporation should have all its shares registered in the Stock Market Public Registry. The Superintendence of Securities Market (SMV) is the government agency in charge of supervising and controlling publicly held corporations. SMV has the following powers:

- Require the conversion to publicly held corporation, when appropriate;
- Demand the conversion of the publicly held corporation to another type of corporation; and
- Determine and penalize the violation of the regulations established in the openly held corporation section of the Corporate Law and specific SMV regulations.

The minority shareholders' rights in an openly held corporation are discussed below.

1. Right to information

   The openly held corporation must provide the information required by shareholders representing no less than 5% of the paid-in capital, provided it is not dealing with reserved matters or matters in which disclosure may damage the corporation.

2. Right to request meeting call by shareholders

   The openly held corporation requires 5% of the subscribed shareholders with voting rights to request the call for the shareholders' meeting.

3. Right to postpone shareholders' meeting

   At the request of the shareholders representing 25% of the subscribed shares with voting rights, the shareholders' meeting will be postponed once, at least for three but no longer than five days without

issuing a new notice, in order to discuss and vote on matters in which they consider they do not have enough information.

4. Right to challenge resolutions

The resolutions of the shareholders' meeting that contravene the Corporate Law, the bylaws or the articles of incorporation of the company, or which damage, directly or indirectly, the corporate interests in favor of one or several shareholders, may be judicially challenged. The agreements that incur the grounds for annulment established in the Corporate Law or the Peruvian Civil Code can also be challenged in accordance with terms and forms established by the Corporate Law. There is no requirement of a percentage in order to exercise this right. The challenge may be brought by the shareholders that may have put on record their opposition to the resolution in the shareholders' meeting, by the absent shareholders or by those unlawfully deprived of their voting rights. The challenge right expires two months after the date the resolution has been adopted if the shareholder was present at the meeting; after three months if the shareholder was absent; and for resolutions which are recorded in the minutes, within the next month following their registration. This right is also granted for the standard corporation and in the closely held corporation.

5. Right to suspend resolutions

At the request of shareholders representing more than 20% of the fully subscribed capital, a judge may order a precautionary measure for the suspension of the challenged resolution. The judge may order that the claimants provide counter-precaution compensation for damages that may be caused by the suspension. This right is also granted in the standard corporation and in the closely held corporation.

6. Right to withdraw

The shareholders' right to withdraw occurs when an openly held corporation decides to retire its shares or obligations from the Stock Market Public Registry. Retiring shares or obligations causes the corporation to lose its status as an openly held corporation, and it must convert to another type of corporation. The shareholders who did not vote in favor of the resolution have the right to withdraw.

Moreover, in order to effectively protect the rights of the minority shareholders the corporation is obliged to publish the following information in the Official Gazette as well as in the corporation's Web page, within 60 days of the shareholders' meeting:

- The total number of unclaimed shares and their total value;
- The total number of uncharged and demandable dividends;
- The place where the detailed lists are, and the place and hour in which the minority shareholders can claim their shares and charge their dividends;
- The list of shareholders that have not claimed their shares and profits; and

- The amount expended on these protection processes (which should be paid by the corporation).

4.2.3. Standard corporation

Corporations that do not comply with the requirements for publicly held or privately held corporations are considered to be standard corporations, regulated by the general clauses established for all corporations in the Corporate Law.

4.3. Capital structure

The corporation may issue different types of shares. The difference among them could be constituted by: (1) the rights granted to their holders; (2) the obligations assumed; or (3) by both the rights and obligations. All stocks of the same class will have the same rights and obligations.

The corporation may issue nonvoting stocks whether it is a standard, closely held or openly held corporation. Nonvoting stocks are not computed in determining the quorum necessary to hold shareholders' general meetings. Nonvoting stock confers the following rights upon the holder:

- The right to participate in the distribution of profits and net worth resulting from liquidation before any common stockholder;
- The right to be informed at least every semester about the corporations' activities and management;
- The right to oppose those agreements damaging their rights; and
- The right to withdraw from the corporation in cases established by the Corporate Law or the bylaws.

Moreover, in the case of capital increase, shareholders can:

- subscribe voting stocks pro rata when the shareholders' general meeting agrees to increase the capital only through the creation of stocks with voting rights;
- subscribe pro rata stocks with voting rights and with the necessary number to maintain his or her participation in the capital, in case the shareholders' general meeting agrees that the increase includes the creation of nonvoting stocks, but in an insufficient number, so that the holders of these stocks maintain their participation in the capital;
- subscribe pro rata nonvoting stocks in cases of capital increase where the shareholders' general meeting is not limited to the creation of stocks with voting rights or in cases where the general meeting agrees to

increase the capital only through the creation of nonvoting stocks; and

- subscribe liabilities or other convertible securities or with the right to be converted into stocks, applying the rules set forth in the above numerals.

4.4. Corporate bodies

The administration and management of a corporation are carried out at the shareholders' general meetings and by the board of directors' meetings.

4.4.1. Corporate bodies-Shareholders' general meetings

The shareholders' general meeting is the primary corporate body of the corporation and it is composed of all of the corporation's stockholders, who must hold a meeting at least once a year. All shareholders, present, absent, or dissident, are bound by the resolutions adopted at the general meeting. The meeting can be called by the Board of Directors, the management, or by 20% of the subscribed shares with voting rights. The Corporate Law permits the holding of universal general meetings when all subscribed shares with voting rights are present and unanimously agree to hold the meeting.

The general meeting is mandatory and must be held at least once a year within the three months following the end of the corporation's fiscal year. The issues discussed include approval of the financial statements, allocation of profits, election of members to the Board of Directors and compensations, designation of external auditors, and any other issue required by the bylaws or expressly stated in the call.

The shareholders at the general meeting may resolve to remove the Board of Directors and name its successors, modify the bylaws, increase or decrease the capital, issue bonds, agree on the sale of assets when its value exceeds 50% of the corporation's capital, order investigations and special hearings, agree on the transformation, merger, spin-off, reorganization, and dissolution of the corporation, and resolve its liquidation.

4.4.2. Corporate bodies-Board of directors

The board of directors is elected at the shareholders' general meeting. The bylaws will establish the minimum, maximum, or a fixed number of directors which may not be less than three. The bylaws determine the directors' terms of office, which cannot be less than one year nor more than three years. Reelection is permitted. The shareholders may remove the directors at any time without a specific cause. The position is personal unless the bylaws permit directors to be represented by others. A director is not required to be a shareholder or a resident to be elected. However, the bylaws may establish this. The position may only be held by natural persons; thus, no corporation may be elected as member of the board of directors.

The Corporate Law establishes that corporations are obliged to constitute their boards of directors with representation of the minority (cumulative vote). Consequently, each share has as many votes as there are members of the board to be elected. It is possible for the minority shareholders to obtain greater participation on the board of directors, with respect to the percentage of capital that they hold.

The board of directors' quorum is 50% plus one. However, the bylaws may establish a higher quorum but may never request the total assistance of all board members. Decisions are adopted by the majority of the attending directors; however, the bylaws can establish a higher requirement.

It should be noted that regarding openly held corporations, the Corporate Law does not establish any particular requirements for the board of directors.

4.5. Limited liability companies

The limited liability company has its capital divided into ownership rights of equal value, which are cumulative and indivisible and cannot be represented by shares of stocks. The total number of partners cannot be more than 20. Partners are not personally liable for the company's obligations.

Similar to corporations, there is no minimum capital required. However, 25% of each participation must be paid-in before registering the incorporation at the commercial registry.

Company agreements will be achieved by the will of partners representing the majority of capital. The bylaws can establish the manner these accords may be reached. However, a general meeting is mandatory when requested by partners representing at least 20% of the paid-in capital.

Management of the company is performed by one or more managers, elected by the partners, who may or may not be partners. Managers are prohibited from being involved on their own behalf or on behalf of third parties in the same type of business as the company. No board of directors is required.

Transferability of ownership rights to heirs in case of death of a partner may be restricted by the bylaws in favor of the other partners. Partners' ownership rights are not freely transferable to third parties. The partner must first offer its interests to the other partners who have preemptive rights to purchase the ownership rights. In case none of the partners exercise this right, the company may purchase and amortize them, resulting in reduction of capital. If none of this occurs, the partner may freely transfer its interests to third parties.

4.6. General partnership

The general partnership is a business organization where its partners are severally and completely liable for the obligations and debts of the company. This form of business organization is rarely used by foreign investors. The general partnership has a fixed term of duration. However, its duration may be extended with the consent of all partners. Likewise, any amendment to partnership agreements should be approved by all partners and registered in the commercial registry. Transferability of partnership interests must be approved by all partners.

Unless stipulated otherwise, the company's accords are adopted by a majority of votes, computed in terms of persons. If the accords are to be adopted in terms of the capital held, the partnership agreement should establish the vote that corresponds to each partner. In case any partner has more than half of the votes, it is necessary to also have the vote of the partner who contributes personal services.

4.7. Simple limited partnership

The simple limited partnership is a type of business organization that is formed by one or more active partners who are liable in an unlimited and joint manner for obligations incurred by the partnership and one or more nonactive partners whose liability is limited to the payment of their respective contribution to the capital. These contributions cannot be represented by shares of stocks or any other type of security. Unless agreed otherwise, nonactive partners cannot participate in the administration of the business.

To transfer contributions pertaining to active partners, the unanimous consent of active partners and 50% plus one of the votes corresponding to nonactive partners, computed per capital investment, is required. To transfer contributions of nonactive partners, the agreement of 50% plus one of the votes computed by persons (active partners) and 50% plus one of the votes computed by capital (nonactive partners) is required.

4.8. Limited partnership with shares

The limited partnership with shares is a type of business organization that, like the simple limited partnership, has active and nonactive partners with the same economic responsibilities. The difference between the two types of partnership relies on the fact that all the capital stock must be divided into shares. The active partners are in charge of the company's administration. However, nonactive partners can assume the administration in which case such partner acquires the quality of active partner.

Shares belonging to active partners cannot be transferred without the consent of all of the active partners and 50% plus one of nonactive partners, computed per capital for both types of partners. Shares of nonactive partners are freely transferable unless the partnership agreement establishes clauses limiting it.

4.9. Civil company

Civil companies are created by professionals, generally in the service area, exercising a jointly economic purpose. There are two types of civil companies: (1) ordinary civil companies; and (2) limited liability civil companies. In the first type, partners are personally liable for the company's obligations, unless stated otherwise. In the latter type, partners are not personally liable, and there may not be more than 30 members. In both cases, the capital should be paid in the act of incorporation. Ownership rights cannot be incorporated as securities or shares of stocks.

Transferability of ownership rights must be agreed to by all partners and requires signature before a notary public and registration in the commercial registry. Profits or losses are divided among the partners if stated in the partnership agreement. Otherwise, they are divided in proportion to the partners' contributions. Those contributing services rather than capital can be partners. These partners' contributions are valued as the average of contributions made by the capital partners, unless stated otherwise.

Decisions made at the partnership meeting represent the highest authority of the company. Decisions are reached by majority vote per capital unless stipulated to be per person in the partnership agreement. Amendments to a partnership agreement require the partners' unanimous vote.

4.10. Collective Interest Corporation

With the purpose of generating a positive impact in Peru, the Collective Interest Corporation's purpose is to provide services that will increase positive impact and wellbeing. Collective benefit and interest" mean the positive material impact or the reduction of a negative impact on the society and the environment.

What differs this type of corporation to the others mentioned above is the purpose to prioritize social and environmental objectives. Members of the board of directors have to ensure that the corporation is acting on behalf of increasing a positive impact.

4.11. Foreign branch

A foreign branch of a corporation incorporated and domiciled abroad can be established in Peru by public deed which must be registered at the commercial registry. The public deed must contain at least the following:

- a document certifying that the main office in its country of origin is currently in force and neither the bylaws nor the articles of incorporation contain any restriction on establishing a foreign branch;
- a copy of the bylaws or the partnership agreement in its country of origin; and
- the agreement by the competent corporate body to establish a foreign branch, among other documents

needed. This agreement must state the capital assigned to the foreign branch, the declaration that its activities in the foreign country are included within its corporate purposes, the domicile of the foreign branch, the designation of at least one permanent legal representative in the country, the proxy conferred, and its submission to Peruvian laws.

4.12. Association in participation

The association in participation type of business consists of a written contractual agreement between a managing partner (asociante) and a contributing partner (asociado). This agreement can be executed by two or more natural and/or juridical persons for the purpose of executing a particular business or project. The agreement is not subject to registration before the commercial registry.

The managing partner of an association in participation agrees to grant the contributing partner a participation in the results or profits of one or more businesses of the managing partner in exchange for a determinate contribution such as money, property, or services, to the enterprise or project by the contributing partner. The managing partner acts in his or her own name and the association in participation has no legal name. Management of the business enterprise is solely performed by the managing partner who is the only person responsible to third parties.

Unless stated otherwise in the agreement between the parties, the contributing partner participates in the losses in the same percentage as he or she participates in the profits. In any case, losses cannot exceed the amount of the contributing partner's contribution.

The managing partner cannot include third parties in the business without the written consent of the contributing partner.

The assets contributed by the contributing partner are presumed to belong to the managing partner unless these assets are recorded in the commercial registry under the name of the contributing partner.

These types of agreements present various undeniable advantages and are an excellent mechanism used to satisfy the interests of the parties in initiating new business endeavors, extending and optimizing existing ones, accessing new markets, etc.

It is an associative structure that has similar purposes to those of a corporation but should not be confused with it. The essential differences between these are:

- The agreements are not revealed to third parties because they are private contracts between the parties.

- It is not subject to publicity formalities.
- The agreements do not originate a legal entity like corporations do.
- The economic collaboration does not imply the formation of a common capital fund.
- There is no common commercial name; the business continues to belong to the managing partner.

4.13. Consortium

A consortium is an agreement by which two or more persons actively and directly participate in a specific project or enterprise to obtain economic benefits. Each party maintains its own autonomy. Each member performs the activities entrusted to them by the consortium or assumed by them. When doing so, each party must coordinate his or her activities with the other members of the consortium according to the procedures and mechanisms established in the agreement.

The assets contributed to the consortium remain the property of each member contributor. The joint acquisition of assets will be ruled under the joint ownership regime.

Each member of the consortium is individually responsible to third parties for its activities within the consortium. Any rights or liabilities and responsibilities assumed are taken at the member's own risk.

In case the consortium enters into an agreement with third parties, the responsibility is shared among the consortium members, unless stated otherwise in the agreement or by law.

The consortium agreement must establish the participation of each member in the profits and losses. Otherwise, participation will be understood to be in equal parts for each member.

4.14. Mergers

There are two different types of mergers provided for in the Company's General Law:

- merger by integration, which implies that two or more companies integrate into the merging company creating a new company. A company which is merged by integration is dissolved but not liquidated; and
- merger by absorption, whereby one or more companies are incorporated into the surviving company.

In its initial phase, the merger procedure involves the creation of a merger agreement project, which is prepared by the companies involved in the merger. This agreement should be approved by each company's board of directors or administration by majority vote. The merger must then be approved at the shareholders' meeting or assembly of each of the companies involved. The call to the shareholders' meeting or to the assembly must be published in the Official Gazette at least 10 days prior to the meeting.

Each company involved in the merger must disclose the following documents to its shareholders, partners, bondholders and other creditors:

- the merger agreement project;
- the latest financial statements audited;
- the shareholders' agreement and bylaw of the merging company; and
- the relation of the main shareholders, directors and administrators of each of the companies involved in the merger.

In order for the merger to be legally valid it must be registered in the public registry. Registration of the merger results in the extinction of the companies absorbed or integrated. The merger agreement gives the shareholder or partner the right to withdraw.

The creditor of any of the participating companies in the merger has the right to file an opposition to the merger. The term granted to exercise the right to oppose expires 30 days after the last publication communicating the merger. The opposition is carried out through a summary trial. In the meantime, the merger agreement is suspended until the company pays the credits or guarantees the payment.

4.15. Spin-offs

A spin-off entails the transfer of part or all of a company's assets to one or more companies already in existence or formed for this purpose. If all the company's assets are transferred, the company will be extinguished. If only part of the assets is transferred, the spun-off company is not extinguished but must reduce its capital. Rights and obligations of the spun-off company will be distributed proportionately by the company receiving the assets.

To spin off a company, it is necessary to comply with the same requisites established by law or by the bylaw to modify the shareholders' agreement or the bylaw. Spin-off transactions are subject to similar rules applied to mergers, including the right of the shareholders to withdraw, the right of creditors to oppose the spin-off, the registration of the spin-off before the public registry and a spin-off agreement project.

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CHAPTER 5

Other Types of Business Organizations

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5.1. Financial System Companies, generally

The financial system companies are regulated by Law N° 26702 - "General Financial System Law".

The financial system companies are:

1. Multiple Operation Companies

- Banking institutions
- Financial institutions
- Municipal savings and loan houses (Cajas Municipales de Ahorro y Crédito)
- Municipal popular finance entities (Cajas Municipales de Crédito Popular)
- Credit Companies (Empresas de Créditos)
- Savings and loan associations which are authorized to take public deposits (Cooperativas de Ahorro y Crédito)
- Rural savings and loan houses (Cajas Rurales de Ahorro y Crédito)

2. Specialized companies

- Real estate capitalization companies
- Financial leasing companies
- Factoring companies
- Surety and bonding companies
- Trust companies
- Mortgage management companies

3. Investment Banks
4. Insurance and reinsurance companies

The financial system companies must be incorporated as corporations in accordance with the Law N° 26887 "Corporate Law" (Ley General de Sociedades), except those, which its nature does not permit. In order to initiate operations, these companies have to request an organizational and functioning authorization before the Banking, Insurance and Private Pension Fund Superintendence (SBS). Likewise, a guarantee deposit certificate made out to the order of the SBS for an amount equivalent to five percent (5%) of the minimum capital or another financial instrument that fulfills the same purpose must accompany the application.

Also, banking institutions, financial institutions, leasing companies and insurance companies must have their shares registered in the Lima Stock Exchange before the start of operations. This requirement could be demanded to the other companies of the financial system if the SBS consider it necessary.Furthermore, financial system companies can organize real estate capitalization companies; operate as general warehouses, broker-dealers and custodian companies; manage mutual funds and closed-end funds; and operate as fiduciaries in securitization operations, provided the incorporation of a subsidiary, which cannot perform more than one of the mentioned operations at the same time.

Foreign financial system companies

Foreign financial system companies can operate in Peru through the incorporation of a branch and the authorization of the SBS. A Peruvian branch of a foreign financial system company will have the same rights and will be subject to the same obligations as any national financial system company.

On the other hand, it is allowed for foreign financial companies that do not have a branch in Peru, to appoint an individual or legal entity as a representative in order to develop the following operations only:

- Promote their representative's services among other similar companies that operate in the country with international trading and external financing purposes;
- Promote their representative's financing offers among companies interested in buying or selling assets in international markets; and
- Promote their representative's services among credit or external capital potential clients.

They cannot:

- Carry out transactions or offer services that are activities proper of their principal office;

- Receive deposits or place them directly in the country;
- Directly offer or place within the country foreign securities and other negotiable instruments.

Finally, all the financial system companies and all the individuals and legal entities regulated by the General Financial System Law, Private Pension System Law and specific regulations are supervised by the SBS.

5.1.1. Banking institutions

Banking institutions are corporations whose main business consists of receiving money from the public on deposit or under any other contractual mode, and using such money, its own capital and that obtained from other sources of financing to grant loans under different modes, or to apply the funds to operations subject to market risks.

Banking institutions must have a minimum capital, at present approximately, of US$8'676,865 which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor)

Banking institutions are permitted to develop the following operations and services:

Receive deposits;

Receive term and savings deposits as well as in custody;

a) Grant overdrafts or advances in current account;

b) Grant direct credits, with or without collateral;

Discount and grant advances over bills of exchange, promissory notes and other debt instruments;

1. Grant mortgage and secured loans; and in relation to them, issue credit instruments, mortgage and pawned securities, both in domestic and foreign currency;
2. Grant loans in the form of reverse mortgages, and in relation to these issue securities and mortgage instruments in both national and foreign currency;
3. Grant securities, guaranties and other collateral, even in favor of other companies of the financial system;
4. Issue, notify, confirm and negotiate letters of credit, whether on sight or term, in agreement with the international practices and, in general channel foreign trade operations;
5. Act jointly with other companies to grant credits and guaranties, under the responsibilities considered in the respective agreement;
6. Acquire and negotiate certificates of deposit issued by companies, mortgage instruments, guaranties and bills of exchange coming from commercial transactions;

7. Carry out factoring operations;
8. Carry out credit operations with domestic companies, as well as make deposits therein;
9. Carry out credit transactions with foreign banks and financial institutions, as well as make deposits in either of them;
10. Purchase, maintain and sell shares of banks or other institutions abroad that operate as financial intermediaries or in the securities market, or are auxiliaries of either, in order for their activities to be at an international level. In the case of the purchase of these shares, in a percentage of over 3 percent (3%) of the receiver's net worth, prior authorization from the SBS is required;
11. Issue and place bonds in domestic or foreign currency, including regular, convertible, financial leasing and subordinate bonds of various types and currencies, and promissory notes, negotiable or nonnegotiable certificates of deposit and other instruments representing liabilities, provided they were issued by them;
12. Perform operations with commodities and with derivative financial products, such as forwards, futures, swaps, options, credit derivatives or other instruments or derivative contracts, according to the regulations issued by the SBS and with prior authorization from the SBS;
13. Accept time bills, originated from commercial transactions;
14. Acquire, keep and sell instruments representing private debt and instruments representing capital for the negotiable portfolio that are subject matter of any centralized mechanism of negotiation in agreement with the pertinent law issued by the SBS on the matter;
15. Acquire, keep and sell shares of companies which purpose is to provide supplementary or auxiliary services to companies and/or their subsidiaries;
16. Acquire, keep and sell, as participants, certificates of participation in mutual trust and investment funds;
17. Buy, keep and sell public debt instruments, both domestic and foreign, as well as bonds from the Central Bank;
18. Buy, keep and sell bonds and other securities issued by multilateral credit agencies of which the country is a member;
19. Buy, keep and sell debt instruments issued by the governments of the countries approved by the SBS;
20. Operate in foreign currency;
21. Issue bank certificates in foreign currency and make foreign exchange operations;
22. Serve as a financial agent to place and invest foreign funds in Peru;
23. Execute portfolio purchase and sale contracts;
24. Effect structured financing operations and purchase and sell securities, pursuant to the Securities Market Act;
25. Acquire real property, personal property and equipment;
26. Make collections, payments and fund transfers and issue drafts against their own offices or correspondent banks;

27. Issue cashier's checks;
28. Issue payment orders;
29. Issue travellers checks;
30. Accept powers of attorney;
31. Receive securities, documents and objects in custody, as well as lease out safe deposit boxes;
32. Issue and manage credit and debit cards;
33. Execute financial leasing and real property capitalization operations;
34. Promote foreign trade operations as well as render integral advisory on the matter;
35. Sign temporary first security issues with partial or total guarantees;
36. Provide financial advisory services without this implying the management of money of customers or their investment portfolios;
37. Act as trustees where trusts are involved;
38. Buy, keep and sell gold;
39. Grant pawned credits for jewels or other gold and silver objects;
40. Issue electronic money;
41. Act as originators in the purchase and sale of securities through the transfer of real or personal property, credit and/or money, having the power to establish companies with special purposes;
42. Any other operations and services provided they meet the requirements set forth by the SBS by means of the norms of general character, with the previous opinion of the Central Bank (BCR). To this end, the company shall advise the SBS of the characteristics of the new instrument, product or financial service.

In order to take or provide coverage for commodities, futures and related financial products, such as forwards, swaps, options, etc., banking institutions need an additional and specific authorization issued by the SBS.

5.1.2. Financial institutions

Financial institutions are corporations whose main business consists of obtaining resources from the public and whose specialty consists of facilitating the placement of primary securities' issues, operating with bearer securities, and rendering advisory services of a financial nature.

Financial institutions must have a minimum capital of US$4'363,450 (approximately), which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

The financial institutions are permitted to develop the same operations and services established for banking institutions. Notwithstanding, it is mandatory to request an additional and specific authorization to the SBS, with the previous and favorable opinion of the BCR, to develop the following operations:

- Take or provide coverage for commodities, futures and related financial products, such as forwards, swaps, options or other derivatives contracts;
- Grant overdrafts or advances in current account;
- Issue electronic money.

5.1.3. Credit Companies

The purpose of credit companies is to grant financing in various forms, with resources from their own capital and from other sources that do not include deposits from the public.

Credit companies must have a minimum capital of approximately US$176,104, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

In order for credit companies to be able to carry out public fund raising operations, they must comply with the requirements established by the SBS.

5.1.4. Financial leasing companies

Leasing companies are engaged in financing the purchase of tangible assets. Thus, they are specialized in the acquisition of personal property and real estate to be assigned for the use of a natural or juridical person in return for the payment of a periodic rent in which it is included a part of the price and with the option of buying such property for a residual value.

Financial institutions must have a minimum capital, at present approximately, of US$1'419,576, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

5.1.5. Factoring companies

Factoring companies are defined as institutions specialized in the acquisition of invoices approved by payer, securities, and generally any commercial paper representing debt. They assume the credit risk of the account and

receive cash as the debtor's settle their accounts.

Factoring companies must have a minimum capital, at present approximately, of US$788,912, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

5.1.6. Bond and guarantee companies

Bond and guarantee companies are institutions empowered to grant guarantees, bonds, policies, or contracts to natural or juridical persons.

Bond and guarantee companies must have a minimum capital, at present approximately of US$788,912, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

5.1.7. Trustee services companies

Trustee services companies specialize in acting as trustee in the management of autonomous trustee equity, or in the performance of trusteeships of any nature.

Trusteeship is a juridical relationship whereby the trustor transfers property under trust to another person, called the fiduciary, for the setting up of a trust property subject to compliance with a specific end in favor of a trustor or a third party called the trustee. Such trust property is separate from the property of the fiduciary, trustor, or trustee or in due case, the recipient of any remaining property.

Trustee services companies must have a minimum capital, at present approximately of US$788,912, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

Also are allowed to act as trustee service companies, COFIDE, multiple operation companies, insurance and reinsurance companies and other companies supervised by the SBS, provided that their main business would be to grant, promote and manage, directly and indirectly, the Micro and Small Enterprises (MYPE) in any economic sector.

5.1.8. Real estate capitalization companies

The real estate capitalization companies are those whose main business is to buy and/or build real states and celebrate individual real state capitalization contracts with third parties, and giving in deposit to the investors the

corresponding property unit. These latest contracts include the right of choice of the investor to purchase the property unit by paying its cash price. These companies may celebrate contracts for the financing of the real state and issue mortgage certificates.

The amount of the individual capitalization is not subject to retirement and can only be applied to the payment of the purchase price of the property or recovered by investors through the sale of its contractual position.

Real estate capitalization companies are only allowed to make transactions regarding real estate capitalization programs and cannot make placements.

Real estate capitalization companies must have a minimum capital, at present approximately of US$2'327,173, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

5.1.9. Investment banks

Investment banks are corporations designed to promote investment in general, in Peru and abroad.

Investment banks must have a minimum capital, at present approximately of US$8'676,866, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

Investment banks do not have a credit portfolio. Also, are not allowed to take public deposits, make placements or grant contingent credits. Investment banks operate only negotiable portfolio.

Additionally, the SBS may authorize investment banks that request it to carry out other operations, as long as they are compatible with their nature.

5.1.10. Insurance and reinsurance companies

Insurance companies are corporations whose main business is to celebrate contracts with third parties, within certain limits and in exchange for a premium, to indemnify a certain damage, rents or another agreed services, in case of the occurrence of a specified uncertain future event. They must have a minimum capital, at present approximately of US$5'521,800, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

Reinsurance companies are corporations that provide coverage to one or more insurance companies and insurance patrimonies for the risks assumed in cases of major capitals, or because of their operational limits. They must have a minimum capital, at present approximately of US$3'352,875, which is adjusted quarterly according to the "Wholesale Prices Index" (Índice de Precios al por mayor).

Insurance and reinsurance companies are permitted to perform all the necessary operations, acts and contracts to extend risk coverages and accept investments. Also, they can grant credits to their clients for the payment of their premiums.

Insurance and reinsurance companies can incorporate as Peruvian subsidiaries, the following companies:

- Financial institutions;
- Healthcare provider entities; and
- Mortgage management companies.

5.1.11. The private pension fund administrators

The Private Pension Fund System was created and regulated by Decree Law No. 25897 of December 6, 1992. This law establishes the basic rules for the creation and operation of the Private Pension Fund Administrators (AFPs).

AFPs are corporations organized and operating under the General Companies' Law and the Pensions Law and its regulations. In order to operate as AFP's, it is necessary to have an authorization issued by the SBS and have their shares listed in the Lima Stock Exchange. AFP's must have a minimum capital, at present approximately of U$$834,471, which is adjusted annually according to the "Consumer Prices Index" (Índice de Precios al Consumidor).

The AFPs have an indefinite duration and its purpose is to manage pension funds. For this purpose, the AFP collects resources from themselves or third parties and destines them to the funds. These funds have the character of intangibles.

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CHAPTER 6

The Foreign Investment Regime

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The Foreign Investment Regime

6.1. Peruvian foreign investment laws

Peru's foreign investment regime is governed by Legislative Decree No. 662, the Foreign Investment Promotion Law, and Legislative Decree No. 757, Framework Law for Private Investment, published on September 9, 1991 and November 13, 1991, respectively. Both laws are regulated by Supreme Decree No. 162-92-EF of October 12, 1992.

Legislative Decree No. 662 created mechanisms to guarantee foreign investors with tax and legal stability; availability of foreign currency; and nondiscriminatory treatment between national and foreign investors, to stimulate flows of foreign capital.

Legislative Decree No. 757 contains provisions required for growth of private investment in all economic sectors, including the elimination of all legal and administrative barriers and distortions blocking economic development and restricting free private initiative, leaving competition to the companies in the private sector. It also established basic provisions regarding taxes, protecting investors from arbitrary changes.

6.2. What is foreign investment?

Foreign investment is defined as investment coming from abroad and may be carried out in any economic activity that generates income. It may take any of the following forms:

- Contributions made by foreign individuals or entities to the capital of a new or already existing company, in freely convertible currency or in physical or tangible goods.
- Investments in local currency originated from resources available to be remitted overseas.
- Conversion of private foreign debt into equity.
- Reinvestment of profits made in accordance with current laws.
- Acquisition of assets located in Peru.
- Intangible technological contributions such as trademarks, industrial models, technical assistance, and

technical know-how, patented or not, which may be classified as physical goods, technical documents, and instructions.

- Investments in securities, negotiable instruments, or bank depositary certificates in foreign or domestic currency.
- Resources for joint-venture agreements or similar contracts, which grant the foreign investor participation in the productive capacity of a company, without involving capital contributions and that corresponds to contractual business operations.
- Any other type of foreign investment that contributes to the country's development.

6.3. Rights of foreign investors

With the exception mentioned in 6.5 below, all economic activities are open to foreign investment with no restriction on the participation of foreign investors. Foreign investors' rights include:

- The same rights as national investors (*).
- The right to acquire shares, equity interests or property rights from national investors (*).
- Remittance in foreign currency of the entire amount of their profits, the consideration received for the use of assets physically located in the country, and royalties for the use and transfer of technology, after deducting the corresponding taxes. Dividends received by foreign investors are subject to a 5% withholding tax. Remittances of foreign currency must be made through the Peruvian banking system (*).
- The right to remit the entire capital in foreign currency, whether from the sale of shares, equity interests or rights, a reduction of capital, or a total or partial liquidation of investments, after deducting the corresponding taxes. Remittances of foreign currency must be made through the Peruvian banking system (*).
- The freedom to conduct commercial and industrial activities, and to perform import and export operations.
- The right to use the most favorable exchange rate existing in the market for any exchange operation.
- The right to enter into legal stability agreements with the Peruvian government for their investments in the country.
- The right to acquire insurance for their investments against commercial and noncommercial risks.
- The right to have access to short-, medium-, and long-term internal credit without limits.

Government authorization is not required in any of the cases mentioned in paragraphs (*) above.

6.4. Registration of foreign investment

All capital contributions must be channeled through the Peruvian banking system. Foreign investments to be made in the country are automatically authorized. Once made, they must be registered with the Private Investment Promotion Agency (ProInversion), which will issue a certificate of registration evidencing the amount invested. ProInversion is also the agency in charge of matters relating to the signing of stability agreements.

6.5. Restrictions to foreign investment

Participation in foreign investment in any sector has no prohibitions, except for some specific activities and for the restriction established in the Political Constitution. Article 71 of the Constitution states that foreign investors cannot acquire or possess, by any means, mines, land, water, forests, fuel, or energy sources, directly or indirectly, within 50 kilometers of the national border.

6.6. Currency investments and remittance of capital, dividends and royalties

Investment in foreign currency does not require any previous official authorization. There is complete freedom to hold and dispose of foreign currency in Peru, and its value is set by market supply and demand.

Likewise, foreign investors do not need any type of authorization to transfer funds abroad from capital, profits, dividends, and royalties. These funds can be transferred in freely convertible currency after taxes are paid.

With respect to tax matters, dividends and any other form of allocation of profits are levied with taxes. A rate of 5% will be applied, except for domiciled entities. On the other hand, royalties are subject to a withholding tax rate of 30%.

6.7. Legal stability agreements for private investments

Local and foreign investors may sign legal stability agreements with the government through the Private Investment Promotion Agency (ProInversion), to maintain in effect certain legal provisions in force at the time the investment is made. The legal stability is granted for 10 years. Legal provisions that could be frozen include tax laws, free access to foreign exchange, and the right to nondiscriminatory treatment between investors on the basis of national or foreign participation.

To enjoy the benefits mentioned above, investors should be committed to alternatively:

- Make capital contributions for no less than U.S.$5 million; or
- Make capital contributions for no less than U.S.$10 million, provided such investment is made in the mining or hydrocarbon industries.

These investments can be made in cash, contributions to the capital stock of a company already incorporated or to be incorporated in Peru, capitalization of debt, or capitalization of resources with remittance rights. The investment must be made by the same investor who enters into the agreement.

6.8. Tax stability agreements

Under a tax stability agreement, local companies receiving foreign investment can also enjoy tax stability, but only with respect to income tax, provided the amount of foreign investment is greater than 50% of the paid-in capital and reserves of the receiving company and the investment is for expanding the productivity capacity or for technological improvement. The tax stability agreement may also be signed when dealing with privatization of more than 50% of the stock of a State-owned company.

In addition, please bear in mind that stability on the employee contractual system and special promotion treatment could be also obtained by the recipient company.

6.9. Guarantees to foreign investment

Investors are authorized to acquire insurance within Peru and abroad, in order to protect their investments from commercial and noncommercial risks. Consequently, the government offers investors coverage to protect their investments through the World Bank Multilateral Investment Guarantee Agency (MIGA); agreement ratified by the Peruvian Congress on April 2, 1991. MIGA secures investments against noncommercial risks related to issues such as money transfers, expropriation, war and civil disturbances, or in case of violation of agreements signed with the investors. MIGA also offers advice services to improve the image of signatory countries to attract investments.

On the other hand, Peru has signed a financing agreement with the United States of America over the incentives for the investments that permit the "Overseas Private Investment Corporation" (OPIC), which has been transformed into the U.S. International Development Finance Corporation (DFC) on December 2019, to issue insurance, coinsurances, or guaranties to open investments of the United States of America in Peru. DFC promotes development through financial arrangements totally or partially supported by the government of the United States of America.

6.10. Investment agreements

Peru has signed bilateral investment agreements with the following countries:

- Argentina
- Australia
- Belgium and Luxemburg Economic Union
- Bolivia
- Canada
- Chile
- People's Republic of China
- Colombia
- Cuba
- Czech Republic
- Denmark
- Ecuador
- El Salvador
- Finland
- France
- Germany
- Iceland
- Italy
- Japan
- Liechtenstein
- Malaysia
- Mexico
- The Netherlands
- Norway
- Paraguay
- Portugal
- Republic of Korea
- Romania
- Singapore
- Spain
- Sweden
- Switzerland
- Thailand
- United Kingdom
- United States of America
- Venezuela

Likewise, after months of negotiations Peru has also signed a Free Trade Agreement with the United States of America which entered into force on January 1, 2009. This agreement includes matters such as services trade, electronic trade, governmental purchases, promotion and protection of investments, protection of intellectual property rights, compliance with labor and environmental legal provisions, settlement of disputes, among others.

In addition, Peru has Free Trade Agreements with Canada, Chile, China, Mexico, Singapore, South Corea, the European Free Trade Association (EFTA), Honduras, Costa Rica, the European Union, Japan, Panama, Thailand and The United Kingdom. Further, it is currently negotiating a Free Trade Agreement with El Salvador.

Finally, Peru has signed the World Bank International Convention on the International Center for Settlement of Investment Disputes between States and Nationals of other States (ICSID). This is an international center created to solve investment controversies.

6.11. Loans

The Peruvian foreign investment regime has included some guidelines with respect to the establishment of loans:

- Foreign exchange transactions are free, and there are no restrictions for entering into loans in foreign currencies.
- The disbursement is made in the currency agreed upon, and the borrower is not obliged to convert the foreign loan into local currency. Loans made by foreign banks and financial institutions to borrowers are not subject to any authorization or registration requirements, nor do they have to be deposited for a fixed term with the Peruvian Central Bank or any other government agency before being released to the borrower.
- Payment of interest and repayment of the loan's principal may be made without restrictions (different than those agreed to by the parties to the loan agreement) and does not require any authorization.
- There are no differences between local banks making loans to Peruvian or to foreign resident investors. Both are treated the same.
- Interest paid by debtors unrelated to nondomiciled creditors are subject to a withholding tax rate of 4.99% provided certain requirements are met. Otherwise, a withholding tax rate of 30% will apply.
- Interest payable by domiciled banks and financial entities for using their credit lines abroad are subject to a withholding tax rate of 4.99%.
- Interest generated from promotional loans provided directly by international organizations or foreign government institutions through foreign financial intermediaries or suppliers are exempted from income tax until December 31, 2023.

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CHAPTER 7

Antitrust, Unfair Competition and Consumer Protection

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Antitrust, Unfair Competition and Consumer Protection

7.1. Repression of anticompetitive behaviors

The Political Constitution of 1993 established the social market economy model, setting rules, guiding principles, and economic fundamental rights that allow its operation. Article 61 of the Constitution establishes the function of control that must be performed by the State with respect to the economy, preventing the rising of monopolies or dominant market positions that benefit a few, in a way that produce alterations in the economic order.

Our legal system itself does not prohibit a company's dominant position or monopoly on a market. What is considered as prejudicial against the competition and the market is the abuse of such position.

7.2. Prohibitions

Two kinds of prohibitions are regulated by Legislative Decree N° 1034 that approves the Law of Repression of Anticompetitive Behaviors (hereinafter the "Decree2"), that is, absolute and relative prohibitions:

1. In cases of absolute ban ("per se prohibition") it is enough that the competition authority proves the existence of such behavior to verify the existence of the administrative infringement.

2. In cases of relative ban ("rule of reason") the competition authority must prove the existence of the behavior and that it has, or could have, negative effects on competition and consumers' welfare.

7.3. Abuse of dominant position

[2] By Supreme Decree N° 030-2019-PCM approves the Unique Ordered Text of the Legislative Decree N° 1034, Law for the Repression of Anticompetitive Conduct, which incorporates clarifications in relation to DL 1034.

An economic agent has a dominant position in the relevant market when he or she uses its position to illegally restrict competition, obtaining benefits and harming real or potential, direct or indirect competitors, which would not have been possible if it did not have that position. Abuse of dominant position may include conducts of exclusory effect, which are considered as absolute bans, such as:

- The unjustified denial to fulfill purchase demands or to accept sale offers or provision of goods or services offers;
- The application in trade relations of unequal conditions for equivalent provisions that unfairly place competitors in a disadvantageous position against others;
- The subordination of the execution of agreements to the acceptance of additional provisions that, because of their nature or relation to the commercial usage, are not related with the purposes of such agreements;
- Unjustifiably impeding a competitor the entrance or permanence to an association or organization of intermediation;
- Establishing, imposing, or suggesting unjustified exclusive distribution or sale agreements, noncompetition clauses, or similar agreements;
- The abusive and reiterative usage of judicial procedures or administrative proceedings, whose effects restrict competition;
- Inciting third parties to not provide goods or services or to not accept them; or
- Generally impeding or making difficult the access or permanence of actual or potential competitors in the market for reasons which are not those of greater economic efficiency.

7.4. Horizontal collusive practices

Horizontal collusive practices are those agreements or practices performed by economic agents who compete with each other, and whose purposes or effects are to restrict, impede, and distort free competition, such as:

- The concerted fixing, directly or indirectly, of prices and production;
- Supply, demand, and marketing agreements by companies that are current or potential competitors;
- Agreements to restrict production, distribution, and technical or technological development;
- Agreements that seek to apportion markets or the assignment of production shares;
- Concerting or arranging offers, bids or proposals or refrain from them in public or private tenders and other forms of public procurement acquisition, as well as in public auctions;
- Concerted discrimination in prices or terms; and
- The use of tying clauses and fixing of prices or of other commercial or services conditions.

The horizontal collusive practices listed above are relative prohibitions. In accordance with what has been stated, relative prohibitions are analyzed under the rule of reason: the mere existence of a horizontal practice is not illegal itself, as it should be shown that this practice could have had detrimental effects on the market.

However, the competent authority (Indecopi) may sanction as "per se" illegal conduct, inter-brand horizontal agreements, that is, between competitors of different brands, that are not complementary or accessory to other legal agreements, and that have as purpose to:

- Fixing prices or other commercial or service conditions;
- Limit production or sales;
- Distribute the market (clients, suppliers, geographical zones); or
- Establish abstentions or postures in tenders or other type of public contracting or acquisition under Peruvian legislation, as well as in public bids and auctions.

The competition authority will apply to other conduct not mentioned above, the "rule of reason" and will analyze whether the advantages obtained by a company in the market are a consequence of a superior efficiency in the use of resources or as the result of illegal practices. This allows the parties to defend themselves, demonstrating that their conduct does not generate any effect in detriment of the market and, therefore, on the consumers.

7.5. Vertical collusive practices

Vertical collusive practices are defined as arranged practices performed by economic agents that operate in different parts of a chain of production, distribution, or commercialization, whose purposes or effects are to restrict, impede, or distort free competition.

The configuration of a vertical collusive practice requires that at least one of the parties involved have, before said offense, dominant position in the relevant market. Vertical collusive practices constitute relative prohibitions.

The most common cases are:

- Fixing prices, commercial or service conditions.
- Limitation or distribution of clients, suppliers, or geographical areas.
- Subordinate conclusion of contracts subject to the acceptance of additional benefits (tied clauses).

Execute exclusivity or non-competition agreements. Agreements in which the distributor or seller agrees to solely

distribute or sell determined products to the same buyer, agreements that ban the distributor or supplier from concluding contracts with a buyer.

It is important to mention that cases specified in the law for both types of infringement are merely illustrative, and the competent authority (Indecopi) can consider as antitrust practices other cases with equivalent effect.

Since the vertical collusive practices constitute relative prohibitions, an analysis is required from Indecopi, according to the rule of reason. In that sense, the mere existence of a vertical collusive practice is not illegal in itself since it must be demonstrated that such practice could have had detrimental effects on the market. Also, the analysis is not referred to the specific effects of the practice, but the suitability of it to produce or not detrimental effects on the market.

7.6. Control law for mergers and acquisitions

On 14 June 2021, the applicable legal framework regarding the prior control of concentration transactions came into force, through Law N° 31112, Law that establishes the prior control of concentration transactions, its Regulation approved by Supreme Decree N° 039-2021-PCM and the guidelines corresponding to said legal framework, issued by Indecopi.

The aforementioned legal framework seeks to promote economic efficiency in the markets for the welfare of consumers, as it considers that certain business concentration transactions could, in certain cases, impact in a negative manner on the market through restrictive effects on the competitive process, affecting free competition.

The Law will be applicable to all acts of concentration that produce effects in all or part of the national territory, including acts held abroad that link, directly or indirectly, to any economic agent that develops economic activities in Peru.

An act of concentration is defined as one that implies a permanent transfer or change of control of a company or part of it, which is generated as a consequence of the following operations:

- Mergers
- Acquisitions
- The constitution by two (2) or more independent economic agents of a joint venture or any other similar contractual modality that implies the acquisition of joint control over one or several economic agents, in such a way that this economic agent performs permanently the functions of an autonomous economic entity.

- The acquisition by an economic agent of direct or indirect control, by any means, of productive operating assets of other economic agents.

For the concentration transaction to be subject to prior approval, the following economic thresholds must be met, concurrently:

- The total sum of the value of the annual sales or gross income in the country of the companies involved in the operation has reached, during the fiscal year prior to that in which the operation is notified, a value equal to or higher than one hundred and eighteen thousand (118,000) Tax Units3 (US$ 134,857,143, approximately).
- The value of the annual sales or gross income in the country of at least two (2) of the companies involved in the operation have reached, during the fiscal year prior to that in which the operation is notified, a value equal to or higher than eighteen thousand (18,000) Tax Units each, (US$ 20,571,428, approximately).

Concentration operations within the scope of the Superintendency of Banking, Insurance and Private Pension Fund Superintendence (SBS), will proceed if they obtain the authorization of Indecopi and SBS, each within the scope of their legal attributions. Likewise, the joint authorization of Indecopi and the Superintendency of Securities Market (SMV) will be required for concentration operations of economic agents who have obtained an operation license from the SMV.

The authorization is requested before the Commission for the Defense of free Competition of Indecopi and, if it is denied, it can be appealed before the Court of Indecopi. The technical body supporting the Commission and proposing the decisions on the applications for prior authorization is the National Direction for Research and Promotion of Free Competition, through its Technical Secretariat.

On the other side, Law N° 26876 (Antitrust and Antioligopoly Law of the Electricity Sector) is no longer into force, since the First Complementary Repealing Provision of Law N° 31112 established its derogation at the time of the entry into force of the new legal framework.

Finally, it should be pointed out that since the entry into force of the legal framework on prior control of mergers, most transactions have been approved in the first phase, and no transaction has been rejected to date. On the other hand, Indecopi has been establishing criteria in relation to its analysis regarding such requests. Likewise, together with Law No. 31112 and its Regulation, Indecopi has issued guidelines through which it explains, clarifies and further develops the premises given through the current regulatory framework, which contributes to greater predictability for economic agents requiring prior authorization for a particular transaction.

[3] The value of the Tax Unit that must be used for this calculation corresponds to the one for the year prior to the operation.

7.7. Unfair competition

Peruvian legislation aims to prevent and sanction any act of unlawful trade practice or deceptive act in the usual course of business. This regulation is pertinent to any act that is considered as a dishonest commercial practice, no matter the sector or economic activity in which it is performed, including acts of publicity, whether carried out by any natural person or legal entity.

The Repression of Unfair Competition Law, Legislative Decree No. 1044, governs those acts of unfair trade practice. It applies to any act of unfair competition that produces its effects in any given part or the entire national territory. This can also be produced abroad; therefore, if an act of unfair competition has its origin in another country it can be treated in the courts of Peru.

Any method or practice in the conduct of usual trade or commerce contrary to honest commercial practices and good faith will be considered unfair and so an unlawful and prohibited act. The Administrative Authority will determine the true nature of acts under investigation, applying the principle of "primacy of reality".

Among others, the following acts are considered unfair:

- Acts that affect the transparency of the market. These types of acts are divided into two categories: acts of deception and acts of confusion.
- Acts connected with the reputation of other economic agents. In this case, the acts are divided into three subtypes: acts of improper exploitation of the reputation of a third party, acts of denigration, and acts of unlawful comparison and similarity.
- Acts that alter unlawfully the competitive position, of the company or of others. An example of these kind of acts is the violation of business secrets, acts of law infringement, and business sabotage.
- Acts of unfair competition carried out in a publicity activity. For example: acts against the authenticity principle (e.g., any act that would impede consumers in recognizing the publicity as such), acts against the legality principle (e.g., any act of publicity that will infringe the law), acts against the social principle (e.g., any publicity that could induce consumers to infringe the law, such as providing publicity of pornographic services to children).

For an act to be considered one of unfair competition, it will suffice to inflict potential and illicit harm to competitors, consumers, or the public order. Therefore, it is not necessary to prove that real damage has been inflicted into a company, consumers or economic public order, for the Indecopi to consider that there was an act of unfair competition.

7.8. Consumer protection

The Consumer Protection Law, Law 29571 (hereinafter the Law), applies to all consumer relations of natural persons or legal entities, being a final destination the national territory or when its effects are produced therein. of any goods. This Law introduces a new concept related to the consumption relationship by which the law regulates, not only the final consumer, but every step leading up to the final consumer. Under this scope, all relationships between individual consumers and the businesses that sell those goods and services, whether carried out by any natural person or legal entity, (that is any private or public legal entity); have to comply with this Law.

The Law was created in order to compile all the norms related to Consumers' Protection regulations. In this sense, the mentioned law protects consumers to an even greater degree, introducing a free system of claims known as the "Book of Claims", which all businesses must own in their establishments, and wherein consumers could introduce their claims or comments. Additionally, this Law introduces an arbitral consumer system to solve any conflict related to consumer's acts.

Suppliers are responsible, among other things, for the following:

- To give safe goods and services that must correspond with the description and advertising labels and have reasonably expected conditions of use and durability. Goods must be fit and of satisfactory quality. In summary, the Law states that certain terms are implied in every transaction for the transfer of goods.
- The sale price of goods and services must be offered in national currency (Nuevos Soles) and will include the value added tax (VAT). If the price tag is in a foreign currency, the national currency must also be included, in equal lettering and condition.
- To provide consumers with relevant, clear, and comprehensive information. In this sense, all information on national goods must be offered in Spanish. In the case of foreign goods, it is necessary that the information related to warranty conditions, instructions, warnings and risks, and safety procedures in case of injury is also in Spanish.

All consumers have the right to:

- Be informed of all the relevant information, in order to make an informed decision about the choice of the product or services, as well as for using them correctly.
- A suitable product or service. A product or service is suitable when there is a confluence between the quality offered and the quality received.
- Not be discriminated against. For example, when a public establishment restricts a person who fulfills the requirements for entry from entering the establishment.

- Choose freely among different qualities of products and services offered on the market, according to relevant legislation, and to be informed by the supplier on account.
- To associate with others, in order to protect their rights and interests collectively in a framework of consumer relations.

CHAPTER 8

Tax Considerations

CHAPTER 8

Tax Considerations

8.1. Tax structure in Peru

The most important taxes levying individual investors and companies are the following:

- Income tax: Income Tax Law (Single Unified Text), approved by Supreme Decree No. 179-2004-EF, regulations approved by Supreme Decree No. 122.94-EF.
- Value added tax: General Sales Tax and Excise Tax Law (Single Unified Text), approved by Supreme Decree No. 055-99-EF, regulations approved by Supreme Decree No. 29-94.EF.
- Excise tax: General Sales Tax and Excise Tax Law (Single Unified Text), approved by Supreme Decree No. 055-99-EF, regulations approved by Supreme Decree No. 29-94.EF.
- Customs duties: Supreme Decree No. 404-2021-EF
- Real estate property tax: Municipal Taxes Law (Single Unified Text), approved by Supreme Decree No. 156-2004-EF.
- Financial transactions tax: Law for the fight against tax evasion and for the formalization of the Economy (Single Unified Text), approved by Supreme Decree No. 150-2007-EF; regulations approved by Supreme Decree No. 047-2004-EF.
- Temporary tax on net assets: Law No. 28424; regulation approved by Supreme Decree No. 025-2005-EF.
- Social security contributions

In Peru, specific tax measures are in force in order to promote private investments in several economic fields, such as mining, oil and gas, and agriculture.

8.2. Income tax—Generally

Income tax is levied on incomes derived from capital, work, or a combination of both; capital gains generated on the transfer of shares and immovable property, and, patrimonial increases expressly established by Income Tax Law.

8.3. Income tax—Individuals

Regarding individuals, the domicile is a basic criteria in order to determine the tax treatment applicable. In fact, domiciled individuals are taxed on their worldwide income, as opposed to non-domiciled individuals, who are subject to taxation only on their Peruvian source income.

Non-resident individuals acquire the condition of resident individuals when they stay in the country for more than 183 days within a period of 12 months. In those cases, the "resident individual tax treatment" will be applicable since January 1 of the following year in which the condition is fulfilled.

Income obtained by individuals is classified into two categories: Capital Net Income (incomes from first category--incomes derived from leasing of movable and immovable property--and second category--capital gains) and Work Net Income (income from fourth category--income from independent work--and fifth category--income from dependant work--and the foreign source income).

As a general rule no losses can be deducted or carried forward by individuals. Exceptionally, losses derived from the transfer of shares can be offset with the annual net income obtained from the transfer of those shares.

8.4. Income tax—Individuals—Domiciled individuals

The taxable base is determined by deducting from the gross income in each of the above-mentioned categories (capital net income and work net income) the percentages or amounts established in articles 36 and 46 of the Income Tax Law.

8.5. Income tax—Individuals—Domiciled individuals—Deductions

Domiciled individuals are allowed the following flat deductions:

Category	Type of Income
Capital Income	For first and second category income: 20% of total gross income.
Work Income	For fourth category income: 20% of total gross income thereof, with a limit of 24 UIT. 1 UIT equals to 4,600 Soles (U.S.$ 1,195, approximately).
Work Income	For fourth and fifth category income (combined): A non levied minimum amount of 7 UIT (U.S.$ 8,363 approximately) is applicable.

Work Income	Additionally, taxpayers obtaining fourth and/or fifth category income are allowed to deduct an additional amount up to a maximum of 3 UIT (U.S.$3,584, approximately) with respect of the following expenses: • Lease or sublease of immovable property located in Peru, which is not exclusively used for activities that generate income of third category. Only 30% of the agreed rent will be deductible. • Professional fees of doctors and dentists in regard to services rendered in the country, as long as they qualify as fourth category income. Only 30% of the professional fees will be deductible. • Other professional fees corresponding to services provided in connection with any profession, art, science or jobs. Only 30% of the retribution will be deductible. • Payments of Social Security contributions (ESSALUD) in favor of domestic workers. • Amounts paid by concept of accommodation and restaurants. Only 25% of the amount paid will be deductible (percentage applicable to fiscal years 2021 and 2022) • Services of tourist guides and services of adventure tourism, ecotourism or similar and services of artisans. Only 50% of the consideration paid by the taxpayer will be deductible (percentage applicable to fiscal years 2021 and 2022). • Services of travel and tourism agencies, tourist guides, adventure tourism or similar provided by individuals with business and legal entities. Only 25% of the consideration paid by the taxpayer will be deductible (percentage applicable to fiscal years 2021 and 2022). Likewise, such expenses must comply with the following: I. Be supported by electronic payment receipts which allow to deduct expenses and/or leases receipts approved by SUNAT, as applicable. II. The payment of the service, including the Value Added Tax, is made using the means of payment allowed by law.

Taxpayers obtaining fourth and/or fifth category income as from fiscal year 2017 are allowed to deduct an additional amount up to a maximum of 3 UIT with respect of the following expenses in calculating their annual Income Tax:

- Lease or sublease of immovable property located in Peru, which is not exclusively used for activities that generate income of third category.
- Mortgage interest derived from the acquisition of a first property of residence.
- Professional fees of doctors and dentists in regard to services rendered in the country, as long as they qualify as fourth category income.
- Other professional fees of lawyers, systems and computer analysts, architects, nutritionists, nurses, sports coaches, photographers and camera, film and television operators, engineers, interpreters and

translators, obstetricians, psychologists, medical technologists and veterinary.

- Payments of Social Security contributions (ESSALUD) in favor of domestic workers.

Likewise, such expenses must comply with the following:

I. Be supported by electronic payment receipts which allow to deduct expenses and/or leases receipts approved by SUNAT, as applicable.

II. The payment of the service, including the Value Added Tax, is made using the means of payment allowed by law.

8.6. Income tax—Individuals—Domiciled individuals—Losses from foreign source

The results obtained by domiciled individuals on their overseas operations will be offset and then, only if the result is positive (net income), it will be added to the work net income (income from fourth and fifth categories). Net losses from a foreign source cannot be compensated with domestic source net income.

8.7. Income tax—Individuals—Domiciled individuals—Applicable rates

The annual capital net income (not including dividends) is subject to a 6.25% rate. Dividends will be subject to a 5% withholding tax.

The annual work net income of domiciled individuals (income from independent personal services and employment) is subject to the following progressive cumulative scale:

Work Net Income	Rate
Up to 5 UIT (U.S.$ 5,974 approximately)	8%
More than 5 UIT up to 20 UIT (U.S.$ 23,896 approximately)	14%
More than 20 UIT up to 35 UIT (U.S.$ 41,818 approximately)	17%
More than 35 UIT up to 45 UIT (U.S.$ 53,766 approximately)	20%
More than 45 UIT (more than U.S.$53,766)	30%

8.8. Income tax—Individuals—Domiciled individuals—Exemptions

Interest on deposits in the Peruvian financial system, in Peruvian or foreign currency, as well as the capital increase of readjustable deposits and contribution in Peruvian currency for which a certificate is issued.

8.9. Income tax—Individuals—Non-domiciled individuals—Applicable rates

The following effective rates are applicable to non-domiciled individuals:

Independent work (net rate)	24%
Dividends	5%
Dependent work	30%
Transfer of immovable property	5%
Interests (when payer is a domiciled corporation or individual that generates third-category income)	4.99%
Interests (when payer is a related party or the transaction is performed from or non-cooperative countries, tax havens or entities that are subject to a preferential tax regime)	30%
Capital gains from the transfer of shares carried out within Peru (within Peruvian stock exchange)	5%
Capital gains from the transfer of shares carried out abroad (out of the Peruvian stock exchange)	30%
Royalties	30%
Incomes of artists for shows performed within the country	15%
Others	30%

Dividends will be subject to a 5% withholding tax.

8.10. Income tax—Individuals—Non-domiciled individuals—Deduction of invested capital

In order to determine the domestic source net income obtained by non-domiciled individuals as a consequence of the transfer of goods, titles or rights, the cost incurred in their acquisition and improvement, if any, may be deducted provided certain requirements are met.

For those purposes, the non-domiciled individuals should obtain a certificate of the cost, issued by the Peruvian Tax Administration.

8.11. Income tax—Corporations

Regarding corporations, the domicile is a basic criteria in order to determine the tax treatment applicable. In fact, domiciled corporations are taxed on their worldwide income, as opposed to non-domiciled corporations, and branches or permanent establishments of non-domiciled corporations, which are subject to taxation only on their Peruvian source income.

The dividends from Peruvian Corporations are not subject to tax.

8.12. Income tax—Corporations—Domiciled corporations

Peruvian domiciled corporations are taxable on their worldwide income.

Despite the fact that branches and permanent establishments of non-domiciled corporations are considered domiciled taxpayers, they are taxed only on their Peruvian income. Nevertheless, they are subject to the same formal obligations (accounting, book keeping, filing of tax returns, etc.) as corporations.

The results of the corporation's overseas transactions will be netted and then added to their domestic source net income, but only if they result in a net income. It is important to highlight that losses from tax havens cannot be combined with foreign source income.

Net losses from a foreign source cannot be compensated with domestic source net income for income tax purposes.

8.13. Income tax—Corporations—Domiciled corporations—Applicable tax rates

The net income obtained by domiciled corporations is considered as third-category income and it will be subject to a 29.5% tax rate.

8.14. Income tax—Corporations—Domiciled corporations—Deductions

Expenses incurred during the fiscal year by domiciled corporations are generally deductible, provided that they are deemed necessary for obtaining third-category income as well as for maintaining the income source, unless expressly prohibited by law (e.g., personal expenses, income taxes, fines, donations not complying with certain conditions, certain provisions or reserves, value added tax and excise tax levying, transfer of property without consideration, expenses supported by invoices that do not fulfill the requirements established by the Invoices Regulations, among others).

As of January 1st 2017, in the case of services rendered between related parties, in order to deduct the expenses for such services, the taxpayer must comply with the benefit test and provide certain documentation and information before the Peruvian Tax Authority.

The deduction of the expenses is determined on the basis of the sum of the costs and expenses incurred by the provider, as well as the profit margin. For this purpose, in the case of low added value services, the aforementioned margin cannot exceed 5% of the costs and expenses incurred by the provider.

Low added value services shall meet the following characteristics: (i) they have an auxiliary or support nature; (ii) they do not constitute principal activities of the taxpayer or the multinational group, as applicable; (iii) they do not require the use of unique and valuable intangibles, nor imply the creation of unique and valuable intangibles; and (iv) they do not involve assuming or controlling a high or significant level of risk, nor do they generate a significant level of risk for the provider.

As of January 1st, 2019, royalties and retributions for services, technical assistance, assignment in use or others of a similar nature in favor of non-domiciled subjects, may be deducted by the entity domiciled in Peru, as cost or expense, in the corresponding fiscal year as long as they have been paid or accredited within the period established for the filing of the tax return corresponding to such year.

The aforementioned costs and expenses that are not deducted in the corresponding fiscal year, will be deductible in the year in which they are actually paid, even when they are duly provisioned in a previous year.

8.15. Income tax—Corporations—Domiciled corporations—Annual loss

Domiciled corporations may carry forward their Peruvian source net losses in order to set off future profits by using one of the following systems:

- Losses should be carried forward to set off against profits obtained in the immediate net four fiscal periods counted as of the year when the loss is generated. Under this regime, if a portion of the losses generated was not compensated within the four-year term, the taxpayer will lose the right to keep carrying forward the loss.
- Losses obtained should be carried forward to set off against 50% of future profits. Under this system losses may be carried forward for an indefinite period.

8.16. Income tax—Corporations—Domiciled corporations—Foreign income tax

Domiciled corporations may credit against the Peruvian annual income tax the amounts levied by the country where the source of the income is located, provided some requirements are fulfilled.

On the other hand, under certain conditions, domiciled entities that obtain foreign source income subject to the Income Tax, corresponding to dividends or profits distributed by non-domiciled companies may deduct: (1) the Income Tax paid or withheld abroad corresponding to dividends or distributed profits; (2) the Income Tax paid by the first level non-domiciled company; and (3) the Income Tax paid by a second level non-domiciled company.

For these purposes, the first level non-domiciled company is understood as the non-domiciled company in the country that distributes dividends or profits to the legal entity domiciled in the country. Likewise, the Income Tax paid by the first level non-domiciled company is understood as the Income Tax paid by it abroad, for the conduct of a business or company, in the proportional part corresponding to dividends or profits distributed to the legal entity domiciled in the country. Finally, a second-level non-domiciled company is understood as a non-domiciled company that distributes dividends or profits to a first-level company.

8.17. Income tax—Corporations—Non-domiciled corporations

Non-domiciled corporations are levied taxes only on their Peruvian source income.

Likewise, as we already mentioned in 8.12, branches and other permanent establishments of nonresident entities are taxed on their Peruvian source income only.

8.18. Income tax—Corporations—Non-domiciled corporations—Withholding taxes

As a general rule, Peruvian source income obtained by nonresident entities is subject to a withholding tax rate of

30%. Nevertheless, the following special rates are applicable:

Dividends: A 5% withholding tax will be applicable on dividends.

Royalties: A 30% withholding tax rate is applicable on royalties. For this purpose, the Income Tax Law has defined royalties as the payment in consideration of use, or the privilege of using, brands, designs, or models; plans, secret processes, or formulas; author rights on literary, artistic, or scientific work; as well as any payment for the assignment of software or any information related to industrial, commercial, or scientific experience.

Interest: Interest from credit operations will be subject to a withholding tax rate of 4.99%, provided:

- Foreign currency must be paid in through the Peruvian Financial System.
- The purpose of the foreign loan must have relation with the corporate business.
- The foreign creditor and the domiciled debtor are not related parties.
- Credit must not accrue an interest annual LIBOR-plus 7 (USA, Canada, Europe) rates. If said condition is not fulfilled, only the surplus of said rate will be subject to a 30% tax rate.

Otherwise, a withholding tax rate of 30% will apply.

Interest from bonds or debentures, and other debts financial instruments, and deposits according to the Financial System General Law, are subject to a withholding tax rate of 4.99%.

Interest payable to non-domiciled corporations by domiciled banks and financial companies as a result of the usage in the country of their credit lines abroad is subject to a withholding tax rate of 4.99%.

Lease of ships and aircraft: Income derived from the lease of ships and aircraft is subject to an effective withholding tax rate of 8% and 6%, respectively.

Technical assistance: Income derived from services that qualify as technical assistance will be levied with a withholding tax rate of 15% provided some requirements are complied.

In that respect, the resident party must file before the Peruvian Tax Administration a report issued by an auditing firm certifying that the technical assistance has been effectively rendered.

This requirement is needed if the income derived from services represent more than 140 UIT (U.S.$ 167,272

approximately).

Transfer of shares: A withholding tax rate of 5% is applicable on the transfer of shares within the country, provided they are registered in the Stock Market Public Registry and negotiated within the Peruvian stock exchange. Otherwise, the transfer of shares will be deemed carried out abroad, in which case a withholding tax rate of 30% is applicable.

This includes indirect transfer of shares, which occurs when shares from a non-resident company (either directly or indirectly through other companies) transfers shares from a resident company, provided that (i) within the 12 months previous to the transfer, the fair market value of the shares from the resident company, owned by the non-resident company, is equal to 50% or more of the fair market value of the total shares from the non-resident company or (ii) the non-resident company is domiciled in a tax haven, except when the taxpayer is able to prove that the condition described in (i) did not occur.

Income obtained from the sale of shares, among other securities, is Income Tax exempted until December 31, 2022, provided that: (i) the transfer is made through a centralized negotiation mechanism supervised by the Superintendence of Securities Market, (ii) whithin a twelve-month period the taxpayer and its related parties do not transfer, through one or more simultaneous or successive transactions, the ownership of 10% or more of the shares issued by the company, and (iii) the shares have "stock market presence".

8.19. Income tax—Corporations—Non-domiciled corporations—Withholding taxes—Income of an international nature

Due to their international nature, certain activities (insurance, transport between Peru and abroad, international press agencies, film distribution, telecom services, containers supply, among others) performed by non-domiciled corporations and their permanent establishments are deemed to generate different percentages of Peruvian source net income.

In those cases, the effective tax rate results from applying the corresponding withholding tax rate to the percentage of the Peruvian source income.

8.20. Income tax—Corporations—Non-domiciled corporations—Deduction of invested capital

In order to determine the domestic source net income obtained by non-domiciled corporations as a consequence of the transfer of goods, titles, or rights, the cost incurred in their acquisition and improvement, if any, may be deducted provided certain requirements are met.

For those purposes, the non-domiciled individuals should obtain a certificate of the cost, issued by the Peruvian Tax Administration. Likewise, in regard to the exploitation of depreciable goods, an amount equal to 20% of the sum paid or credited may also be deducted.

8.21. Income tax—Joint ventures

As a general rule, a joint venture that keeps independent accounting is considered for tax purposes as a taxpayer. In that sense, joint ventures are levied as independent business entities rather than as pass-through entities.

If the joint venture does not keep independent accounting; or if it is deemed to last less than three years, the parties under a joint venture agreement will be levied directly on their income in accordance with what is agreed in the agreement (e.g., as pass-through entity).

8.22. Income tax—Transfer pricing rules

Under market value general rules, the Peruvian Tax Administration may adjust the price agreed to by the parties so that it reflects the fair market value (arm's-length standard).

This adjustment can be made by the Tax Administrator if the price agreed by the parties determines a lesser tax in Peru or if such adjustment increases the tax in Peru in regard to transactions with other related parties.

Special transfer pricing rules inspired in OECD guidelines are applicable in the case of transactions between related parties or executed towards, through or from, tax haven countries, where prices assigned by the related parties affects the fiscal interest (e.g., causes a lesser tax to be paid in Peru).

Accordingly, under Peruvian transfer pricing legislation, the following methods can be used in order to determine the market price: (i) the compared uncontrolled price method (CUP), (ii) resale price method, (iii) cost plus method, (iv) profit split method, (v) residual profit split method, or (vii) other methods, when the application of any of the above methods is not appropriate due to the nature and characteristics of the activities and transactions.

Additionally, in case of imports and exports of goods between related parties, with a known price in the international, local or destination market, including those of derivative financial instruments, or with prices that are fixed according to the listed values of said markets, the market value is determined on the basis of those listed values.

The Peruvian Tax Administration may celebrate Advance Pricing Agreements (APA) with resident taxpayers to determine the value of the transactions under the Transfer Pricing rules. Such APA must meet certain requirements and conditions established in the Income Tax Law for purposes of its approval and execution.

Moreover, taxpayers must comply with the following formal obligations (only if the operation has an impact on the determination of the Income Tax):

- Keep detailed documentation and information of each transaction, when applicable, that supports the calculation of the transfer prices, the methodology used, among others, duly translated into Spanish, during the corresponding statute of limitations period of the tax obligation.
- Annually file informative statements of transactions with related parties or with individuals, resident in countries or territories with null or low imposition, according to the following:

Type Of Affidavit	Taxpayer	Annual Income Acrrued	Information Reported
Local Report	All taxpayers	Taxpayer's annual income accrued > 2,300 UITs (U.S.$ 2'748,052)	Among other information: organizational structure; description of the intercompany transactions; benefit test for services; transfer pricing method used; financial statements corresponding to the related tax period.
Master File	Taxpayers belonging to a local group4	Local group's annual income accrued > 20,000 UITs (U.S.$ 23'896,103)	Among other information: organizational structure; a description of the business or businesses developed; a description of the transfer pricing policies regarding intangible assets and group financing; finance and fiscal status.
Country by Country Report	Taxpayers qualified as headquarters of a multinational group5	Multinational group's annual income accrued > S/ 2,700,000,000 (U.S.$ 701,299)	Among other information: global distribution of the income; losses; taxes paid; business activities regarding each of the entities belonging to the multinational group.

[4] For this purpose, the term "Group" has been defined as the group of persons, companies or entities related by way of property or control, obliged to formulate consolidated financial statements in accordance with the generally accepted accounting principles, or that would be obliged to do it if the shares issued by them where negotiated through a centralized negotiation mechanism.

[5] For this purpose, the term "Multinational group" has been defined as a group composed by one or more persons, companies or entities with residence in Peru and one o more persons, companies or entities with foreign residence; or a group composed by one or more persons,

8.23. Income tax—Non-cooperative countries, tax havens, preferential tax regimes

Non-cooperative countries or tax havens as those included in a list established in the Peruvian legislation, and may be included, by means of a supreme decree, other countries that meet the following requirements:

- Do not have a Tax Information Exchange Agreement or a Double Taxation Agreement that includes an information exchange clause; or existing, do not comply with the exchange of information with Peru or that such exchange is limited by application of its law or administrative practices.
- Lack of transparency at the legal, regulatory or administrative level.
- The applicable rate of Income Tax, whatever this tax is named, is 0% or less than 60% of which would correspond in Peru on corporate income, in accordance with the general regime.

Non-cooperative countries or tax havens can be excluded by means of a supreme decree, as long as they meet any of the following criteria:

- They are members of the Organization for Economic Cooperation and Development (OECD).
- They have in force with Peru a Double Taxation Agreement that includes an information exchange clause.
- They comply with the exchange of information with Peru and it is not limited by application of its law or administrative practices.

Preferential tax regimes are those that meet at least two of the following criteria:

- The country or territory of the tax regime does not have a Tax Information Exchange Agreement or a Double Tax Agreement that includes an information exchange clause; or existing, they do not comply with the exchange of information with Peru or that said exchange is limited by application of law or administrative practices, regarding such tax regime.
- The country or territory of the tax regime has a lack of a tax transparency regime at the legal, regulatory or administrative level, with respect to such regime.
- The applicable rate of Income Tax, whatever this tax is named, is 0% or less than 60% of which would correspond in Peru on income of the same nature to domiciled subjects.

companies or entities with tax residence in a jurisdiction taxed in a different jurisdiction on the activities carried out through a permanent establishment.

- The tax regime excludes, explicitly or implicitly, the residents of the country or territory of such regime, or that the subjects benefiting from such regime are prevented, explicitly or implicitly, from operating in the domestic market.
- They have been classified by the OECD as pernicious or potentially pernicious regimes due to the absence of a substantive local presence or the exercise of a real activity or with economic substance, even when the country or territory of the regime is in the process of eliminating or modifying them.

Regarding the deduction of expenses, please note that expenses incurred in by a domiciled corporation, paid to an entity located in a non-cooperative country or tax haven or subject to a preferential tax regime, will not be deductible when determining the net income subject to Peruvian income tax. Nevertheless, the following exceptions are applicable:

- loans;
- insurances and reinsurances;
- assignment of ships and airships;
- transport from Peru to a foreign country and from a foreign country to Peru; and
- right of passage through the Panama Canal.

These expenses will be deductible provided that the price or retribution paid is according to fair market rules.

8.24. Taxes on transactions—Value added tax ("IGV")

This tax is applied to consumption of goods and services effected in Peru as follows:

- local sale of goods;
- the rendering or use of services within the country;
- construction contracts;
- the first sale of real estate carried out by the constructor; and
- the import of goods.

The current IGV rate is 18%. Transfer of shares is not levied with IGV.

In order to determine the corresponding IGV tax due, the IGV tax credit will have to be deducted from the monthly gross tax (amount resulting from the application of the IGV tax rate (18%) on the amounts derived from any transaction subject to this tax). On the other hand, the tax credit is the tax paid on the acquisition of goods, services, and construction contracts, or the payment for the importation of goods or for the utilization of services within the country rendered by nonresidents.

Some requirements must be fulfilled in order to have the right to the tax credit. In fact, the transactions:

I. should be allowed as costs or expenses of the company in accordance with the income tax legislation, even if the taxpayer is not levied by said tax; and

II. should be destined to transactions for which the IGV tax should be paid.

Moreover, certain formal requisites should also be complied with.

Exports are not levied with IGV. Exporters are entitled to request return of IGV that may have paid in the purchase of goods or services used in manufacturing of exported goods (drawback benefit).

Services are considered exported when the following requirements are met:

a. They are provided for consideration from the country to the outside, which must be proved with the payment receipt, issued in accordance with law and the accounting record.

b. The exporter is a resident entity.

c. The user of the service is a nonresident entity.

d. The use or exploitation of services takes place abroad.

e. The exporter is registered in the Registry of Service Exporters of SUNAT.

8.25. Taxes on transactions—Value added tax ("IGV")—Value Added Tax —Anticipated Recovery Regime

In order to allow individuals or business entities to develop projects that require substantial investment in any economic sector of the economy, in a more favorable financial scenario, Peruvian legislation has established the Value Added Tax Anticipated Recovery Regime (hereinafter, the Regime).

The Regime grants the right to recover the IGV paid in the import and/or local acquisition of goods or services in the pre-productive stage of a project, which will be later used in the execution of said project regulated under

Investment Contracts entered into with the Peruvian State.

In order to benefit from the Regime, the following must be complied with:

I. Carry out a project in any sector of economic activity that generates third category income.

II. The project must contemplate an investment commitment of no less than U.S. $ 5,000,000, not including the corresponding IGV, including the sum of all the sections, stages or similar, if any.

III. The pre-productive period of the project has to be equal to two or more years, from the start of the investments schedule. If the project is supported by contracts or agreements or authorizations signed or granted by the State under sectorial regulations, the pre-production stage begins from the date of subscription of the respective contract, agreement or granting of the respective authorization.

By means of a Ministerial Resolution of the competent sector, the individuals or legal entities who qualify for application of the Regime will be approved, as well as the goods, services and construction contracts that will grant the early recovery of the IGV for each project.

It is important to highlight that the Regime is applicable during the pre-productive period only, which finishes when the first exportation of a good or service is done, or when the first transfer of a good or a service is taxed with the IGV, resulting from the exploitation.

Regarding the scope of the Regime, the goods, services, or construction contracts covered by the Regime should be approved by the Ministry in charge of the sector in which the investment is made, on the basis that they are listed in the national sub-entries corresponding to the Economic Use or Destiny Classification (CUODE is its Spanish acronym). Said goods, services, or construction contracts should be acquired after the Investment Contract's subscription is requested (in case the pre-productive stage of the project already started), or as from the starting date of the pre-productive stage as established in the investment schedule of the project (in case such pre-productive stage started after the Investment Contract's subscription was required), and must be used in the project's execution, in order to guarantee the application of the tax benefit.

The activities considered for the construction contracts should be in accordance with Divisions 41, 42 and 43 of the United Nations International Standard Industrial Classification of all Economic Activities, according to the codes established in the Annex 2 of the Regulations of the Legislative Decree 973.

Regarding the devolution request before the Tax Administration, it is important to mention that the beneficiary of the Regime must accumulate at least 36 UIT (approximately U.S.$43,013). Once the devolution request is submitted for a specific period, another cannot be submitted for the same period or prior periods.

Finally, it is important to mention that, in order to apply for the Regime, the goods, services, constructions, etc.

should be recorded separately in the accounting records as follows: (1) those that are destined to taxed operations or exploitation operations; (2) those which are destined exclusively to non- taxed operations; and (3) those that are destined to be used jointly in taxed and non-taxed operations.

8.26. Taxes on transactions—Excise tax (ISC)

The excise tax is levied on the local sale at manufacturer level and the import of goods such as fuels (gas, gas-oils, and diesel), alcoholic beverages, vehicles, soft drinks, mineral water, cigarettes and tobacco, luxury items, casino and games of chance. Tax rates are variable (percentage system) and for some items this tax is applied by charging a fixed amount per unit sold (specific system).

8.27. Taxes on transactions—Customs duties

The Peruvian custom tariff structure includes four levels: 0%, 4%, 6%, and 11%.

There is a customs regime that allows the temporary import of equipment without payment of customs duties, provided that said equipment will be re-exported within the term of 18 months and as long as a guarantee is granted.

8.28. Taxes on transactions—Financial transactions tax (ITF)

The financial transactions tax (ITF) is levied upon a series of financial transactions made through the Peruvian banking system, irrespective of the amount. In fact, this tax is applied to debits and credits in current accounts, saving accounts, deposits, liquid asset funds, trust funds and other financial funds.

The ITF paid is deductible for income tax purposes, as an expense for local companies and individuals.

The 2022 rate for the ITF is 0.005%.

8.29. Taxes on transactions—Immovable property transfer tax ("Alcabala")

Transfers of immovable property, whether for consideration or not, are subject to a tax levied by municipalities. The acquirer will be the taxpayer.

The rate of this tax is 3% over the transaction value. A non-levied amount equivalent to 10 UIT (US$ 11,948 approximately) is considered in order to determine the base.

8.30. Temporary tax on net assets (ITAN)

This tax applies to taxpayers generating corporate income (third-category income) that are subject to the General Income Tax Regime (which also includes branches, agencies, and other permanent establishments of non-domiciled corporations). Those who have not started operations, as well as those entities exempted or not taxed with the Income Tax, among others, are not taxed with ITAN.

ITAN is applied over the value of a company's net assets as of December 31st of the foregoing year. Certain assets may be deducted in order to determine the taxable base, including assets granted in concession, and shares, among others.

The following rate will be applicable to the tax base in order to determine the tax due:

Years	Rate	Net Assets
2009-onwards	0.4%	Excess of S/. 1,000,000 (approximately U.S.$259,740).

The tax paid may be credited against advance payments of income tax or annual payment of the income tax, or the tax refund can be requested. This last procedure may apply in case of tax losses or a minor tax assessed under the general regime rules, provided certain conditions are met.

8.31. Real estate property tax

The real estate property tax is an annual local tax imposed by the municipalities on the total value of rural or urban immovable property owned by an individual or a corporation within a local jurisdiction.

The tax is applied at progressive rates as follows:

Taxable base	Rate
Up to 15 UIT (U.S.$17,922)	0.2%

Between 15 UIT and 60 UIT (U.S.$ 17,922 and U.S.$71,688)	0.6%
More than 60 UIT (U.S.$ 71,688)	1.0%

Concession holders of public works or services granted by the government are subject to this tax with respect to the property assigned to the contract or project during its term.

8.32. Tax incentives—Regions with special tax regimes

Peruvian tax regulations have established special regimes for investment and industries in specific regions of the country. In the Special Development Zones (ZED), it is possible to import goods tax-free in order to transform them. However, the sale of those goods to other zones is levied with normal taxes.

There is a special tax regime for companies located in the Peruvian Amazon region, which includes lower tax rates for special activities in that area.

8.33. Tax treaties—Tax stability agreements

Investors and corporations receiving investment can enter into an agreement with the Peruvian State, in order to guarantee that the basic rules (including certain tax rules) in force at the moment of the subscription will "freeze".

Said agreements may not be unilaterally modified by the Peruvian State, thus allowing the investors to foresee the rules that will govern their investment during a reasonable term.

8.34. Tax treaties—Treaties to avoid double taxation in force

Peru has entered into Double Taxation Avoidance Agreements (DTAA) with Chile and Canada (both in force since 2004), Brazil (in force since 2010), as well as with Mexico, Portugal, South Korea and Switzerland (all of them in force since 2015), and Japan (in force since 2022). The general rule under said treaties establishes that all the Peruvian source business profits obtained by entities domiciled in the countries before mentioned can only be taxed in their countries, unless they have a permanent establishment in Peru.

Under those DTAA, interests, dividends, and royalties enjoy reduced withholding rates. The rates are 10% or 15% for dividends (in this case, the lower Peruvian Income Tax Law rate of 5% will apply for the year 2018), 10% or 15%

for interests (in such case, the lower Peruvian Income Tax Law rate of 4.99% will apply provided the requirements established by law are fulfilled), and 10% or 15% for royalties. Notwithstanding, the passive income (interests, dividends, and royalties) will also be subject to taxation in these countries. In order to avoid double taxation, the Income Tax paid in Peru can be used as a tax credit in these countries.

In the region, the Community of Andean Nations (Bolivia, Ecuador, Colombia, and Peru) has established a regime to avoid double taxation (Decision No. 578).

8.35. Tax incentives and tax treaties—Treaties to avoid double taxation not in force and future conventions

Negotiations are currently ongoing for the execution of Double Taxation Avoidance Agreements with the technical commissions of Singapore and Qatar.

8.36. General anti-avoidance rule

Regulation XVI of the Tax Code establishes a General Anti-Avoidance Rule (GAAR). The GAAR will be activated when the realization of the taxable event is totally or partially avoided or the tax base or tax debt is reduced, through acts in regard to which the following situations arise concurrently:

a. Individually or jointly they are artificial or improper for the achievement of the result obtained.

b. Its use results in legal or economic effects, other than tax savings or advantages, that are the same or similar to those that would have been obtained with the usual or own acts.

SUNAT, for example, could evaluate the application of the GAAR when it identifies any of the situations that have been mentioned by way of example:

- Acts, situations or economic relationships in which there is no correspondence between the benefits and the associated risks; or have low or low profitability or do not adjust to market value or lack economic rationality.
- Acts, situations or economic relationships that are not related to the type of ordinary operations to achieve the desired legal, economic or financial effects.
- Carrying out activities similar or equivalent to those carried out by business figures, instead using non-business figures.
- Company reorganizations or restructuring or businesses with the appearance of little economic

- substance.
- Performing acts or operations with subjects residing in non-cooperative countries or territories with low or no taxation or with subjects that qualify as permanent establishments located or established in non-cooperative countries or territories with low or no taxation or with subjects that obtain income or gains through a non-cooperative country or tax haven; or subject to a preferential tax regime in regard to their operations.
- Transactions at zero or low cost, or mediating figures that end up minimizing or canceling non-tax costs and gains in the parties involved.
- Employment of legal, business, acts, contracts, or unusual structures that contribute to the deferral of income or the anticipation of expenses, costs or losses.

The application of the GAAR is carried out in a definitive audit procedure and provided that the SUNAT department that carries out such procedure previously has the favorable opinion of a Review Committee composed by SUNAT officials.

On the other hand, once the GAAR has been applied, it is presumed, unless proven otherwise, that the company's legal representatives who collaborated in the design, approval or execution of the tax planning have acted with intent, gross negligence or abuse of powers, for which could be jointly and severally responsible for the tax obligations that generates for the company.

8.37. Final beneficiary

Legal persons and/or legal entities are obliged to inform SUNAT about the identity of their final beneficiaries. This obligation aims to strengthen the fight against money laundering and terrorist financing, as well as national and international tax evasion.

Final beneficiary is considered to be:

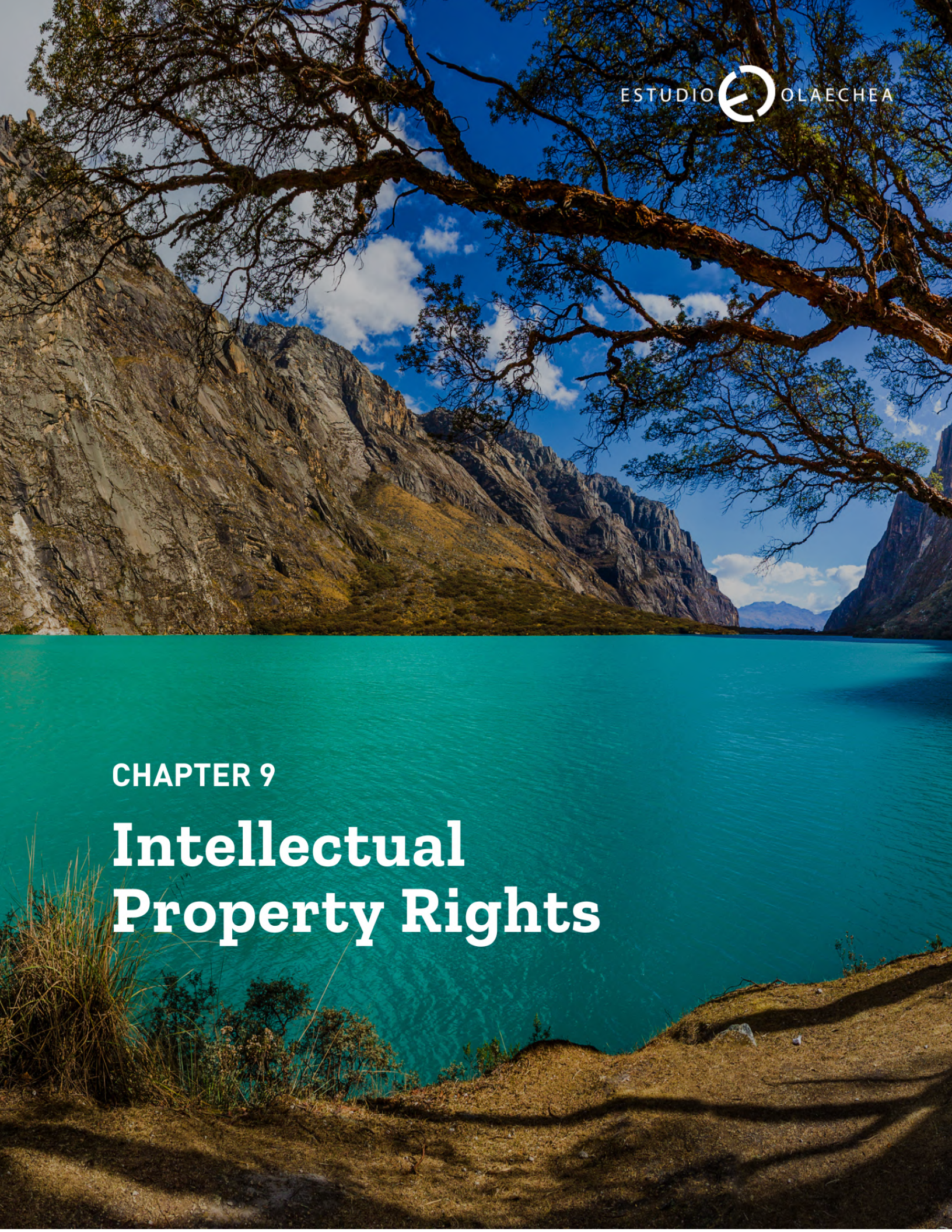
- The natural person who directly or indirectly owns at least 10% of the capital of a legal person or legal entity.
- The natural person who finally owns or controls a client or on whose behalf a declaration is made in accordance with the criteria established in the regulation.
- In case the first two cases are not identified, those that occupy the top administrative position (for example, General Manager).

Companies that as of November 30th, 2019 have had the status of main taxpayers, are obliged to present an affidavit with the information of their final beneficiaries in the month of December 2019.

Later, the group of companies that must submit the affidavit was expanded. To determine which new companies are obliged to report their final beneficiaries as well as the respective submission deadline, it will have to take into account the amount of their "net income" corresponding to the fiscal year 2021. The schedule is the following:

Phase	Anual "net income"6	Submission deadline: until the due date corresponding to the monthly tax obligation of:
I	More than 1,000 UITs (U.S.$ 1'142,857)	May, 2022
II	More than 500 (U.S.$ 571,429) up to 1,000 UITs (U.S.$ 1'142,857)	August, 2022
III	More than 300 UITs (U.S.$ 342,857)	May, 2023

[6] For these purposes, it must be used the UIT applicable to the fiscal year 2021 equivalent to S/ 4,400 (approximately U.S.$ 1,143)



CHAPTER 9

Intellectual Property Rights

CHAPTER 9

Intellectual Property Rights

9.1. Generally

Peru is a signatory, among others, to the following conventions:

- The Paris Convention for the Protection of Industrial Property;
- The Bern Convention for Copyrights;
- The Lisbon Agreement for Appellation of Origins;
- The Convention Establishing the World Intellectual Property Organization (WIPO);
- The Inter-American Convention for Trademark and Commercial Protection;
- The Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs);
- The Agreement Establishing the World Trade Organization (WTO);
- The Budapest Treaty about International Recognition of Micro
- The Patent Cooperation Treaty (PCT).
- The Locarno agreement, International Classification for Drawings and Industrial Models
- The Strasburg agreement, International Patent Classification
- Nice agreement, International Classification for products and services
- Vienna Agreement, International classification on figurative signs
- Geneva Act of Lisbon Agreement, on the international registry of geographic indications

In order to obey the Free Trade Agreement signed between the U.S.A. and Peru, some changes have been introduced in Peruvian legislation. These new rulings are only complementary in some aspects, the fundamentals are preserved. As Peru is also a member of the Andean Community, Intellectual Property will be ruled by Decision No. 486 and Legislative Decree No. 1075, which approve complementary dispositions to the Decision. The previous Industrial Property Law, Decision No. 486, covers patents of invention, certificates of protection, utility models, industrial designs, industrial secrets, trademarks, trade names, appellations of origin, among others.

The National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi) is the national office in charge of intellectual property rights.

9.2. Trademarks

Protection of a trademark in Peru is subject to its registration by filing an application before the Distinctive Signs Direction at Indecopi. Usually, the registration process takes approximately four months if oppositions are not filed. Unregistered trademarks, with the only exception of well-known distinctive signs, have no protection no matter its use. Trade names are protected on a use basis whether or not registered.

In that sense, under Decision No. 486, a registration application can be opposed if the trademark is identical, or considerably similar, to another trademark that has already been registered or filed for registration in any Andean Community country as well as opposed to a "well known trademark". Opposition can also be held if the application is for a trademark that is likely to lead to confusion or mistaken association to the consumer even though it is not identical or considerably similar.

However, parties in a proceeding are able to agree to the coexistence of identical or similar trademarks, provided Indecopi considers that such coexistence does not affect the consumers' general interest. Indecopi will decide this during the process of registration of the requested trademark.

9.3. Trademarks-Equal treatment for foreign owners

The Industrial Property Law establishes that national and foreign owners of trademarks are subject to equal treatment. Any advantage, favor, privilege, or immunity granted to a member of the Andean Community must be accorded to the nationals of all other members of the World Trade Organization or of the Paris Convention. The law does not distinguish between individuals or corporations.

9.4. Trademarks-Priority

Any person who has duly filed an application for a trademark in another member country of the Andean Community or in countries that are members of the Paris Convention, or with a national, regional, or international authority to which Peru is linked by a treaty establishing an analogous right of priority, confers on the applicant or the applicant's assignee the right of priority for a non-extendable period of six months.

9.5. Trademarks-Procedure

The trademark procedure consists of the filing of an application that should comply with all the formal conditions established by the National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi), the Distinctive Signs Direction, which includes the following:

- Applicant's identification information if it is a natural person or identification information related to the legal entity.
- Indicate the kind of sign which is available for registration.
- Indicate the products or services that the applicant wants to distinguish, and the class thereof according to the international classification.

In this sense, one could register a commercial name, slogan, collective trademarks and certification marks.

Within 15 working days from the day the application was received, the trademark office will examine it for compliance with the main requisites. Therefore, if the applicant complies with all the requisites, the trademark office will issue an order for the trademark's publication in the Official Gazzete of Indecopi.

On the other hand, once all the requisites are complied with, within a period of 30 working days following the publication date, any person having a legitimate interest may, for one time only, file a valid opposition that could result in the invalidation of the trademark registration. Reckless oppositions are subject to a fine of up to 50 UIT (approximately U.S.$ 59,741). In practice, however, it is rare that the trademark office declares a reckless opposition.

The trademark applicant has 30 working days in order to respond to the opposition formulated against its application. After that, the Commission will decide on the opposition and if it grants or denies the registry. Against what is resolved by the Commission, an appeal recourse can be formulated. The Tribunal of Indecopi resolves in second and last recourse.

Due to the events that arose, in connection to COVID 19 pandemic, the trademark authority has made available the trademark registration procedures that can be carried out online, which also include acts of modification and renewal.

9.6. Trademarks-Procedure-Term of protection and renewal

Registration of the trademark enables the holder to use it exclusively for 10 years and may be renewed for successive 10-year periods. Renewal does not require proof of trademark use; it will be granted automatically on the same terms as the original registration. There is a six-month grace period to renew while the trademark is still in force. After this period, the trademark will officially expire, and in the case that the former owner is interested in the trademark, he must initiate the process of registration from the beginning. In addition to this, no objections proceed against those trademark applications filed within six months following the expiry of the grace period.

Notwithstanding that proof of use is not required for registration or renewal of a trademark, a registration can be cancelled for unjustified nonuse during an uninterrupted period of at least three years immediately before the start of the cancellation proceeding, if requested by a third party. The Distinctive Signs Direction may request the owner of the trademark in question to assert their arguments and submit proof they deem convenient should there be a challenge by a third party.

9.7. Patents

Protection of a patent in Peru is subject to its registration by filing an application before the Inventions and New Technologies Direction in the National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi). The registration process for patents is the longest; it takes at least two years.

Patents for inventions can be granted in Peru, for goods or processes in all areas of technology that are new, have an inventive level, and are industrially applicable. The government grants the patent holder the exclusive right to exploit the invention within its territory. An invention may be considered new when it is not included in the state of the art. The state of the art includes everything that has been made available to the public by a written or oral description, use, marketing, or any other means prior to the filing date of the patent or, where appropriate, of the priority claimed.

The first application for an invention patent that has been filed in another member country of the Andean Community or in countries that are members of the Paris Convention, or with a national, regional, or international authority to which Peru is linked by a treaty establishing an analogous right of priority, confers on the applicant or the applicant's assignee the right of priority. In order to qualify for that right, an application claiming priority must be filed within the following non-extendable periods, to be counted as from the filing date of the applications whose priority is claimed: one year for patents on inventions and utility models, and six months for industrial designs.

9.8. Patents-Term of protection

The protection of the right that is granted by the patent registration lasts 20 years. After this period, it is not possible to renew the patent. Once the term is over, the patent will be in the public domain.

9.9. Patents-Application process

To apply for a patent, the application is submitted to the Inventions and New Technologies Direction with the inventor's petition, which includes among others, the data identifying the applicant or person filing the application, a full description of the invention, and the proof of payment of the prescribed fees. Assuming the inventor complies with all the legal requirements, the Inventions and New Technologies Directions will officially publish a summary of the application within 18 months. Thus, the application will be kept secret for that time.

Within a period of 60 days following the date of publication, any person with a legitimate interest may, for one time only, submit valid reasons for contesting the patentability of the invention. An extended 60-day period may be granted upon request. The patent applicant will have 60 days following the notification to discharge any claim or file the required documentation. An extended 60-day period may be granted. If the findings of the final examination are favorable, the patent will be granted. The applicant may request an examination be made of the patentability of the invention within six months after publication of the application, regardless of whether or not any objections have been filed.

Indecopi divides the application for the registration as follows:

- Application for the registry of the Patents and New Inventions
- Application for the registry of Industrial Design
- Application for the registry of an Integrated Circuit Layout Design
- Application for the registry of a Plant Variety Certificate of Obtainer
- Application for the registry of Utility Models

9.10. Patents-Obligation to exploit; compulsory licenses

The patent holder is obligated to exploit the patented invention in any member country of the Andean Community, either directly or through any authorized person. To maintain patents in force, it is necessary to pay annuities fees annually which should be payable in advance. The expiry date is the last day of the month in which the application was filed. The failure to pay an annual fee shall result in the expiration of the patent or patent application. These annuities must be paid during the entire time the patent is in effect.

Under Decision No. 486, compulsory licensing may apply if the patent is not exploited or is not sufficiently exploited within three years from the date the patent is granted or within four years from its filing date, whichever is longer. Compulsory licenses are not exclusive and may also be granted to assure free competition in the market to avoid practices of unfair competition. The licensee must pay the patent holder adequate compensation.Following the declaration by a Member Country of the existence of public interest, emergency, or national security and only for so long as those considerations exist, the patent may be subject to compulsory licensing at any time. The grant of a compulsory license for reasons of public interest, emergency, or national security will not reduce the right of the patent owner to continue exploiting it.

9.11. Patents-Patent Cooperation Treaty (PCT)

As mentioned above, Peru is now a Contracting State of the Patent Cooperation Treaty (PCT), which provides a unified procedure for the filing, searching, and examination of applications for the protection of inventions and for rendering special technical services internationally. It can also be used for the grant of an inventor's certificate, a utility certificate, or a utility model, rather than a patent. The PCT entered in force for Peru on June 6th, 2009.

The PCT system consists of a unified application procedure for a patent among the Contracting States, thereby enabling the applicant to avoid having to begin a different process in each State in which protection for the invention is desired. Hence, any application filed under this treaty will be considered an "international application." Any resident or national of a Contracting State may file an international application. In Peru, it will be the National Institute for the Defense of Competition and Protection of Intellectual Property (Indecopi) who will finally grant or deny the patent following the prescribed national procedures. The concepts of residence and nationality and the application of those concepts are defined in the Regulations.

It is important to note that an applicant, whether a natural person or not, who is a national and resides in Peru will have a 90% reduction of the international filing fee and the supplementary search and handling fee (international preliminary examination).

9.12. Patents-Patent Cooperation Treaty (PCT)-Filing the application

The PCT procedures consider two steps: an international and a national one. The international stage is comprised of: an international application, an international search, and, if asked for, an international preliminary examination. The national stage includes all due proceedings as stated by the Indecopi to be granted the patent.

The international application must be filed, at the option of the applicant: with the national office of or acting for the Contracting State of which the applicant is a resident, with the national office of or acting for the Contracting State of which the applicant is a national, or irrespective of the Contracting State of which the applicant is a resident

or national, with the International Bureau.

The international application must be in the prescribed language accepted by the receiving office which is both a language accepted by the International Searching Authority and a language of publication; it will comply with the prescribed physical requirements as well as the prescribed requirement of unity of invention and be subject to the payment of the prescribed fees as well as any other indication required for a national application. It must contain at least the following elements: an indication that it is intended as an international application, the designation of the Contracting State or States in which protection for the invention is desired ("designated States"), the name of the inventor, a description and one or more claims. It may also contain a declaration claiming the priority of one or earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property or in or for any Member of the World Trade Organization that is not party to that Convention.

When an international application is received by a national office on behalf of the International Bureau as receiving office, that national office must promptly transmit it to the International Bureau. Such transmittal may be subjected by the national office to the payment of a fee, for its own benefit, equal to the transmittal fee charged by that office. The international application so transmitted will be considered to have been received by the International Bureau as receiving office on the date of receipt of the international application by that national office, that is, the Indecopi.

Any international application fulfilling the requirements listed in the PCT is equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property. If the receiving Office, that is, the Indecopi, determines that, at the time of receipt of the papers purporting to be an international application, the physical requirements were fulfilled, it will accord as the international filing date the date of receipt of the international application.

9.13. Patents-Patent Cooperation Treaty (PCT)-International search and opinion

Each international application is subject to an International Search and an International Search Report as well as a written opinion, carried out by an International Searching Authority (which may be either the INDECOPI or an intergovernmental organization). The objective of the international search is to discover relevant prior art made on the basis of the claims, with due regard to the description and the drawings. Relevant prior art consists of everything which has been made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) and which is capable of being of assistance in determining that the claimed invention is or is not new and that it does or does not involve an inventive step. The international search must cover all those technical fields, and be carried out on the basis of all those search files, which may contain material pertinent to the invention. Insofar as possible and reasonable, the international search should cover the entire subject matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended. It may also contain indications to the requirement of unity of invention. The written opinion will refer to whether the claimed invention appears to be novel, involve an inventive step, and is industrially applicable and whether the international application complies with the requirements of the treaty and its regulations in so far as checked by the International Searching Authority. The written opinion must contain a notification informing the applicant that, if a demand for international preliminary examination is made, the written opinion will be considered to be a written opinion of the International Preliminary Examining Authority. In this case,

the applicant is invited to submit to that Authority, within the time limit (between two to three months) a written reply together with amendments, where appropriate.

This international search report and the opinion must, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau. The applicant is then entitled to one opportunity to amend the claims, within two months from the date of transmittal of the report or 16 months from the priority date, whichever time limit expires later. Amendments must be filed directly with the International Bureau.

9.14. Patents-Patent Cooperation Treaty (PCT)-Confidentiality of application

The International Bureau and the International Searching Authorities may not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

9.15. Patents-Patent Cooperation Treaty (PCT)-Communication to designated Offices

The international application, together with the international search report, must be communicated to each designated office, unless the designated office waives such requirement in its entirety or in part.

9.16. Patents-Patent Cooperation Treaty (PCT)-Publication

The International Bureau must publish international applications and search reports promptly after the expiration of 18 months from the priority date of that application in the PCT Gazette as well as the claims and its modifications. As of the date of publication it will be part of the state of the art. The applicant may ask the International Bureau to publish his or her international application any time before the expiration of the time limit. There will be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

9.17. Patents-Patent Cooperation Treaty (PCT)-International preliminary examination

On the demand of the applicant, the international application may be the subject of an international preliminary examination by the International Preliminary Examining Authority subject to the payment of the prescribed fees.

This application has the effect of postponing the national stage in as much as 30 months from the priority date. The demand for international preliminary examination must be made separately from the international application. A demand may be made at any time prior to the expiration of whichever of the following periods expires later: three months from the date of transmittal to the applicant of the international search report and of the written opinion or 22 months from the priority date.

The objective of the international preliminary examination is to formulate a preliminary and nonbinding opinion on the questions of whether the claimed invention appears to be novel, to involve an inventive step, and to be industrially applicable. This will enable the applicant to better assess the possibilities of being granted a patent in the designated States without incurring the expenses involved in this process. The applicant has a right to amend the claims, the description and the drawings before the international preliminary examination report is established. The amendment may not go beyond the disclosure in the international application as filed.

The granting of a patent will follow the regular national legislation.

In light of the events of the COVID 19 pandemic, INDECOPI has provided a virtual platform in order to allow the online receipt of documents which include the filing of patent application.

9.18. Patents-Patent Prosecution Highway (PPH)

The Patent Prosecution Highway (PPH) is a filing system for patent applications where an application has been filed on one of the patent office of a signatory country of the PPH system. For requesting the PPH prosecution it is necessary that the patent filed has passed the patentability examination and obtained a technical report in connection to the claims aimed to be patentable or can be granted. In such a way that the second application filed benefits of the analysis carried out by the first filing office's report at the time of the patentability examination. In Peru, a requirement is that the claims filed in the second patent application that request the PPH prosecution should be the same as the first patent filed.

9.19. Copyrights

Unlike trademarks, copyrights are protected even if they are not registered; they are declarative, according to Bern Convention, but the registration makes the copyrights opposable to third parties.

Nonetheless, registration of a copyright is recommended, because in the situation where a third party tries to register a product to which another one claims to be the author, the proof of who is the real author will be difficult to show, in terms of time and money. This is why registration is recommended in these cases.

Copyright is regulated by Decision No. 351 of the Andean Community, by Legislative Decree No. 822 of April 23, 1996 (The Copyright Law) and its modifications introduced by Legislative Decree No. 1076 pursuant to which copyright protection is available for books, pamphlets, magazines, lectures, addresses, speeches, didactic explanations, musical composition, cinematographic works, dramatic works, choreographic art, mimed works, audiovisual work, work of applied art and work of fine art, rough drafts, drawings, sculptures, lithographs, prints, architectural works, photographs, illustrations, maps, plans, plastic work relating to geography, topography, architecture, or the sciences, slogans and phrases, computer software, journalistic articles, press reports, editorials, comments, translations, and adaptations, among others.

The Copyright Direction of INDECOPI has the power to dictate precautionary measures, such as confiscations and inspections, and to impose sanctions.

9.20. Copyrights-Procedure

As mentioned above, the registration of copyrights is declarative. Once the person is interested in filing the registry, it is necessary to fulfill the requirements depending on what he or she is trying to register. The Copyrights Direction will have a response in 30 working days. If the registry is not granted, an appeal can be filed against that decision and the Court of INDECOPI will resolve in second and last instance. The time estimated for proceeding of registration is the same as the registry of trademarks, approximately four months.

The proceeding is similar to the registry of trademarks. The decision of the office can be appealed, and if third parties want to avoid the registry, they can file an infringement action. The period of time to file an infringement action is two years after the copyright is declared. This is the period of prescription of property rights. In this case, the registry has been granted, so what this action is requesting is the nullity of the registration.

To register copyrights at INDECOPI, it is necessary to fulfill the requirements corresponding to the product that is going to be registered. INDECOPI divides the applications for registration in the following way:

- Application for the registry of audio-visual work or images in movement not considered as an audio-visual work
- Application for the registry of software and databases
- Application for the registry of literature work
- Application for the registry of artistic work
- Application for the registry of phonograms
- Application for the registry of contracts of companies of collective management
- Application for the registry of artistic interpretation

- Application for the registry of authors, editors, and producers
- Application for the registry of license, assignment of rights, and contract of transference of copyrights

9.21. Copyrights-Term and scope of protection

The rights of the author last all of the author's life and 70 years after the author's death, no matter the country of origin of the work. Once this time elapses, the work belongs to the public domain.

For collaborative work, the protection period starts at the time of death of the last co-author.

Moral rights last forever; therefore, although the work can be used freely, it is necessary that the name of the author is recognized in the work.

Protection is given to the author regardless of nationality, domicile, or the place of publication or disclosure. Registration of the copyright is optional in Peru and not essential for its protection. In other words, registration is merely declaratory and does not in itself confer rights. It serves as a means of publicity and priority. However, registration is recommended in order to secure the copyright for litigation purposes and therefore enforceable against third parties.

The law recognizes the author of the work as the original holder of the exclusive rights over it. These rights can be opposed against third parties. A person or a corporation is allowed to own the copyright to a work.

9.22. Copyrights-Translated works

Copyrights for translations can exist even though the original work belongs to the public domain. However, translations do not give any exclusive right over the original work. Thus, the translator cannot prevent the publication of any other translation of the same original work unless the new version is derived from its own originality.

9.23. Copyrights-Enforcement of rights

Copyright can be enforced by an infringement action in administrative proceedings or by a criminal action if the facts are considered a crime. With regard to the administrative proceedings, the penalties for breach include:

- A warning
- A fine of up to 180 UIT (approximately U.S.$ 215,065)
- Temporary closure of the business for 90 days
- Seizure and destruction of the goods as well as the destruction of the means used to produce the infringing goods
- Withdraw of all infringing goods from the market and distribution channels
- Permanent closure of the business
- Publication of the guilty verdict and notification of interested parties at the infringer's expense

Criminal courts can impose fines and imprisonment for several years on anyone committing a criminal act against copyrights. The tax-applicable withholding income to royalties derived from copyrights is in the order of 30%, including for non-domiciled taxpayers.

9.24. Copyrights-Computer software

Computer software is regulated by Legislative Decree No. 822 and Decision No. 351 of the Andean Community. These regulations provide mainly for the protection of software as copyright. Software developed in Peru or abroad is regulated in the same way.

Computer programs are protected on the same terms as literary works. Economic or patrimonial rights expire after 70 years counted since the first publication date, or when finished. The protection of software does not depend on registration; therefore, the author does not need to register it in order to have full protection of its work. However, as with copyrights, it is prudent to register it at INDECOPI in case of litigation.

9.25. Technology transfer agreements

There is no need for authorization by a government agency before one can enter into technology transfer agreements, licenses for the use of patents, trademarks, and other foreign copyrights, technical assistance, basic and detailed engineering, and franchises. However, this sort of agreement which includes payment of royalties has to be submitted to registration by the Inventions and New Technologies Direction in INDECOPI.

Agreements must include the following clauses:

- Clauses that identify the parties, expressly
- Express mention of their domiciles and nationalities

- A description of the technology transferred
- The value assigned to each element of the contract
- The duration of the contract

The conditions of the agreement can be freely negotiated, with the exception of technology transfer agreements containing clauses prohibiting or limiting any type of exportation to Andean Community countries of products manufactured, because INDECOPI does not register these kinds of agreements.

These agreements give the right to remit royalties or stipulated payments abroad in strong currency and through the banking system, after tax deduction. There is no need for government authorization to forward royalties or payments.

9.26. E-commerce

Electronic signatures are regulated by the following laws:

The Digital Signatures and Certificates Law, Law 27269, enacted in 2000.This law regulates the use of electronic signatures, as well as granting digital signatures the same legal validity and effectiveness as a manual signature.

The Regulations of the Digital Signatures and Certificates Law, enacted in 2002, stipulates that INDECOPI is the competent administrative authority.

The Anti-Spam Law, Law 28493 enacted in 2005, requires any sender of any advertising e-mail to indicate that fact in the e-mail subject. A sender who does not comply with this law is subject to a fine.


ESTUDIO OLAECHEA
CHAPTER 10
Labor and Immigration

CHAPTER 10

Labor and Immigration

10.1. Labor laws

The Employment Law approved by Legislative Decree No. 728 of November 12, 1991 regulates the relationship between individual employees and employers. The Labor Relations Law enacted by Supreme Decree No. 010-2003-TR of October 5, 2003 regulates unions, collective labor negotiations, and strikes. Legislative Decree No. 689 of November 5, 1991 regulates the specific conditions for contracting foreign employees. The above-mentioned laws have been amended by different laws.

10.2. Employee/employer labor relations

According to labor legislation, employers could sign with employees nonfixed-term or fixed-term agreements. As a general rule, labor agreements are under nonfixed-term agreements and have no formalities.

Labor agreements with different benefits than the legal ones should be in writing to reflect the terms and conditions agreed to by the parties are different than the ones established by the law. Also, if the labor agreements have a fixed-term, they must be held in writing and in triplicate, and their duration must be expressly stated, including the determining objective causes of the hiring, as well as the other conditions of the employment relationship. Part-time contracts and those celebrated with foreign personnel must be presented to the Administrative Labor Authority. They must be reported to the Administrative Labor Authority.

Fixed-term agreements may be renewed several times but the aggregate term may not exceed five years. The term depends on the type of agreement. Employees hired under fixed-term contracts must enjoy the same benefits and rights as the employees hired under nonfixed-term labor contracts.

10.3. Protection against arbitrary dismissal

The Peruvian Constitution recognizes the protection of the employee against arbitrary dismissal. This protection applies once the trial period is finished, and if the employee worked at least four hours per day.

According to Peruvian legislation, the first three months counted from the hiring date is considered as a trial period. Nevertheless, the trial period may be extended to six months if the employee is qualified and to one year if the employee holds a managerial or executive position. Once the employee has passed the trial period, he or she may not be fired unless fair reason is given, as discussed below.

10.4. Protection against arbitrary dismissal-Reasons and infringements

Fair reason for dismissal of an employee may include:

1. Capacity of the employee:

- Supervening physical, intellectual, mental or sensory disabilities when the pertinent adjustments performed impede the development of the functions, as long as there is not a vacancy position to be transferred and it does not imply any risk for the security and health (of the worker as well as of third parties).
- Deficient performance in relation to the ability of the worker and with the average work performance under similar conditions.
- Unjustified refusal of worker to submit to medical examination prearranged in the Law, which is determinative for the labor relationship or to comply with prophylactic or curative measures prescribed by the doctor to avoid illnesses or accidents.

2. Behavior of the employee:

- Serious offenses;
- Criminal conviction for intentional crime; and
- Disqualification of the employee.

The following are considered serious offenses:

- Noncompliance with working obligations;
- Deliberated and repeated decrease in performance in the undertaking of the employee's tasks or
- their volume or quality;

- Consummated or frustrated appropriation of goods or services of the company; as well as the
- retention or improper use of them for their own benefit or of third parties;
- The use or delivery to third parties of confidential information of the company;
- The theft or unauthorized use of company documents; false information to the employer with
- the intention of causing injury or obtaining an advantage; and unfair competition;
- Repeated attendance under the influence of alcohol, drugs, or narcotics;
- Acts of violence, serious lack of discipline, perjury, or verbal or written statements made to the
- detriment of the company;
- Intentional damage to facilities, works, equipment, and other property belonging to or in
- possession of the company;
- Unjustified absences from work for more than three consecutive days, five days within a period
- of 30 days, or fifteen days during a period of 180 calendar days.
- Sexual harassment committed by representatives of the employer or who have authority over
- the worker or committed by a worker.

10.5. Protection against arbitrary dismissal-Indemnity for unfair dismissal

The employee who is unfairly dismissed has the right to receive a special indemnity. An employee under nonfixed-term agreement has as special indemnity of an equivalent to 1.5 monthly salaries per year of service with a maximum of 12 monthly salaries. Periods of time less than one year are paid proportionally.

If the employee is hired under a fixed-term agreement, the indemnity is equivalent to 1.5 monthly salaries per each month remaining until the end of the agreement. Such indemnity may not be higher than 12 monthly salaries.

In addition, the Constitutional Court has stated in different resolutions that the employee who is dismissed by the employer has the right to be restored to the workplace. Taking these resolutions into consideration, the dismissal process has to be reviewed carefully and evaluated for special circumstances.

10.6. Labor benefits

Peruvian legislation establishes certain benefits in favor of the employees, with which the employers must comply. The main legal benefits are discussed in sections 10.7 to 10.16 below.

10.7. Labor benefits-Severance payments and/or compensation for time served (CTS)

Private sector employees working four or more hours per day enjoy severance payment.

On May and November of each year, employers must deposit as many twelfths of the applicable remuneration earned by the employees in the months of April and October, respectively, as the number of full months worked.

Fractions of a month must be deposited in thirtieths. Applicable remuneration is defined as basic remuneration plus any amounts earned by the employees in cash or kind as a consideration for their work, provided it is freely available. There are specific rules to pay and deposit the severance payment.

10.8. Labor benefits-Bonuses

Employees have the right to receive two bonuses per year, one for Independence Day and the other for Christmas. Bonuses must be paid on the 15 of July and December, respectively, and the amount of the bonus consists of the basic remuneration amount plus any other amount fixed and permanently earned by the employee and which is freely available.

If the employee has worked less than six months for the employer, he or she will receive a bonus in proportion to the number of months worked. The employee will have the right to receive this bonus only if he or she has worked the entire month.

10.9. Labor benefits-Annual vacation

Employees are entitled to 30 calendar days' vacation for each full year of service, provided they worked at least four hours per day.

However, in order to earn vacations, employees working six days a week must have actually worked 260 days a year. Employees working five days a week must have worked 210 days a year. In cases where the work plan is developed for only four or three days a week or suffers temporary stoppages authorized by the Administrative Labor Authority, employees shall be entitled to vacation, provided that their unjustified absences do not exceed ten days during that period.

For the purposes of completing the labor record, any of the following cases are also considered as working days:

- employees who work at least four hours a day;
- employees who work on his or her day off regardless of the effective number of hours worked;
- four or more extra hours worked in a day;
- the first 60 days of absence within each year of service due to common disease, occupational accidents, or work-related illness;
- Rest before and after childbirth;
- Union leave;
- Absences or absences authorized by law, individual or collective agreement or decision of the employee;
- The vacation period corresponding to the previous year;
- On strike days, unless it has been declared inadmissible or illegal.

By written agreement between the employer and the employee, rest days can be granted on account of the vacation period generated in the future. If the employment relationship is terminated, the rest days granted in advance will be compensated with the days of truncated vacations acquired by the employee on the day of cessation. Those days that cannot be compensated with the truncated vacations acquired do not generate obligation of compensation to the employee.

Also, by written request of the employee, the enjoyment of the vacation period may be divided as follows: i) fifteen calendar days, which may be enjoyed in periods of seven and eight uninterrupted days; and, ii) the rest of the vacation period may be enjoyed fractionated in periods of at least one calendar day.

The vacation break can be reduced from thirty to fifteen calendar days with the respective compensation of 15 days of remuneration. The reduction agreement must be made in writing. The reduction can only be attributed to the vacation period that can be enjoyed in a fractional way in periods even less than seven calendar days.

Vacation pay is equivalent to the remuneration that employees would have normally received.

10.10. Labor benefits-Profit sharing

Employees of companies developing activities that generate incomes of the third category (income obtained by resident business entities) and, subject to the private activities system, share the company's profits according to the percentages set forth by law, as per the following table:

Activity	Percentage
Mining companies	8%
Fishing companies	10%
Industrial companies	10%
Telecommunication companies	10%
Wholesalers, retailers, and restaurants	8%
Other activities	5%

Companies with fewer than 20 employees or civil corporations do not pay profit sharing.

10.11. Labor benefits-Weekly rest

Employees have right at least to a rest of 24 consecutive hours per week, preferably on Sunday.

Those employees who work on their rest day without replacing it with another day in the same week will have right to a compensation corresponding to the work performed plus an overtime rate of 100%.

10.12. Labor benefits-Holidays

Employees are entitled to paid leave during the holidays approved by law. These are:

- New Year's Day (January 1)
- Easter Thursday and Good Friday (changeable)
- Labor Day (May 1)
- Saint Peter and Saint Paul's Day (June 29)
- Independence Days (July 28 and 29)
- Battle of Junin (August 6)

- Saint Rosa of Lima's Day (August 30)
- The Battle of Angamos' Day (October 8)
- All Saints Day (November 1)
- Immaculate Conception's Day (December 8)
- Battle of Ayacucho (December 9)
- Christmas (December 25)

Employees are entitled to regular remuneration for the holiday, in an amount equal to one day's work, which will be paid proportional to the number of days actually worked, except for Labor Day, which is paid unconditionally.

All work performed on holidays without being replaced by another day, is subject to regular payment plus an overtime rate of 100%.

10.13. Labor benefits-Workday and overtime

The usual working day for women and men is eight hours per day and 48 hours per week as a maximum. The employer may establish atypical working days or alternative working regimes due to production requirements which may not exceed the 48 hours per week.

However, Peru's Constitutional Court has accepted alternative working regimes that do not exceed 144 hours per three weeks.

The time worked exceeding the working day or per week will be considered as overtime and be paid with surtax to be agreed that, for the first two hours, cannot be less than 25% per hour calculated over the ordinary remuneration received or compensating with periods of rest. From the third hour on the charge will be 35%. Some personnel have no right to overtime such as direction personnel, personnel who have no direct supervision, trusted personnel who have disposition over their time, and other cases established by the law.

Employees performing night work may not receive remunerations lower than the minimum monthly remuneration in force, plus a 35% surtax. Night work is defined as any work performed between 10 p.m. and 6 a.m.

10.14. Labor benefits-Family allowance

Employees, whose remuneration is not regulated by collective bargaining, and who have at least one son or daughter under 18 years enjoy the equivalent of 10% of the Minimum Remuneration in force at the time when this benefit is enjoyed. Currently, the Minimum Remuneration is S/.1,025.00, equivalent to U.S $ 266.23, approximately.

10.15. Labor benefits-Life insurance

Employees and workers are entitled to life insurance, for which the employer is responsible from the beginning of the labor relation. The employer is obliged to contract the insurance policy and to pay the corresponding premiums.

In the event that the employer does not comply with this obligation, and the employee or worker dies or suffers an accident causing his or her temporal or permanent disability, the employer must pay his or her beneficiaries the value of the insurance established by law.

10.16. Labor benefits-Food assistance

Employers may grant its employees food vouchers. The amount of the food vouchers may not be higher than 20% of the monthly remuneration of the employee nor exceed the equivalent of two minimum award remuneration (whose actual amount is S/. 2,050.00, equivalent to U.S.$ 532.460, approximately).

Food vouchers are granted only by companies incorporated for such purpose and which are duly registered.

The food voucher is only levied with the income tax, and not by the other social contributions, nor will it be considered for the calculation of the employee's labor benefits.

10.17. Employees' and employers' contributions

Both the employee and the employer make different contributions for the employees' benefit. Each of these types of contributions is discussed below in sections 10.18 and 10.21.

10.18. Employees' and employers' contributions-Pension fund

If an employee is in the pension system (in an AFP), the employer must deduct from the employee's monthly remuneration an amount equal to the rate of approximately 12.83%. If the employee works for the public system, the rate is 13%.

At the end of his or her stay in Peru, a foreigner can transfer abroad the funds accumulated in the private pension system.

10.19. Employees' and employers' contributions-Income tax

Income tax is deducted from an employee's pay. The retention will be done during the year.

Calculation for persons considered as domiciled in Peru for tax reasons. For a person domiciled in Peru for tax reasons, the calculation should be made as a projection of the annual remuneration that the employee will receive, deducting an amount corresponding to 7 UIT7 or approximately U.S.$. 8,363.63.00 for year 2022.

To the difference obtained, the following rates will be applied:

Up to 5 UIT	8%
More than 5 UIT up to 20 UIT	14%
More than 20 UIT up to 35 UIT	17%
More than 35 UIT up to 45 UIT	20%
More than 45 UIT	30%

Once the rate is applied over the difference, the resulting annual tax will be divided among the months of the year.

Calculation for persons considered as non-domiciled in Peru for tax reasons. The employer withholds 30% for all amounts of monies delivered to the employee.

[7] The value of the UIT is of S/4,600 in 2022.

10.20. Employees' and employers' contributions-Social security (ESSalud)

Employers are obligated to register their employees in the national health system and must pay the equivalent of 9% from the monthly remuneration of each employee for this purpose.

10.21. Employees' and employers' contributions-Private health system (EPS)

It is possible for employees to be affiliated with a Private Health Company that is complimentary to the service provided by ESSalud. In this case, the employer must pay the cost of the service to the EPS of 2.25% and should pay 6.75% of the monthly salary to ESSalud.

10.22. Employer monthly cost

Taking into consideration the benefits and contributions previously discussed in sections 10.7 to 10.21 above, the structure of the monthly costs for the company that hires an employee will be the following:

	Employer	Employee
Remuneration	100%	
ESSalud	9%	
Vacations	8.33%	
Bonuses	16.66%	
Severance Payment and/or Compensation for time served (CTS)	11.66% (approx.)	
Income Tax		According to scale
AFP (Pension)		12.9% (approx.)

10.23. Micro, small and medium enterprises labor regime

Legislative Decree No. 1086 of June 28, 2008 and Supreme Decree 013-2013-PRODUCE of December 27, 2013, establish a special labor regime applicable for micro enterprises and small enterprises in order to promote the development of these types of companies and to battle against the informal economy.

Consequently, Peru's labor legislation defines as microenterprise those that have an annual sale that does not exceed 150 Tax Reference Units (UIT) (approximately U.S.$ 179,220.77).

On the other hand, small enterprises have annual sales of over 150 UIT and up to 1700 UIT (approximately U.S.$ 2,031,168.83).

Medium-sized enterprises are those with annual sales in excess of 1700 UIT and up to a maximum of 2300 UIT (approximately US $ 2,748,051.94).

Employees who work in these micro and small enterprises are entitled to the following labor benefits:

- For both, vacations for 15 days per full year of service;
- For both, minimum vital remuneration.
- For the employees of the small enterprises, two bonuses, each one of a half salary, paid on July 15 and December 15, respectively. The amount of these bonuses is equivalent to 15 days of remuneration per each year of service;
- For the employees of the small enterprises, Compensation for time served (CTS), which must be deposited by the employer in the months of April and October of each year. This benefit is equivalent to 15 days of remuneration per each year of service, with a maximum of 90 days of remuneration.
- For the employees of small enterprises, the right to participate in profits.

The enterprises that are considered as micro or small enterprises, according to the above, can choose a special labor regime that has lower labor costs, as per the following table:

	Employer	Employee
Remuneration	100%	
Vacations	4.165%	
Bonuses	8.33%	
Severance Payment and/or Compensation for time served (CTS)	5.83% (approx.)	

In addition, there are special regulations regarding social security, pension fund, income tax, and indemnity in case of arbitrary dismissal of these enterprises' employees, which is equivalent to 10 days of remuneration per each year of service with a maximum of 90 days of remuneration in case of microenterprises, and 20 days of

remuneration per each year of service with a maximum of 120 days of remuneration in case of small enterprises.

Medium enterprises are governed by the general business labor of private activity.

10.24. Unions and employer relations

Peru is a member of the International Labor Organization (ILO). Employees can belong to different types of unions. Unions can be of four types:

- Business Unions, formed by employees of different professions, occupations, or specialties, working for the same employer;
- Group of companies' unions;
- Activity Unions, formed by employees of diverse professions, specialties, or occupations who work for two or more companies in the same branch of activity, or who participate in the same activity;
- Labor Unions, formed by employees of diverse enterprises that perform the same occupation, profession, or specialty; and
- Various Occupation Unions, formed by employees of diverse professions, occupations, or specialties working for several or different enterprises,
- Production chain or subcontracting networks' unions;
- Of any other area that the employees deem convenient.

Affiliation with a union is voluntary. To be a member of the union, employees must work in the enterprise, activity, profession, or occupation that corresponds to each type of union. Managers and executive employees are not allowed to be part of unions, unless the bylaws establish otherwise. Also, to become a member of a union, the employee must not be affiliated with another union.

Unions represent employees in collective labor negotiations with employers. The collective bargaining agreement reached prevails over individual labor contracts. This agreement is for one year unless the parties agree otherwise. If no agreement is reached between the union and the employer, parties may request that the Labor Department call for a conciliatory meeting. If no conciliation is achieved, parties may request arbitration. The arbitration authority, which can be a person or an arbitration panel, can only decide about the position of the union or the employer and may not suggest solutions different from those proposed by the parties. However, the union maintains its right to opt for a strike and not for the arbitrage.

A strike is considered legal if it occurs in defense of the socio-economic or professional rights and interests of employees established in the law, and if more than 50% of the employees agree with it. Also, in order to be considered legal, the collective bargaining process should have not been submitted to arbitration.

10.25. Occupational Safety and Health

The Occupational Health and Safety Act, Law 29783, establishes minimum standards for the prevention of occupational risks, and employers and employees may freely establish levels of protection that improve the provisions of the Act.

This Act applies to all economic and service sectors; it covers all employers and employees in the private sector throughout the country, employees and civil servants in the public sector, employees in the Peruvian Armed Forces and National Police, and self-employed employees.

The Act is understood to include all persons undergoing training and self-employed employees within the scope of application. Also included is anyone who, without providing services, is within the workplace, insofar as applicable.

By collective agreement, employment contract or unilateral decision of the employer, higher levels of protection than those provided for in the Law may be established. Employers may also apply international standards on occupational safety and health to address situations not covered by national legislation.

10.26. Immigration classifications

Foreign people who enter Peru to carry out various activities are subject to different immigration classifications. Each classification has a different type of visa. Legislative Decree No. 689 establishes the regulation of foreigners, regarding their hiring.

On the other hand, Legislative Decree No. 1350, Legislative Decree on Migration, recognizes, among others, the following types of migratory qualities:

10.27. Immigration classifications-Temporary immigration status

It allows the entry and stay of a foreigner in the territory of the Republic, without the intention of residence. The following are some of the temporary migratory qualities:

10.28. Immigration classifications-Temporary immigration status-International Agreements

It allows the entry and stay of a foreigner, as stipulated in international treaties and conventions to which Peru is a party. It is granted by the Migration Office.

Application, period of stay, possibility of extension and other characteristics will be those stipulated in international treaties or conventions to which Peru is a party.

10.29. Immigration classifications-Temporary immigration status-Artistic or Sports

It allows a foreigner to develop paid or lucrative activities, linked to artistic, cultural, sports and other similar shows by virtue of a contract in accordance with the regulations in force. It is granted by the Migration Office, prior entry to the country. The period of stay is 90 days, which cannot be extended.

10.30. Immigration classifications-Temporary immigration status-Businesses

It allows the foreigner without intention of residence to carry out activities of a business, legal, contractual, specialized technical assistance or similar nature. The period of stay is 183 days, cumulative for a period of 365 days, which is not extendable.

10.31. Immigration classifications-Temporary immigration status-Employee/ Temporary designee

It allows the entry and stay of foreigners who wish to carry out the same activities referred to as resident, employee and designated resident migratory qualities, but with no intention of residence. The period of stay is 183 days, cumulative for a period of 365 days, extendable for the same period.

10.32. Immigration classifications-Temporary immigration status-Tourist

It allows multiple entries abroad for the purpose of carrying out only tourist, leisure, health or similar activities.

The period of stay is 183 days, which may be accumulated over a period of 365 days, which may not be extended.

10.33. Immigration classifications-Resident immigration status

Authorizes entry and/or residence in the territory of the Republic, which are renewable and allow multiple entries. These are, among others, the following:

10.34. Immigration classifications-Resident immigration status-Designated

It allows the foreigner to carry out work activities in the national territory consisting of the performance of a specific task or function or work requiring professional, commercial, technical or specialized knowledge sent by a foreign employer. The period of stay is 365 days.

10.35. Immigration classifications-Resident immigration status-Training and education

It allows the foreigner to develop regular studies of higher education, basic education, arts or crafts, on institutions recognized by the State. The period of stay is 365 days.

10.36. Immigration classifications-Resident immigration status-Investor

It allows the foreigner to establish, develop or manage one or more lawful investments. The period of stay is 365 days.

10.37. Immigration classifications-Resident immigration status-Employee

It allows the foreigner to carry out gainful activities in a subordinate or independent manner for the public or private sectors, by virtue of an employment contract, administrative relationship or contract for the provision of services. The period of stay is 365 days.

10.38. Immigration classifications-Resident immigration status-Resident family member

It allows residence to the foreigner who is a member of the family immigration unit of a Peruvian or resident foreigner. It allows carrying out subordinate or independent gainful activities. The period of stay is up to 2 years.

10.39. Immigration classifications-Resident immigration status-Rentier

It allows the residence to the foreigner who enjoys retirement pension or permanent income from Peruvian or foreign source. The period of stay is indefinite.

10.40. Immigration classifications-Resident immigration status-Permanent

It allows the foreigner to reside indefinitely after 3 years as a legal resident. The period of stay is indefinite.

10.41. Immigration classifications-Foreigners entering Peru using the Asia-Pacific Economic Cooperation's business travel card

A foreigner may come into Peru without planning to establish a residence, using the Asia-Pacific Economic Cooperation's business travel card (APEC business travel card) stamped by the Ministry of Foreign Affairs. These foreigners are allowed to sign agreements or transactions for up to 90 days, extendable according to law. However, they cannot perform any remunerated or lucrative activity nor receive any Peruvian income source, except expenses as directors of companies domiciled in Peru. In the event of receiving a Peruvian source, they shall comply with the provisions of the income tax law.

10.42. Immigration classifications-International agreement Mercosur

Since 2011, the free movement of persons between the Mercosur countries has been facilitated through the "Agreement on Residence for Nationals of Mercosur States Parties" and the "Agreement on Residence for Nationals of Mercosur States Parties, Bolivia and Chile".

These mechanisms grant Mercosur citizens the right to obtain legal residence in the territory of another State Party. They are currently in force in Argentina, Brazil, Paraguay, Uruguay, Bolivia, Chile, Peru, Colombia and

Ecuador.

With this migratory status, the following benefits are acquired:

- Temporary residence in Peru for 2 years.
- It allows to work and access health services, among others.
- Right to apply for permanent residence within 90 days before the expiration of the temporary residence.

10.43. Temporary permit to stay (PTP)

The temporary permit to stay (PTP) is a document issued by the Migration Office that allows the following: (i) Accredit the regular migratory situation of Venezuelan citizens in the country for a period of one year and; (ii) Develop activities within the framework of Peruvian legislation. The PTP applies to persons of Venezuelan nationality who have entered the national territory until October 31, 2018.

10.44. Immigration Regularization Procedure (CPP)

This is an immigration procedure whose objective is to regulate the immigration status of foreigners who are in an irregular immigration situation in the Peruvian Territory, in accordance with the provisions of Supreme Decree No. 010-2020-IN.

A foreigner is considered to be in an irregular situation when: (i) the period of stay corresponding to the migratory status assigned by the Migration Office has expired, and the person remains in the national territory, (ii) when he or she has entered the country without having completed the immigration control.

With this procedure, the foreigner obtains a temporary residence permit (CPP) and can carry out work activities and access health and education systems. This is not renewable, before its expiration the foreigner must make his change of migratory status to one of the migratory status established in the law.

Until now, the deadline to request this document is in force until March 31, 2022, a deadline that could be extended by the government.

10.45. Hiring of foreigners

The foreigner who comes into the country to perform labor activities must first have his labor agreement approved by the Labor Ministry. He may receive a resident visa and stay in the country for the term of the employment agreement. Foreigners wishing to work in Peru are subject to the procedures for hiring foreigners established in Legislative Decree No. 689.

National and foreign companies can hire foreign personnel who enjoy the same rights and obligations as Peruvian employees, unless certain limitations apply as stated below. The labor agreement must be in writing and approved by the respective Administrative Labor Authority. For that, it must be filed virtually through the virtual platform SIVICE for its automatically approvement. The agreement term cannot exceed three years, although it is possible to renew the contract subsequently for terms not greater than three years.

There are some restrictions to hiring foreign personnel:

- Foreign employees could be not more than 20% of all the personnel registered on the company's payroll;
- Foreign employees may not receive remuneration exceeding 30% of the entire payroll of wages and salaries.

However, these restrictions are not applied for the following foreigners:

- Foreigners who have a Peruvian spouse, ascendants, descendants, or siblings;
- Foreigners holding an immigrant visa;
- Foreigners where the country of origin has executed labor reciprocity or double nationality agreements with Peru;
- Personnel belonging to foreign companies dedicated to transport, terrestrial, aerial, or aquatic international service with flag and foreign registration;
- Foreign personnel working for multinational service companies or banks;
- Foreign personnel providing services in Peru by virtue of bilateral or multilateral accords with the Government of Peru;
- Foreign investors, provided that during the term of the contract, the investor maintains a permanent investment of not less than 5 UIT (approximately U.S.$ 6,345.56); and
- Artists, sportsmen, and in general those participating in public events within Peru, during a maximum period of three months per year.

Likewise, the two restrictions on hiring can be waived by employers, in the following cases:

- When the personnel involved are professionals or specialized technicians;
- When the personnel hold a management position in a new business activity or a restructured business;
- When the personnel are teachers for private schools or colleges;
- When the personnel belong to the public sector or private companies that have signed agreements with agencies, institutions, or firms in the public sector; and
- Any other cases established by law.

10.46. Andean migrant employee

Decision No. 545, referred to as the Andean Instrument of Labor Migration, establishes that nationals of Ecuador, Colombia, Peru, and Bolivia are allowed to work with a labor agreement in any of the Andean Community member countries (CAN).

This proceeding is easier than the one required for hiring other types of foreigners. The Andean migrant employees must be registered with the Labor Ministry. The labor agreement may have an indefinite time.

The Labor Ministry will issue in favor of the employee a Migrant Employee Andean Certificate. The Andean migrant employee will be considered as a national employee.

10.47. Other forms of hiring-Labor mediation

Companies are entitled to hire service companies or workers' cooperatives to provide various services or activities with their employees. These service companies or cooperatives have as sole purpose the rendering of services through labor mediation.

Labor mediation companies cannot be hired to render services which will imply the execution of activities related to the main purpose of the user company. They may only provide the following activities and services:

Specific Activity: Defined as secondary or supporting activity, that is not related with the main activity of the company and demands a high level of technical, scientific, or qualified knowledge such as maintenance, accounting, legal, etc. The hiring of this kind of activity has no limitation regarding the number of personnel that can be hired under this way, neither the term of the agreement.

Complimentary Activity: Defined as secondary or supporting activity and which is not related with the main activity of the company such as the surveillance, security, maintenance, mailing, and cleanness. The hiring of this kind of activity has no limitation regarding the number of personnel that can be hired or the term of the agreement.

Temporary Services: It is the assignment of one or more workers to the user company, so that they can perform tasks exclusively of an occasional or substitute nature, under the direction and supervision of the user company. It should be done for a short term of time; such as the substitution of an employee during his or her vacations. Employees of outsourcing companies may not exceed the 20% of all the personnel of the user company and the maximum term for hiring is six months in a period of one year.

User companies are not related with the employees who provide services through labor mediation companies.

Service companies' or cooperatives' employees have the same rights and benefits as the user company's employees. However, if the service company does not comply with its labor obligations as the employer and the comfort letter granted by the user company does not cover all the debt with the employees, the user company will be held jointly liable for the payment of such debt for the time the employees rendered their services.

10.48. Other forms of hiring-Outsourcing

According to the law that regulates outsourcing services, Law 29245, outsourcing means hiring companies to develop specialized activities. These companies must assume the services rendered by their own account and risk, have their own financial, technical, and material resources, respond for the results of their activities, and guarantee that their employees work under their exclusive subordination.

However, in order to be under the scope of this legislation, outsourcing services must be carried out with the continuous displacement of the workers/employees. In other terms, the displacement of the workers is continuous when:

The displacement occurs in a term that exceeds 1/3 of the working days that, according to the agreement, must be worked; and

The displacement exceeds 420 hours or 52 effective working days, consecutive or not, in the same semester.

The main company that hires the work or services of the assigned personnel from the outsourcing company is held jointly liable with the primary employer for the payment of the labor benefits and social security obligations accrued during the time the employee was assigned. This responsibility extends for one year after the completion of displacement.

10.49. Equal pay

The law that prohibits remunerative discrimination between men and women and its regulations, indicate the need to determine categories, functions and remunerations that allow the execution of the principle of equal remuneration for work of equal value. Companies have, among others, the following obligations:

Obligation to categorize workstations using category and function tables.

Obligation to establish salary categories or remuneration policies without incurring in direct or indirect discriminations based on sex. This must be informed to the employees, as well as the criteria of performance evaluations or others that have an impact on their remuneration.

Objective and reasonable differences will not be considered as those directly or indirectly related to pregnancy, motherhood, fatherhood, lactation, family responsibilities or being a victim of violence.

Measures should be taken as necessary to avoid periods of temporary incapacity for work, linked to pregnancy, maternity or paternity leave, legal or conventional, breastfeeding leave or the assumption of family responsibilities, have an impact adverse in the allocation of remunerative increases and/or benefits of any other nature.

The employer must implement guidelines for the work environment based on respect and non-discrimination, as well as the compatibility or conciliation of personal, family and work life.

It is prohibited for the employer to dismiss or not renew employment contracts for reasons related to the condition that the employees are pregnant or lactating.

The working father will have the right to start the vacation rest period for a record already completed, and still pending of enjoyment, from the day after paternity leave expires.

Prohibition of discrimination in job offers and access to educational training means.

The promotion of male and female employees is a faculty of the employer that must be exercised considering objective and reasonable criteria.

10.50. Sexual harassment

Sexual harassment occurred in the relationship of authority or dependency is regulated by the Law of Prevention and Punishment of Sexual Harassment, regardless of the legal form of the relationship.

It is duty of the employers to train employees on the norms and policies against sexual harassment in the company. In the event that an employee has been harassed, the employer must amend the damage caused to those employees and take the necessary measures to stop the abuse and have a Committee (20 or more employees) or a Delegate of intervention against sexual harassment.

They must also inform the Ministry of labor and Employment Promotion (Administrative Authority) about the cases of sexual harassment and the results of the investigation carried out.

CHAPTER 11

Security Interests

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Security Interests

11.1. Generally

Security interests under Peruvian Law involve:

- Guarantee over chattel (Pledge)
- Mortgage
- Reverse Mortgage
- Antichresis
- Retention right
- Trust

The first two are the most widely used. The main characteristic of security interests in Peru is that they are guarantees to underlying obligations and do not have an independent existence.

11.2. Guarantee over chattel (Pledge)

Law of Collateral over Chattels, Law No. 28677, in force since May, 2006, regulates guarantee over chattels with the purpose of protecting the credit rather than the debtor or the creditor. It is quite an innovative law since it gives the parties a wide margin to regulate the make-up and expansion of the collateral.

11.3. Guarantee over chattel-Characteristics

The guarantee over chattel is a type of collateral that guarantees all kind of obligations, current or future, determined or determinable, subject or not to a modality, and it can be granted with or without dispossession of the chattel.

11.4. Guarantee over chattel-Creation

The act which incorporates a guarantee over chattel must be granted in writing and recorded in the proper registry in order to be defended against third parties.

Guarantees over chattel can be created in the following cases:

- Over chattel belonging to third parties, before the guarantor acquires the property.
- Over a future chattel, before it exists.
- To ensure the compliance with future or eventual obligations.

In these cases, the characteristic of being a future chattel, a chattel belonging to a third party, or ensuring compliance with future or eventual obligations must be stated in the Guarantee over Chattel Agreement.

The efficacy of the pre-composed guarantee over chattels is subject to the following rules:

- If the chattel belongs to a third party, the guarantor must acquire the property of said chattel.
- If it is a future chattel, the efficacy is subject to the existence of the chattel.
- In the case of a future or eventual obligation, the efficacy is subject to the actual contract of the obligation.

11.5. Guarantee over chattel-Possibilities for creating later mortgages over chattel

Within the duration of the collateral, the make-up of the collateral may incorporate mortgage over chattel of second and lower ranks over the same, giving notarial notice, as the only formality to be observed, to the guaranteed creditor of the first collateral.

11.6. Guarantee over chattel-Consequences for noncompliance

With noncompliance of the guaranteed obligation, the creditor gains the right to acquire possession of the chattel and, if necessary, to retain the chattel affected by the collateral.

The guaranteed creditor will have the right to sell the chattel for payment of the guaranteed obligation.

11.7. Guarantee over chattel-Recordation

A guarantee over chattel must be recorded in the corresponding registry in order to be defended against third parties. Once the collateral acquires its efficacy, the effects of the collateral are dated back to the date on which it was recorded in the Public Registry. If the guarantee over chattel falls into a good that is not recorded in an specific registry (such as the vehicles registry or the vessels or aircraft registry) the guarantee shall be recorded in the Chattel Contract Registry.

11.8. Guarantee over chattel-Execution

A guarantee over chattel may be executed in two ways:

I. In the terms established in the constitutive act of the collateral (the agreement).

II. In the way established by law.

In the first way, the parties have a wide margin of freedom to dispose the way in which the collateral will be executed. In the second way, the collateral is executed as follows:

a) A specific and irrevocable power of attorney will be granted in the constitutive act of the collateral, to a common representative, to sell and formalize the property transfer of the chattel affected by the collateral. The guaranteed creditor is not allowed to be the representative, and the power of attorney must be inscribed in the Public Registries.

b) Once the noncompliance of the debtor is produced, the creditor must show evidence of it through a notarial letter addressed to the debtor and the representative and, if applicable, to the guarantor.

c) The guaranteed creditor can proceed to sell the movable affected by the collateral after three working days following the date in which the notarial letter is received by the debtor.

Bear in mind that whether execution is done in either of the two ways mentioned above:

- A judicial procedure is not necessary for performing the execution of the guarantee.
- It is valid to agree that the creditor will deem the property of the chattel as a way of payment.

- The sale price of the chattel affected by the collateral must be at least two thirds of the value agreed by the parties. In case the value of the chattel was not agreed to by the parties, the sale price must be at least two thirds of the chattel's commercial value at the time of the sale.

11.9. Mortgages

Real estate property can be mortgaged, and it is ruled by the Civil Code. It is a common guarantee usually used to obtain the necessary credit since it is the best guarantee of the fulfillment of the obligation contracted.

Unlike antichresis, the debtor in the mortgage has an advantage since the real estate property can be occupied and used, this being the reason why it is more used.

11.10. Mortgage-Requirements for the validity of the mortgage

The following requirements must be met for a mortgage to be valid:

a) It must affect the owners' good;

b) It must assure the fulfillment of a determined or determinable obligation;

c) The burden must be upon a determinate or determinable amount;

d) It is recorded in the Registry of Real Estate Property.

Bear in mind that future assets, public goods, third parties' goods, or family patrimony cannot be granted in a mortgage.

11.11. Mortgages-Consequences for noncompliance

With respect to a mortgage, if there is a breach of the underlying obligation, the secured party may initiate an execution proceeding for the foreclosure of the property and collect on the debt from the proceeds of the sale.

11.12. Mortgages-Recordation

Mortgages must be executed before a public notary who issues a public deed. Perfection of the collateral requires its filing in the Real Estate Property Registry of the Registry Office where the property is located.

11.13. Reverse Mortgage

By a reverse mortgage, an authorized entity, among them, banks, insurance companies, and finance companies, grants a loan in favor of the owner or holder of a property or property right, against a mortgage of that property. The refund of the loan and the guarantee will be executed upon the death of the owner.

The amount of the loan will be established based on the value of the property, the life expectancy of the owner and the applicable interest rate, among others.

The disbursement of the credit by the authorized entity will be made in a single disbursement or periodic disbursements during the term agreed in the respective contract.

The parties may agree to contract an insurance that allow the owner or owners to receive a life insurance after the agreed credit has been fully disbursed.

The execution of the reverse mortgage can be carried out extrajudicially, notwithstanding that the authorized entity uses the judicial court, if deemed appropriate.

11.14. Antichresis

Antichresis is a contract whereby real estate property is given to the secured party, who may use it and take the profits in payment of the debt or the interest thereon.

This collateral is formalized through public deed, which must include the agreed income of the real estate property. Its recordation in the Public Registry is not necessary.

The obligation secured does not have to be related to the real estate property.

11.15. Retention right

With a retention right, a creditor has the right to hold the debtor's property, whether it is personal or real, on a temporary basis, if the underlying obligation is not adequately guaranteed. In this context, it is understood that an obligation is not adequately guaranteed when the value that is expected to receive at the good's execution, would not be enough to cover the value of the guaranteed obligation.

The retention right does not prevent the attachment and auction of the property; without prejudice to the fact that, even if the obligation is not fulfilled, the retainer does not acquire the ownership of the retained property. The right of retention disappears as soon as the debt is paid or when it is duly guaranteed.

11.16. Retention right-Requirements

The requirements for a valid retention right are as follows:

I. Possession: The creditor must possess the goods; without this, there is no right.

II. Credit: It must exist as a justification of the retention right. It also must be actual and necessary.

III. Connection: It must exist between the retained good and the necessary credit. (For example, rented property is retained until the payment of the improvements that were introduced and authorized according to the agreement).

IV. Insufficiency of the guaranty: The retention right is a subsidiary guaranty that works when there is no principal guaranty or it is insufficient to guarantee the obligation (For example: If there is a fund to pay for the improvements, the lessee has no right to retain the good).

The retention right cannot be executed among assets which are destined for deposit purposes or for delivery to another person at the time they are received.

To be effective against third parties, the right of retention over real estate property must be recorded in the correspondent registry.

11.17. Retention right-Execution

A retention right can be executed either judicially or extrajudicially. Whenever the retention right is executed extrajudicially, it means that the creditor will not give back the asset to its debtor until the underlying obligation is

duly fulfilled. If the retention right is judicially invoked, it constitutes an exception that opposes to the debtor's action destined to accomplish the recovery of the asset. In such a case, the judge could authorize the substitution of the retention right for a sufficient guarantee.

11.18. Trusts

A trust is constituted by a trustor who transfers property under trust to an entity, called the fiduciary or trustee, authorized for such purposes by the Superintendency of Banks, Insurance and Pension Fund Administrators ("SBS" for its acronym in Spanish) for the setting up of trust property subject to compliance with a specific end, in favor of the trustor or a third party called the beneficiary. Such trust property is separate and autonomous from the property of the trustee-fiduciary, the trustor, or the beneficiary, or in due case, the recipient of any remaining property.

11.19. Trusts-Trust in guaranty

With a trust in guaranty, the assets that are part of the trust property are destined to guarantee the compliance of one or more obligations agreed upon or to be agreed upon and that are under the control of the trustor or a third party.

11.20. Collateral in bankruptcy proceedings

If the debtor is under a bankruptcy proceeding, the obligations are paid only after labor claims and alimony have been covered. Unless there are preferential credits pending payment, that is, labor or alimony obligations, for the payment of the credits of the secured creditors, the assets that guarantee their credit will be applied.

11.21. Trusts-Execution

The trustee, who is the creditor, can demand of the fiduciary the execution or transfer of the trust property in accordance with the proceeding established in the constitutive act of the trust.

11.22. Execution of other guaranties

Unlike the mortgage over chattel, mortgages, retention rights, and antichresis other guaranties are executed via a judicial procedure -or extrajudicial, if applicable according to the prior numerals of this section 11, governed by the

Peruvian Code of Civil Procedure.

Once the debtor fails to comply with the payment of the debt in due time, the creditor must file a guaranties' execution proceeding before the Judicial Power. Once the demand has been admitted, the debtor will be notified with the resolution of execution ordering him to pay the debt within three days.

If the debt is not paid within the three days granted to the debtor, the judge will order the auction of the assets given in guaranty. The judge will order the appraisal of the assets to be auctioned, appointing for this purpose two specialists.

Once the appraisal is approved by the judge, the judge will call an auction and appoint an auctioneer. The call will be published in the newspaper for three days, in the case of movables, and six days, in the case of real estate.

If the assets are not sold in the first auction based on the appraised value, then a second auction will be held and the assets attached will be offered at a price that is 15% off the price established for the first auction, e.g., the appraised value. If a third auction is necessary, the assets will be offered with an additional 15% discount on the last offered price. However, if, at this third auction, no bidders came up, the party that requested the execution of the assets given in guarantee will be able to acquire the assets directly at the offered price of the last auction.

The proceeds obtained will be used to cover the creditor's claim. However, if these assets are insufficient to pay the creditor's claim, the creditor may proceed within the same action to attach other assets of the debtor by the rules of the executive proceeding of the Code of Civil Procedure.

Bear in mind that:

- The parties are not allowed to agree to an extrajudicial execution procedure.
- The appraisal will not be necessary if the parties have agreed on the value of the asset or its special value for the case of its execution. However, the judge can order a new appraisal if he or she considers that the agreed-upon value is not proper.
- The appraisal may not be needed if the collateral asset is money or is at the Stock Market or its equivalent. In this case the judge will appoint a broker to sell the assets.
- The basis for the bidding must be the equivalent to the two thirds of the assets' appraisal.

ESTUDIO OLAECHEA

CHAPTER 12

Environmental Law

CHAPTER 12

Environmental Law

12.1. Overview

Under the Environmental General Law, Law 28611, any productive or commercial activity that is susceptible of causing environmental damage requires an environmental assessment approved by the authority before the activity is started. This assessment must contain a description of all the possible consequences of the activity on the environment and the ways in which the applicant plans to avoid or reduce these damages to tolerable levels. These levels vary according to the productive or commercial sector concerned, and there are still some sectors which are currently unregulated. Additionally, these limits can vary depending on certain factors such as the place; thus, it is always necessary to do the appropriate investigations at the local level.

The environmental assessment requires approval by the corresponding competent governmental authority.

The level of detail of the environmental assessment depends on the level of impact that can be caused by the activity in question. For certain activities considered by law as having a high impact (such as big size mining exploitation or oil and gas, just to quote two representative activities of high environmental impact), this assessment will have to be an Environmental Impact Study detailed (EIA-d). For some other activities that cause lower environmental impact, the environmental studies are less rigorous. This is the case of the Semi-detailed EIA (EIA-sd) for moderate negative environmental impacts and the Environmental Impact Declaration (DIA) for minor negative environmental impacts.

The EIA-d, EIA-sd or DIA have to be of public access to the communities in the area of impact of the project, and the final decision of the authority must consider (though not necessarily accept) the community's opinion. It is important to bear in mind that the characteristics of these communities and their ways of life are considered as a part of the environmental considerations.

Some companies have had to file an Environmental Adaptation Management Program (PAMA) instead of an EIA, EIA-sd, or DIA because they were already operating when the environmental obligation was enacted. They were granted with time and a program to adapt to the new standards.

Also, every 5 years, the environmental assessment must be updated in the components that require it and presented to the authority, according to the sector. However, investment projects must be considered dynamic and

might require modifications or adjustments in time to optimize their operations. In some cases, those changes may require a modification of the environmental assessment. If the modifications generate significant negative environmental impacts, a modification to the environmental study must be processed through the regular procedure. Otherwise, in case the impact is not significant, a modification to the environmental study must be processed through the Substantive Technical Report (ITS).

Some activities (such as mining, oil, energy, manufacturing industry, etc.) might have special environmental obligations, but all of these regulations are framed in the general regime of the Environmental General Law.

The Peruvian government, through the corresponding Ministry (depending on the economic area where the project belongs) or through special supervisory agencies together with the Ministry of Environment, has the power to continuously review the fulfillment of environmental obligations and to punish their violation with administrative sanctions that can range from fines and temporary closures to confiscation of assets and definite prohibitions to work on certain activities.

In accordance with Law 29325, National Environmental Evaluation and Control System Law, the competent authorities that are part of said system are; (i) the Ministry of Environment (MINAM); (ii) The Environmental Evaluation and Supervisor Agency (OEFA) and (iii) National, Regional or Local entities of Environmental Supervising.

The National Environmental Evaluation and Control System has as purpose to secure the compliance of environmental legislation by individuals and legal entities, as well as to supervise and guarantee that the evaluation, supervision, control and sanction functions related to environmental matters in charge of the State entities are undertaken in an independent, impartial, quick and efficient fashion.

The Peruvian Criminal Code also contains a specific chapter covering environmental felonies and crimes, and any person is entitled to appear in court to sue those who generate environmental damage.

Peru is a party to some environmental treaties, the most important among them being the Rio de Janeiro Convention on Environment and Development held in 1992, the Kyoto Protocol and the Montreal Protocol.

ESTUDIO OLAECHEA

CHAPTER 13

Mining

CHAPTER 13

Mining

13.1. Generally

All mineral resources are national patrimony. Private companies and individuals can take advantage of the mineral resources based upon a concession system and the compliance with other regulatory and environmental requirements. Thus, by a mining concession (juridical-administrative act) and the compliance of other regulatory and environmental requirements, the government authorizes the private sector, as well as any governmental company, to carry out mining activities of exploration and exploitation. In order to develop other mining activities, please be informed of the existence of the concession of benefit, the concessions of general tasks, or the concession of mining transportation.

Under Peruvian law, a mining concession is defined as a real estate right different from the surface property right. In other words, the mining concession is a different and separate property from the land where it is located. Mining concessions are identified by the Universal Transverse Mercator coordinate system (UTM coordinates), which specifies each of the edges that form or give shape to the concession territory. This information is entered into the Official Record of Mining Real Estate, which is part of the Real Estate Property Registry of the Peruvian Public Registry, as well as in the Geological, Mining and Metallurgical Institute (INGEMMET).

13.2. Authorizations required

In addition to receiving a Mining Concession, to initiate mining activities of exploration and exploitation it is necessary to obtain some other authorizations. The main authorizations are:

- Authorization to use superficial land
- Approval of Environmental Impact Declaration, Environmental Impact Study-semi-detailed, or the Environmental Impact Study-detailed
- Certificate of nonexistence of archaeological remains (CIRA). In cases where there are archaeological remains, a special permit would be required. Such permits are granted by the Ministry of Culture.
- Approval of the Mining Plan by the Ministry of Energy and Mines

- Water license granted by the National Authority of Water
- Approval of the Closing Plan by the Ministry of Energy and Mines; and
- Operations Authorization (including the mining and landfill plan).

13.3. Authorizations to use superficial lands

Either for exploration or exploitation purposes, obtaining surface rights is required with respect to the surface area to be used in the Mining Project. The owners of the superficial lands could be:

I. The State;
II. Private owners; or
III. Rural/Native communities.

When the owner of the superficial land is a rural native community, located in the mountains or jungle areas of the country, the law establishes that to dispose, encumber, lease, or exercise any act over the Rural/Native Community lands, the Agreement of the General Assembly will be required, with an approval vote of not less than 2/3 of the members of the Community. When the land is located in the coastal region of Peru, and when the owner is a community, the approval should be obtained from 50%+1 of the members of that community that held the corresponding Assembly Meeting.

The negotiation with the rural/native community and the development of the relationship with it during the exploitation stage is a very sensitive issue that has an important political dimension. Having good community relations is essential.

13.4. Environmental Impact Declaration (DIA), Environmental Impact Study-semi-detailed (EIA-sd), Environmental Technical Sheet (FTA) and Environmental Impact Study detailed (EIA-d) befores the Ministry of Energy and Mines

Exploration Stage

It is necessary to obtain one of the following environmental certifications (EIA-sd or DIA) before starting the exploration activities:

I. EIA-sd or DIA for:

- Projects of medium and large-scale mining, considering certain secondary components (number of drills: more than 20; area of work: more than 10 hectares)
- Exploration projects that consider exploration tunnels or that seek to determine the existence of radioactive minerals.

II. FTA for exploration projects not described in (i)

The FTA is an instrument for those exploration projects that given their location and/or characteristics do not foresee the generation of significant environmental impacts.

The DIA and the EIA-sd should contain certain minimum information such as "The Reference Terms" which are already approved by the authority, the description of the environmental and social impacts as well as their controls, preventions, and closing plan. It is important to mention that the DIA is the environmental study for those exploration projects that foresee the generation of minor environmental impacts whilst the EIA-sd is the environmental study for those exploration projects that foresee the generation of moderate environmental impacts.

Approval of an FTA takes approximately 30 business days, whilst a DIA or an EIA-sd takes approximately four to six months from the filing of the petition with complete information.

Exploitation Stage

To then start exploitation activities it is necessary to consider the qualification granted by the Law to the corresponding mining concessionaire: whether it is qualified as an "artisanal or minor producer" or if it is qualified as a "medium or big-sized mining producer". In the first scenario, the concessionaire must file for the authority's approval a DIA or an EIA-sd, describing the environmental impact during exploitation stage. In the second scenario, the concessionaire must file an EIA-d for the authority's approval. All, the DIA, the EIA-sd and the EIA-d, describe the implementation of activities on mining concessions, and also evaluates and describes the physical, natural, biological, social, economic, and cultural aspects in the area of the project. The purposes are:

- to determine the environmental impact;
- to analyze its nature and magnitude; and
- to prevent or reduce the negative effects and consequences of the execution of the project.

The preventive and control measures to be applied to reach well-balanced development between the operations of the mining activity and the environment should be included in the corresponding DIA, EIA-sd or EIA-d.

Approval of a DIA, EIA-sd, takes approximately six to nine months. In contrast, the approval of an EIA takes approximately 12 to 18 months from the filing of the petition with complete information.

Mining concessions overlapping a natural protected area or its protected boundaries will have exploration and/or extraction limitations.

Before approving the DIA, EIA-sd or EIA-d, the Regional Government or the Ministry of Energy and Mines, as may be the case, requires the opinion of the population that will be potentially affected (including rural/native communities) and local governmental entities.

13.5. Certificate of nonexistence of archaeological remains

An archaeological report should be approved by the Ministry of Culture prior to commencing any exploration or exploitation activity. In this document the State certifies the nonexistence of archaeological remains in a certain area.

The process of approval of the Certificate of Nonexistence of Archaeological Remains takes approximately three to six months. Once obtained, it would not require to be renewed because it has unlimited duration.

In case an archaeological remain is identified within the area of the project, the concessionaire should co-ordinate with the Ministry of Culture in order to protect the archaeological site while proceeding with the mining project, if suitable.

13.6. Mining plan before the Ministry of Energy and Mines

A mining plan is a technical report. The plan describes the mining methods, characteristics of the minerals, the extraction system and the disposal of and superficial lands, among other issues, related to the mining process.

The mining plan should be approved by the Ministry of Energy and Mines. This process takes approximately three months from the filing of the complete information.

13.7. Closing plan before the Ministry of Energy and Mines

According to the law that regulates the closing of mines, the mining closing plan is an instrument of environmental action that establishes the measures that have to be adopted during the stages of operation, final closing, and post-closing, with the goals of rehabilitating the affected area.

The mining closing plan must include the studies, actions, opportunities, and methods of control and verification to be performed to mitigate or eliminate, if possible, the contaminating and harmful effects to the ecosystem in general. The closing plan should contain measures and actions to be executed (i) during the execution of the mining work, (ii) when the mining project is terminated; and (iii) after the closing of the mine.

It also should include the environmental guarantees that should be granted in favor of the governmental authority to guarantee the costs of the rehabilitation actions for the periods of operation, final closing, and post-closing.

The idea of this closing plan is that the environment and the area impacted should be in the end almost in the same conditions as in the beginning of operations. For new projects, closing plans should be filed within one year of approval of a DIA, EIA-sd or EIA-d.

The approval of a closing plan takes approximately three to six months after all documents and technical reports are filed. Once obtained, it must be reviewed at least every five years since the last approval.

13.8. Operations permit

In order to begin activities for the exploitation of minerals a petition has to be filed before the Ministry of Energy and Mines. This permit will be requested once all other documents mentioned in the previous paragraphs are obtained.

This process takes approximately three months.

13.9. Obligations for maintaining mining concession title; fees and penalties

The mining concessionaire should comply with the payment of a fee to the State, in order to maintain its concession. This payment is known as “maintenance fee”. There is a penalty if minimum production or the minimum investment required by the law is not reached.

I. Payment of maintenance fee: To maintain the mining concession in good standing, the concession holder must pay an annual concession fee as a consideration for the right granted to it. The concession fee, for the General Regime of medium and large-scale mining, is currently US$ 3.00 per hectare and per year. For the miners defined as "small mining producers", the annual amount is US$ 1.00 per hectare, while for the miners defined as "artisanal miners" such annual amount is US$ 0.50 per hectare.

An annual maintenance fee, computed on a calendar year basis, should be paid no later than June 30th of the current year. Failure to pay two consecutive annual maintenance fees will result in the expiration of the concession.

II. Payment of a penalty if minimum production or investment is not reached: The mining concessions oblige their owners to work on it.

For the General Regime of medium and large-scale mining, production must not be under 1 Tax Unit Reference (UIT) (which for year 2022 arises to S/. 4,600) per year and per hectare granted in case of metal substances. In case of nonmetal substances, production must not be under 10% of 1 UIT per hectare, per year. The number changes in cases of small mining producers (10% of 1 UIT per year and per hectare for metal substances and 5% of 1 UIT per year and per hectare for nonmetal substances) and of artisanal miners (5% of 1 UIT per year and per hectare, regardless of the substance).

The minimum mining production must be reached before the 10th year, counted from the year in which the title of the mining concession was granted.

The amount of production will be shown by sales figures.

In case the mining concession holder does not fulfill the minimum production requirements, starting in the beginning of the 11th year, the concession holder will have to pay a penalty of 10% of minimum production per year and per hectare, until such time that the holder does comply with the annual minimum production.

If the non-fulfillment persists to the end of the fifteenth year, the concession holder will have to pay a penalty of 5% of minimum production per year and per hectare, until such time that the holder does comply with the annual minimum production.

If the non-fulfillment persists to the end of the twentieth year, the concession holder will have to pay a penalty of 10% of minimum production per year and per hectare, until such time that the holder does comply with the annual minimum production.

If the non-fulfillment persists to the end of the thirtieth year, the concession will be cancelled. The concessionaire may avoid the payment of the penalty if it can prove that it has made investments in mining projects or public services' infrastructure to an amount equal to at least 10 times the penalty that it has to pay. Nevertheless, if the non-fulfillment continues at the end of the 30th year, the governmental authority will cancel the mining concession with no possible extension.

If applicable, the corresponding penalty must be paid together with the Maintenance Fee.

Whenever a project is comprised of two or more mining concessions, its concession holder or leaseholder can request the incorporation of a Mining Economic Unit (UEA) for all its concessions in a specific area. This area will be of 5 kilometers in radius in the case of non-ferrous metal ores or primary gold metals. The area will be of 20 kilometers in radius in the case of iron, coal or non-metallic ores. The area will be

of 10 kilometers in radius in the case of detritic metallic gold deposits or detritic heavy minerals.

In this case, production or investment from one of the mining concessions incorporated into the UEA will be used to avoid paying the penalties for lack of reaching minimum production or minimum investment in any other mining concession that is part of the same UEA. All the mining concessions comprised in a UEA will be obliged to start their production/investment obligations on the date in which such obligation commences for the oldest concession within it. Minimum production/investment for an UEA is calculated on the aggregate area of all the mining concessions incorporated thereto.

13.10. Previous Consultation

In accordance with Convention 169 of the ILO, and in case the mining project involves lands used by an indigenous or native community, the Peruvian Government should perform previous consultation with those communities before the mining concessionaire can initiate operations.

CHAPTER 14

Telecommunications

CHAPTER 14

Telecommunications

14.1. Background

Peruvian telecommunications service was run by the State until it decided to implement the privatization process, enacting rules both to regulate the bidding process and also to regulate the telecommunications market after privatization. When run by the State, telecommunications service in Lima and the provinces were provided by Compañía Peruana de Teléfonos S.A. (CPT) and Entel Peru S.A., respectively. These two companies were privatized, and Entel Peru was merged into CPT. In 1994, the Law of Progressive Demonopolization of the Public Services of Local Fixed Telephony and Long Distance Carrier Services, Law 26285, established that local fixed telephony service and national and international long distance carrier service would be gradually demonopolized over a limited concurrence period. The limited period would not exceed five years, counted from the date of the privatization.

In 1998, the main change to the concession contract granted to Telefónica del Peru S.A.A. was the reduction of the limited concurrence period from five to four years. Starting on August 1, 1998, the telecommunications market was already open to competition.

In 1991, the Supervisory Agency for Private Investment in Telecommunications, known as OSIPTEL, was created by Legislative Decree 702 as the entity in charge of supervising private investment in telecommunications. OSIPTEL has the task of having operators provide modern, efficient, and high-quality telecommunications service to the largest possible number of people, always under a fair and free competition regime. It is also in charge of regulating the activities of the concessionaires, supervising the quality of service provided to final users, and guaranteeing the fairness of tariffs. It has the authority to resolve disputes between concessionaires, to fix maximum tariffs for each public service and to apply sanctions to persons or legal entities that violate the Telecommunications Law.

Likewise, OSIPTEL is the competent authority to ensure free and fair competition, controlling the behavior of the agents in the telecommunications market through an ex-post control. In that sense, for the specific case of the telecommunications market, INDECOPI is not competent, as it is with the other economic sectors.

14.2. Current status

The modernization of the telecommunications sector was finally established in the Single Revised Text of the Telecommunications Law (hereinafter the Law), approved on April 28, 1993 by means of Supreme Decree No. 013-93-TCC. This law was later regulated by the General Rulings of the Telecommunications Law, approved on February 11, 1994 by Supreme Decree No. 06-94-TCC, amended several times, and later converted into the General Single Revised Text of the Telecommunications Law, approved by Supreme Decree No. 020-2007-MTC and published on July 4, 2007 (hereinafter, "the Regulation").

According to its nature, the Law classifies telecommunications service into:

- public service;
- private service; and
- private service of public interest.

Public telecommunications service is the one which is available to the public in general, including long distance both international and domestic, local telephone service, and cellular telephone service. Private service is the service available to authorized parties only. These services are declared as such by the Regulation and its use requires a fee.

Private service is available only to authorized parties. These services are those established by a natural or legal person to satisfy their own communication needs within the national territory. This is the case of private entities that develop a type of activity (banks, security companies), in which they require the use of telecommunications services and, if necessary, have their own infrastructure (networks).

Private service of public interest is the service in which transmission is made only in one direction. This article deals only with public telecommunications service, which requires the execution of a concession contract between the private investor and the State. The Law and the Law of Radio and Television, Law 28278, provide that radio and television broadcasting services are private services of public interest.

In addition to the classification by nature, the Law and the Regulation qualify the telecommunications services by their connection with technical aspects. This classification is based on the Integrated Services Digital Network, which is the technological evolution of the basic telephone network, which integrates a multitude of services, both voice and data.

In first place, there are the "carrier services". This is the set of transmission and switching means that constitute an open network at national or international level that has the power to provide sufficient capacity and quality for

the transport of telecommunication signals.

In second place, there are the "teleservices" or "final services". These are the result of the conjunction of carrier services with terminal functionality. They are those that provide full capacity that makes communication between users possible.

Then there are the "broadcasting services", which are those services in which the communication is carried out in only one direction towards several reception points. In order to provide public broadcasting services, an administrative concession is required, and for private services, authorizations, permits and licenses are required. Currently, with the separation of sound, television broadcasting and closed-circuit television services from the telecommunications field, only cable broadcasting services have remained.

Finally, there are the "value-added services", which are used as support of the carrier services and final telecommunications services, and add other facilities to the support service, or satisfy new specific telecommunications needs.

The Law and the Regulation establish that in order to be an agent in the telecommunications services market, an enabling title is required. These include:

a) The concession: it is provided to public services

b) The authorization, separated by the legislator into: authorization, license and permit.

   These are provided to private services, and private services of public interest.

Telecommunications concessions are granted by Ministerial Resolution from the Ministry of Transport and Communications (hereinafter the Ministry). Concessions may be granted upon application by an interested party or through a public bid. The concession is an administrative act by which the State grants to a natural person or legal entity the faculty to provide public telecommunications service. The Ministry will grant a single concession for the provision of all telecommunications service, independently of how these services are denominated in the Law or in the Rulings. The concession comes into force by means of a contract in writing approved by resolution of the Ministry. Holders of a single concession must inform the Ministry about the public telecommunications services they are planning to provide in accordance with the corresponding rights and obligations set forth for each type of service in the general classification provided for by the Law, the Rulings, complementary rules, and respective concession contract.

The rights granted by the State in the concession contract are not transferable without the prior authorization of the Ministry. Noncompliance with this obligation cancels the concession contract.

The single concession contract must contain the rights and obligations of the concessionaires, termination reasons,

and concession term, among other aspects established in the Rulings.

The term of the concessions to provide public telecommunications service is 20 years, which can be renewed according to the terms established in the contract.

Additionally, in order to provide public telecommunications services, in addition to those established in the single concession contract, the Ministry must be informed so that it can make the corresponding registration. In addition to this registry, there is a registry of value added services and a registry of related activities, disaggregated into a registry of individuals or legal entities engaged in the import and sale of telecommunications equipment and devices in Peruvian territory, and a registry for marketing.

A large part of telecommunications services require the use of radio waves as a vehicle for the transmission of communications, these being radio communications, which use the frequency spectrum to varying degrees.

The frequency spectrum is a natural resource of limited dimensions. It is the mean whereby radio electric waves can be propagated without an artificial waveguide. The frequency spectrum is managed and controlled by the Ministry, which is also responsible for the allocation of frequencies and for keeping a national frequency record, where frequency allocations are recorded down. The allocation of frequencies is an administrative act whereby the State empowers an individual to provide telecommunications service within a specific segment of the radio electric spectrum, in a given geographical area.

All equipment or device that is to be connected to a public network to provide any type of service or is used to perform radio electric emissions must obtain the corresponding homologation certificate, which is issued by the Ministry.

Our law recognizes that public telecommunications service is a universal service, so it must be available to the entire Peruvian population in adequate economic conditions. In our legal system we have the Guidelines for the Opening of the Peruvian Telecommunications Market, as well as Law 28900, the FITEL (Telecommunications Investment Fund) Law.

FITEL was created with the objective of financing access to basic telecommunications services in rural areas and places considered of preferential social interest. FITEL's resources come from the annual contributions of telecommunications operators and service providers. To date, the National Telecommunications Program (PRONATEL) has also been created, which administrates FITEL and promotes the access and use of public telecommunications services for the population of rural areas and places of preferential social interest.

ESTUDIO OLAECHEA

CHAPTER 15

Broadcasting

CHAPTER 15

Broadcasting

15.1. Background

Since June 2004, the Law of Radio and Television, Law 28278, and its Regulation, approved by Supreme Decree N° 005-2005-MTC, governs the operation of broadcasting companies in Peru. The Broadcasting Law (hereinafter the Law) classifies broadcasting services as transmission of sound or television, as private services of public interest.

The regulation governs the provision of broadcasting services, either of sound or television, as well as the management and control of the radio electric wave spectrum given to such services.

15.2. Governing principles

The access to broadcasting services is ruled by the following principles:

- free competition whereby monopolies and direct or indirect exclusivities are prohibited to the State or the private sector;
- free access to equal opportunities and nondiscrimination;
- authorizations must be duly motivated by rulings in force;
- efficient use of the spectrum; and
- nondiscrimination conditioned on the use of certain technology, unless it is for the benefit of the user.

15.3. Radio electric spectrum

The radio electric spectrum is a natural resource of limited dimensions that belongs to the State. It is the space where the radioelectric waves spread, and in Peru, its administration and management correspond to the Ministry of Transport and Communications (MTC, hereinafter). Its use and granting for the provision of broadcasting services is done according to the Law and to the international rules of the International Telecommunication Union

(ITU). The broadcasting services are provided according to the National Plan of Frequency Attribution, the National Plan of Frequency Assignment, the corresponding technical rules, and the international agreements and treaties in force.

15.4. Authorizations, permits and licenses

For the provision of broadcasting services, in any of its modalities, the interested party must previously have received authorization granted by the MTC; which has a term of validity of 10 years, automatically renewable for equal terms, so long as there has been compliance with the requirements established by the Law. Also, for the installation of equipment to be used by a broadcasting station it is necessary to obtain a permit.

Likewise, a permit granted by the State will be required, for the installation of equipment to be used by a broadcasting station; and for the installation of a broadcasting station, a license will be required.

According to applicable regulations, the authorizations of broadcasting services are granted at the request of a party or by public bid; this second option is carried out on a mandatory basis when the quantity of frequencies or available channels in a band is less than the number of requests filed, and its conduction management is conducted by the MTC, under the supervision of the Broadcasting Advisory Council.

In order to avoid the hoarding, monopoly or exclusivity of the ownership of authorizations, the regulations on the matter establish limits when a natural or legal person is the owner of:

- Television broadcasting, in a greater percentage than thirty percent (30%) of the technically available frequencies, assigned or not, in the same frequency band within the same locality; or

- Sound broadcasting, in a percentage greater than twenty percent (20%) of the technically available frequencies, assigned or not, in the same frequency band within the same locality.

15.5. Grounds for refusal

The request for authorization can be refused in the following cases:

- The authorization holder exceeds the limits established above;
- Requesting party has owing obligations regarding to the right of authorization, canon (special tax), fees, fines, or other concepts derived from the provision of broadcasting or other telecommunication services;

- Requesting party has been sentenced to prison for a term of 4 or more years for committing a crime;
- Requesting party has been sanctioned with the cancellation of an authorization within 10 years prior to filing the request in the same location;
- Requesting party has been disqualified from contracting with the State by resolution res iudicata; and
- Requesting party has been sanctioned more than 3 times for very serious infringements in the term of 10 years prior to the date of the request, by resolution res iudicata in the same location.

On the other hand, the renewal of the authorizations of the broadcasting service may be denied due to any of the previously mentioned causes, as well as for (i) non-compliance with the execution of communication projects; and (ii) operate without the corresponding minimum requirements.

15.6. Foreign participation

According to the applicable regulations, the authorizations and licenses will only be granted to (i) natural persons with Peruvian nationality; or (ii) legal entities incorporated and domiciled in Peru.

No foreign person may, directly or through sole proprietorships, be the holder of an authorization or license.

15.7. Transferability of rights

The rights granted for the provision of a broadcasting service may be transferred, prior approval by the MTC, as long as at least two (2) years have elapsed from the date the authorization comes into force and none of the cases for refusal stated above have occurred.

Likewise, the consent of the MTC will be necessary for those cases of assignment, lien, trust, lease, or other ways that, directly or indirectly, involve the effective loss of the decision-making capability or the holder's control over the granted authorization. In this sense, the consent will be given only after having transferred at least one (1) year of granting the authorization.

ESTUDIO OLAECHEA

CHAPTER 16

Water Rights

CHAPTER 16

Water Rights

16.1. Introduction

Water as a natural resource is considered as national patrimony. Water utility companies, and other type of companies or persons, can only use water for productive purposes if they are granted the corresponding water right approval by the State. Water that is taken directly from the natural sources by the population for its own consumption does not require any special approval.

Water Rights are regulated by the Water Law, Law 29338.

16.2. Relevant entities

The State Authority in charge of granting State's approvals, permits and licenses for private uses of water is the National Water Authority (ANA), which is the highest authority and the responsible for the operation of the National System of Water Resources (the "System").

Several entities are in charge of the System management, being the most relevant:

- The National Water Authority (ANA);
- One representative from each of the Ministries related to the use of water (Housing and Sanitation, Energy and Mines, Production (Industry), Agriculture, Environment, etc.);
- Users' Organizations: formed by all the users of the same water source or hydraulic system;
- Representatives of the Regional and Local Governments;
- Basin's Council: formed at the level of one or more Regional Governments (depending on how many regional territories does one basin includes). The members of a Basin's Council are the representatives of the Regional and Local governments and the representatives of the Users' Organization of the corresponding basin;
- Representatives of the native and rural communities;

- Representatives of the operating entities of the hydraulic sectors; and,
- Representatives of public entities related to water resources management.

16.3. Types of uses

The water uses that require the approval of the State are divided into two main types:

a) Population Use: Consists on the collection of water from a public source or system, duly treated, in order to satisfy basic human needs (food preparation, cleaning, etc.). Its distribution is made by a Water Utility Company; and,

b) Productive Use: defined as the use of water in productive activities (agriculture, mining, electricity, industry, etc.).

Population use has priority over productive use.

16.4. Conditions for the governmental approval

In order to grant rights for the use of water, ANA considers, among others, the following main criteria:

- Availability;
- The use that the applicant plans to give to the water;
- The source from which it plans to take the water;
- The location of the points from which the applicant will connect the water;
- The quantity of water it plans to use; and
- Environmental Certification (when there is any possible environmental damage), which requires the approval of the corresponding Environmental Instrument.

ANA grants approvals after consultation with the relevant Basin's Council.

As long as there is enough water for uses by the population in the basin in question, ANA has to grant all requests of water for productive uses that comply with sustaining the six above-mentioned points. In principle, water rights are granted on a first-come-first-serve basis.

On the other hand, when two requests for a productive use are made at the same time, priority will be given following preferential criteria among productive uses established in the Regulations of the Water Law, Supreme Decree No. 001-2010-AG or established in the basin's water resources management plans.

In cases of equal level or preference, the decision will be taken considering the petition that shows:

- A greater efficiency in the water use;
- More generation of job positions; and,
- Less environmental impact.

Whenever there is not enough water for population use and productive use in a basin, population use will be preferred over productive use.

16.5. Types of consent

The state's consent can be of any of the following types:

1. License: By means of this instrument, the authority grants the petitioner the right to use a fixed amount of water for an activity of permanent duration.
2. Permit: By means of this instrument, the authority grants the petitioner the right to use certain amount of water when available, for an indefinite period. The right to use water through a permit does not grant a firm assurance on a water source because the exercise of this right is subject to availability after the use of the ones that hold Licenses or Authorizations.
3. Authorization: By means of this instrument, the authority grants the petitioner the right to use water exclusively in relation with any of the following temporary activities:
    - Studies;
    - Works; and
    - Cleaning of surfaces.

Authorizations are given for two years and can be renewed one time.

16.6. Cost, cancellation, and lack of transferability of the consent

All of the different types of State consents have a cost per cubic meter granted and such compensation has to be paid to ANA.

Lack of payment of two consecutive payment compensations for water use fees can originate the extinction by revocation of the corresponding water use right. Termination may also result from the use of the water for an activity different to the one declared in the application for the consent.

Water rights may not be transferred.

16.7. Principles of the water regime

There are two key principles of Peru's Water Regime:

1. Principle of Acquired Rights. This principle states that the water rights obtained cannot be cancelled or modified by the State unless there is a reason provided by law.
2. Principle of Rewards to Efficiency. For users which obtain State certificates of efficient use that impede waste of water receive incentives (such as the ability to deduct from the water fees a percentage of the investment they have made to develop this efficiency).

ESTUDIO OLAECHEA

CHAPTER 17

Oil and Gas

CHAPTER 17

Oil and Gas

17.1. Generally

In Peru, hydrocarbon exploration, exploitation, transport, storage, distribution and marketing activities are regulated by the OUT of the Organic Hydrocarbon Law and corresponding regulations. In accordance with the provisions of the aforementioned standards, the concept "hydrocarbons" relates to any organic, gaseous, liquid or solid compound composed mainly of carbon and hydrogen, these being crude oil, natural gas and liquids associated with natural gas.

In accordance with the provisions of the 66th article of Peru's Political Constitution, natural resources (including hydrocarbons), are Nation heritage and the State is sovereign in its use. In this sense, the contracts for exploration and exploitation only cover resources that can be found below the surface, which means that no right on it (the surface) is granted. This is why the owners of said activities must manage and negotiate with the owners of the surface properties the establishment of easements or similar legal figures, in accordance with the rules that regulate the matter.

The State company that is in charge of the promotion, management and negotiation of contracts for the exploration and exploitation of hydrocarbons is PerúPetro S.A.

The legal treatment for the exploration and exploitation of (i) crude oil and (ii) natural gas is the same, except for the establishment of the contract's term, subject to be referenced below.

17.2. Activities of exploration and exploitation

Any natural or legal person, national or foreign, may conclude license or service contracts throughout the national territory. In that sense, Contracts for (i) the exploration and exploitation of hydrocarbons; or for (ii) their exploitation, may only be concluded after direct negotiation or by tender process. There are also different types of contracts:

The License Contracts, which grant the contractor authorization to explore and exploit or exploit hydrocarbons in

the contract area in exchange of the payment of a consideration (royalty) to the State. The royalty percentage is calculated on the value of a basket made up of 3 similar types of hydrocarbons and applying a percentage determined according to the relevant regulations.

The Service Contracts are concluded with the contractor so that he can initiate with the hydrocarbon exploration or exploitation activities in the contract area, in exchange of the payment of a consideration (remuneration).

Other types of contracts that shall be authorized by the Ministry of Energy and Mines (MINEM)

The term of the exploratory phase of the exploration and exploitation contracts is 7 years, exceptionally renewable for 3 additional years. On the other hand, the exploitation phase term is subdivided into:

Crude oil, up to 30 years, including the exploratory period.

Non-associated natural gas and condensates, up to 40 years, including the exploratory period.

17.3. Royalties and minimum and maximum fee

The provisions of the aforementioned OUT of the Organic Hydrocarbon Law establish that specific rules will be issued in order to regulate the application of the royalty and remuneration based on a varying scale, which will depend on technical and economic factors that will allow determining said percentages.

Currently, the calculation of royalties is determined once after negotiation in each contract and after the declaration of commercial discovery, according to any of the following methodologies:

1. Methodology of the production scale
2. Methodology of economic result (RRE)
3. Methodology of R factor
4. Methodology of accumulated production by field with price adjustment.

Once the royalties have been paid to the State, it redistributes the benefit to the producing regions, as minimum (canon) and maximum (sobrecanon) fees according to the specific legislation for each region.

The gas fee (canon), on the other hand, is calculated on 50% from the collected Income Tax paid by the producing

companies and 50% from the collected amount of gas royalty paid accordingly to the contracts.

17.4. Other activities

The other hydrocarbon activities mentioned in the TUO of the Organic Hydrocarbon Law are: (i) pipeline transportation; (ii) storage; (iii) refining and processing; (iv) transportation, distribution and marketing of products; (v) free trade; and (vi) natural gas distribution; these activities must have their own administrative authorizations granted by the Ministry of Energy and Mines (MINEM).

In the case of natural gas, there are specific norms that regulate the promotion of this industry by establishing definitions, additional procedures to those contemplated in the aforementioned TUO regarding exploitation activities - such as the guarantee of supply in the national market, establishment of a maximum price for this hydrocarbon to calculate royalties and conditions for its sale, etc.

In the previously mentioned regulations reference is also made to the procedures for the concession of gas and / or condensates and / or gas distribution by pipeline network, as well as for the rate regulation mechanisms that must be applied to the public service of natural gas transportation.

Taking into consideration the difference between the concepts of natural gas (GN) - composed mainly of methane -, and liquefied petroleum gas (LPG) - a by-product of a refining process, and which is composed of butane and propane -, the treatment for both of them is also distinctive in the regulations.

In this sense, the transportation and distribution of NG by pipelines qualifies as a public service and therefore is regulated by natural gas transportation and distribution tariffs established by OSINERGMIN through the Deputy Tariff Regulation Management (GART for its Spanish acronym) through regulatory procedures in which the following concepts must be considered: (i) concession contract signed with the State; (ii) the applicable legal provisions; and (iii) the resolutions issued by the OSINERGMIN Board of Directors.

The intervention of the previously mentioned regulatory body occurs as a consequence of legal mandate and the condition of natural monopolistic activity that gas transportation has; in the case of Camisea, the pipeline system that transports the produced gas is called the "Main Transport Network" and is concessioned to the company Transportadora de Gas del Perú (TGP). On the other hand, the natural gas distribution system is in charge of various companies according to geographical areas, such as Cálidda, Contugas - both physical gas pipelines-; Gases del Pacífico and Fenosa - both authorized for virtual gas pipelines.

17.5. Supervision and inspection

All hydrocarbon activities are supervised by the Supervisor Agency of Investment in Energy and Mining (OSINERGMIN), which supervises and inspects the compliance of the contractual and legal obligations of the contractor.

Regarding the environmental obligations generated by the hydrocarbon activities, the Special Organism of Environmental Control (OEFA) is in charge of their inspection.

17.6. Citizen participation and prior consultation

Citizen participation aims to strengthen the right to information of citizens who could be involved in hydrocarbon activities in the project's area of influence. It must be carried out at different times: (i) during the phase prior the contract signature; (ii) during the phase after its subscription; and (iii) during the preparation of the Environmental Management Instrument (EMI), in accordance with the provisions of Supreme Decree N° 002-2019-EM.

On the other hand, in application of the law on the Right to Prior Consultation of Indigenous People, recognized in ILO Convention 169, the State has the obligation to carry out a process of prior consultation with the representatives of indigenous people in the area of influence of operations, whose collective rights may be affected, prior the issuance of the Supreme Decree which approves the contract for hydrocarbon activities.

ESTUDIO OLAECHEA

CHAPTER 18

Foreign Trade

CHAPTER 18

Foreign Trade

18.1. Generally

On September 11, 1991, Legislative Decree No. 668 was enacted, becoming the legal framework of Peru's foreign trade system, guaranteeing trade liberty as an essential condition for the country development.

Legislative Decree No. 1053, the General Trade Law in force, and enacted in order to facilitate implementation of the US—Peru Promotion Trade Agreement, establishes as a general principle, that customs services are essential to facilitate foreign trade. The purpose of this Law is to make more expeditious the procedures of import and export of goods.

18.2. Import

Currently, the import of goods is subject to the following taxes:

Tax	Rates
General Sales Tax (GST)	16%
Municipal Promotion Tax	2%
Customs duties	From 0%, 4%, 6%, and 11%; The rate will depend on the national tariff subheading of good imported
The Excise Tax (ET)	Applicable to the import of certain products, such as cigarettes, liquor, fuels, some automobiles, among others. The application of the ET will depend on the type of good to be imported.

Regarding the import, ET will apply under three systems: (i) specific, in which case it will apply a fixed amount in local currency to the volume to be imported, (ii) at the value, in which case it will apply a percentage on the custom

value, and (iii) at the value according to the suggested retail price to the public, in which case it will apply a percentage on the suggested retail price by the importer.

The Municipal Promotion Tax levies a tax rate of 2% to all operations taxed with GST. Therefore, all the operations levied with GST include the Municipal Promotion Tax, generating an application of an effective tax rate of 18%.

In certain cases, other duties and charges may apply to the import of goods, such as specific duties, antidumping duties, among others.

Imports may be made in the form of importation for consumption, re-importation in the same conditions, and temporary admission for re-exportation in the same conditions. Such imports regimes have special treatment and different documental requirements. The goods may be destined previously to customs warehousing regime.

Finally, Peru has signed free trade agreements (FTA) with several countries as indicated in chapters 3 and 6, which allow the application of reduced rates for the calculation of customs duties.

18.3. Export

Exports are not levied with transfer taxes. There are certain goods for which export is prohibited, such as native species, in order to prevent their extinction. Also, there are certain goods for which export may need authorizations and previous licenses.

Through the drawback mechanism, the local producer of the exported goods has the right to request the reimbursement of 3% of the FOB value of exported products, as long as they contained imported goods levied with customs duties and that such exported goods meet certain requirements.

18.4. Free Trade Zones and ZEDs

On March 2002, through Law No. 27688, a Free Trade Zone in the department of Tacna was created. For customs purposes this zone is considered to be outside of Peruvian territory. Consequently, a special tax regime is applied for all the goods entering into Tacna. Currently, this zone is considered a strategic access point for South American and Asia-Pacific markets.

Moreover, in order to encourage foreign and national investments as well as to develop manufacturing and services industries in certain strategic areas of the country, the Government has created the Special Development

Zone (ZED, by its acronym in Spanish). These areas are considered as Primary Customs Zones with a privileged tax treatment. There are no customs taxes over the entry of goods to ZED, no Income Tax, GST, among others. Goods manufactured in ZED zones (Paita, Ilo and Matarani) can be admitted into the country subject to the payment of the corresponding customs duties.

Likewise, the goods introduced into such zones from any other part of the country will be considered exported to ZED (exceptions may apply). In this sense, the exporter has the right to request the drawback and the GST credit as relevant.

Also, it is worth mentioning that there are other special treatment zones created but pending to be implemented: the Special Economic Zone in Puno (ZEEDEPUNO), the Free Trade Zone of the Cajamarca Region (ZOFRACAJAMARCA), Tumbes ZED and Loreto ZED.

ESTUDIO OLAECHEA

CHAPTER 19

Bankruptcy

CHAPTER 19

Bankruptcy

19.1. Generally

In Peru, bankruptcy proceedings are regulated by the General Insolvency System Law (referred to as the "Law") in force since August 8, 2002 and amended in July 2008. This law has the following characteristics:

1. Purpose: The effective reclamation of the credits in order to protect the creditors' rights and the timely reestablishment of the payment chain.

2. Achievements: Has prevented the closing down of many companies declared insolvent by the Peruvian Insolvency Authority, known as the National Institution for the Protection of Free Competition and Intellectual Property (Indecopi), providing alternatives to bankruptcy such as companies' restructuring.

Options available for creditors or debtor:

- Restructuring of the company; or
- Liquidation of the company.

Bear in mind that the law does not permit any creditor to directly claim the bankruptcy of a company.

Bankruptcy will only be declared if the creditors choose to liquidate the company and the assets sold are not enough to pay all the company's debts.

19.2. Ordinary proceeding

To opt for the restructuring or liquidation of the company, an ordinary proceeding must be filed by the creditors or by the debtor before Indecopi.

19.3. Ordinary proceeding-Filing

Ordinary proceedings can be filed by:

Unpaid creditors whose claims are more than 30 days overdue and represent more than 50 UIT (approximately, U.S.$61,400).

In this case, Indecopi will verify the existence of the credit invoked and will also request information from the debtor, such as its financial statements and a detailed report of all its obligations, establishing the identity and residence of each creditor, with the specific amounts owed and the expiration date of each credit, among others.The debtor would have the right to reply, choosing one of the following possibilities:

a) Paying the credit that originated the debtor's summons.

b) Offering to pay creditors the whole amount owed, up to the date of its response, in which case the creditor would have to give its acceptance within a 10-day term, as silence means the acceptance of this payment offer.

   In the case of either a. or b., Indecopi will declare the creditor's request of opening an ordinary proceeding not granted and the administrative proceeding concluded, prior to the confirmation of the actual payment of the debt, in the situation included in section a. above.

c) Denying the existence, amount, or possibility of execution of the credit claimed by creditors.

   The ordinary proceeding will be declared not granted if the opposition of the debtor is declared grounded, or valid.

d) Accepting the authority's finding.

Debtors, whether natural or legal entities, that certify losses of more than one third of his or her net worth.

19.4. Ordinary proceeding-Publication

Once Indecopi rules grant the opening of the ordinary proceeding, this is published in the Official Gazette "El Peruano" and publicizes it to every creditor. Additionally, the resolution must also be published in the Insolvency Gazzette of Indecopi, which can be found on its website.

19.5. Ordinary proceeding-Credits' recognition

Creditors (other than the one which started the ordinary proceeding) would be granted a period of time to submit their writs of credit recognition in order to not lose their right to participate in the creditors' meetings, which decide the destiny of the company.

19.6. Ordinary proceeding-Creditors' meeting

The creditors' meeting has the power to decide the company's fate by replacing the shareholders' meeting during the term of the proceeding. It has to prove the existence, origin, ownership, and amount of the claims. Two possibilities arise once the creditors' meeting is installed:

- liquidation
- restructuring of the debtor

If the company is to be liquidated, the law establishes the following preference order for the payment of credits:

- Labor credits and social benefits;
- Alimony credits;
- Credits secured with debtor's assets;
- Tax-related credits, including credits of the Social Health Security--ESSALUD; and
- Any other credit, such as simple claims or nonguaranteed credits.

19.7. Ordinary proceeding-Creditors' meeting-Quorum

For a creditors' meeting to be able to function, it must have a quorum. A quorum is reached depending on whether it is the first or second call for the meeting.

First Call: For a quorum, more than 66.6% of the credits that have been recognized by indecopi must be present.

Second Call: The quorum is composed of the recognized creditors who assisted at the creditor's meeting.

If after the two calls the meeting has not occurred, Indecopi will arrange, within a 10-day period, for the petitioner who originated the proceeding or any other interested person involved with the proceeding orders the publication of a new call.

Once a quorum is reached, the duty of the creditors' meeting is to decide the fate of the company. They have only two options:

a) They may decide that the debtor's activities may continue, in which case the company will enter into a net worth restructuring process; or

b) They may decide to shut down the debtor's operations, in which case the company will enter into a dissolution and liquidation process, with the exception of non-attachable assets.

19.8. Ordinary proceeding-Creditors' meeting-Approval of resolution regarding debtor's destiny

If the meeting occurs after the First Call, a vote of creditors representing more than 66.66% of the claims allowed by Indecopi against the insolvent company is necessary to make a decision. If the meeting does not occur until after the Second Call, a vote of creditors representing more than 66.6% of the present claims is necessary.

19.9. Preventive proceeding

Besides the ordinary proceeding, a simpler proceeding may be filed, only by the debtor, with the purpose of rescheduling the debtor's obligations through a global refinance agreement with the majority of its creditors.

If such an agreement fails to be approved, the debtor may be taken into an ordinary proceeding, if the decision to disapprove the global refinance agreement comes from more than 50% of the creditors participating at the creditors' meeting.

19.10. Restructuring

If the creditors' meeting decides to continue with the debtor's activities, the debtor will enter into a patrimonial restructuring regime for the term established in the corresponding restructuring plan.

19.11. Restructuring-Management

The creditors' meeting will decide which management regime is convenient, choosing among the following alternatives:

a) The company will continue to be managed by the former administration;

b) Special management will be named; or

c) A combined management will be chosen with members of former administration and new managers (natural or juridical persons) elected by the creditors' meeting.

19.12. Restructuring-Dissolution and liquidation

Indecopi will opt for the dissolution and liquidation if the creditor's meeting:

a) Does not meet;

b) Does not decide on the future of the debtor; or

c) Does not agree on the restructuring plan or the liquidation agreement, depending on the case.

19.13. Restructuring-Approval of restructuring plan

The restructuring plan has to be approved by the creditors' meeting within 60 days after the decision to restructure the company has been taken.

19.14. Restructuring-Contents of the restructuring plan

The plan must include mechanisms for putting the company in economic and financial order and for paying its debts.

While the plan is being executed, the company's assets are legally protected against actions that creditors may bring individually.

19.15. Restructuring-Conclusion of restructuring process

The restructuring process concludes after the payment of all the claims against the debtor has been demonstrated. All liabilities must be cancelled according to the payment schedule in the plan.

At the conclusion of the process, Indecopi will lift the company's insolvency status and the functions of the creditors' meeting cease.

19.16. Liquidation

As a consequence of the creditors' meeting resolution approving the debtor's dissolution and liquidation, the debtor may not be able to continue with the activities included in its line of business unless the liquidation agreement requires it to make assets more liquid. If the debtor continues business when it should not, the company will be fined.

The continuance of the activities, simultaneously with the liquidation process, may also be agreed to as long as they are carried out in no longer than a six-month term; in order to make assets more liquid.

19.17. Liquidation-Agreement

The creditor's meeting must approve by signature a liquidation agreement and appoint a liquidator registered with INDECOPI.

The effects of resolution approving the debtor's dissolution and liquidation are:

a) Creation of an indivisible state between the debtor and its creditors, which includes all the assets and liabilities of the first one, even though those liabilities do not have an expired term.

b) Directors, managers, and other executives cease in their functions of managing the goods of the insolvent party.

c) The appointed liquidator assumes management and legal representation of the debtor.

d) All payment obligations of the debtor will be demandable, regardless of their expiration date.

19.18. Liquidation-Responsibility of the liquidator

The liquidator has the following attributions and responsibilities, among others:

- Proceed to protect the interests of the insolvent in the assets;
- Dispose of personal property and real estate, amounts due, rights, and securities belonging to the insolvent;
- Provisionally continue running the business of the insolvent;
- Terminate the employment contracts;
- Sign all the necessary agreements, settle and carry on all the strictly necessary credit operations to cover the expenses and liabilities originated in the liquidation, always informing the creditors' meeting of these activities; and
- Request the release of all the liens and encumbrances on the assets of the debtor.

The claims duly recognized by Indecopi must be cancelled by the liquidator, up to an amount covered by the insolvent's net worth.

If after paying, the net worth is not enough to cover all the claims, the liquidator will demand the judicial bankruptcy of the insolvent.

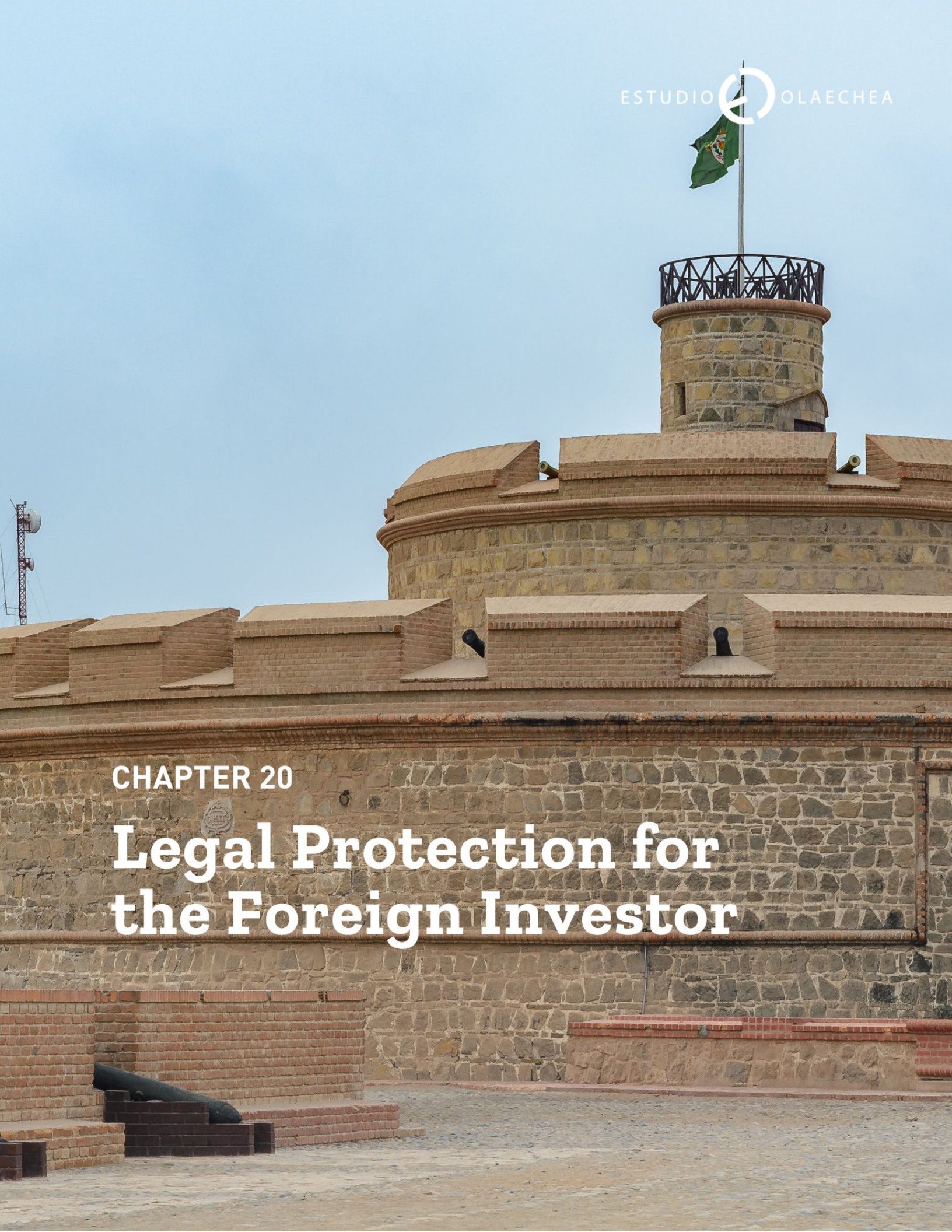
19.19. Judicial bankruptcy

If, after all attempts to resolve the debts of the insolvent fail, a judge will declare the judicial bankruptcy of the insolvent and the extinction of the company after verifying the extinction of the net worth to cover all claims. The liquidator's functions end with the registration of the company's extinction in the corresponding registry.

19.20. Expedited Bankruptcy Refinancing Proceeding (PARC)

With regard to the Expedited Bankruptcy Refinancing Proceeding (PARC), it is important to mention that companies could submit this proceeding only until 31st of December, 2020, in accordance with the provisions of Article 4 of Legislative Decree No 1511, Legislative Decree creating the Expedited Bankruptcy Refinancing Proceeding ("PARC") to ensure continuity in the payment chain because of the impact of COVID-19.

All applications processed under PARC have been processed. Currently there is no adjustment period for them, as there are no pending applications to be processed.



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CHAPTER 20

Legal Protection for the Foreign Investor

CHAPTER 20

Legal Protection for the Foreign Investor

20.1. Consequences of the signature of the Free Trade Agreement (FTA) between Peru and U.S.A.

In December 2007, the Peruvian Congress (Legislative Power) granted authority to the Executive Power legislation on different matters related to the implementation of the Free Trade Agreement entered into between Peru and U.S.A. One of the goals of this law was the improvement of the administration of justice in commercial matters. Because of this law, the Executive Power issued three Legislative Decrees on:

- Improvement of the Justice Administration on Commercial Matters, Legislative Decree 1069;
- Amendments to the Conciliation Law, Legislative Decree 1070, which is one of the alternative mechanisms for solving controversies;
- Arbitration, Legislative Decree 1071, a new law which rules the arbitration proceedings and was recognized as one of the most progressive in the world. This decree has been in force since September 1, 2008.

Without doubt, these rules are helping to form a better administration of justice.

20.2. Contractual choice of law and jurisdiction

The contractual choice of law and jurisdiction is regulated under the private international law norms, regulated in the Civil Code of 1984. In accordance with these norms, what must prevail is the will of the parties to agree on the applicable law to the contractual relationship, provided that the foreign law is compatible with the international public policy and morality. All rights acquired under a foreign legal regime are recognized in Peru as long as these do not contravene international public policy and morality.

If the applicable law is not specified in the contract, it will be governed by the law of the country where the obligation has to be executed. However, if contractual obligations have to be performed in different countries, then

the applicable law is that of the place where the principal obligation takes place. If no principal contractual obligation can be determined, the applicable law is that of the place of the contract's formalization.

The existence and capacity of legal entities is subject to the law of the country where they are established. Legal entities established abroad are recognized as such in Peru and can exercise their rights and actions within the territory of Peru. To perform actions in Peru that are included in their corporate purposes, the entity must follow the Peruvian laws. The rights of foreign legal entities cannot exceed those given by Peruvian law to national legal entities.

In Peru, the applicable law for the government and the capacity of natural persons is the law of the country of domicile. The change of domicile does not limit the capacity acquired based on the applicable law in the former domicile.

The establishment, content, and extinction of rights in rem over property are governed by the law of the place where the property is situated when the right overit is established. Goods in traffic are considered to be situated in the place of their final destination. Likewise, establishment, transfer, and extinction of rights in rem over transport means (ships, aircrafts) subject to a registration regime are governed by the law of the country where the means of transport is registered.

On the other hand, the Civil Code provides that Peruvian courts have jurisdiction to conduct actions against persons domiciled in the national territory. However, Peruvian courts have jurisdiction to conduct actions with pecuniary effects brought against persons domiciled abroad in the following cases:

- When the actions are related to rights in rem on assets located in Peru. In the case of real estate, Peruvian jurisdiction is exclusive.
- When the actions are related to obligations that have to be executed in Peruvian territory or derive from contracts or acts performed in Peruvian territory. Jurisdiction is exclusive in case of civil actions derived from criminal acts or faults perpetrated in Peru.
- When parties expressly or tacitly elect Peruvian jurisdiction. A person becomes a party to a suit if he or she tacitly submits himself or herself to a jurisdiction without making any reservation.

The election of a foreign forum to conduct judicial or arbitration proceedings derived from actions with pecuniary content will be recognized by Peruvian authorities as long as the actions are not based on issues of exclusive Peruvian jurisdiction, do not constitute abuse of process, or are not against Peruvian public policy.

The Peruvian forum will decline its jurisdiction if the parties have agreed to submit an issue of discretionary Peruvian jurisdiction to arbitration, unless the arbitration agreement has contemplated the eventual submission to a Peruvian forum.

20.3. Peruvian civil and commercial ordinary jurisdiction

Besides a Constitutional Tribunal, which is in charge of controlling the constitutionality of the laws, the Peruvian Judicial system is divided into 34 judicial districts and consists of the following courts and judges:

- The Supreme Court, located in Lima, which has jurisdiction over the entire national territory;
- 34 judicial districts, where the highest court is the Superior Court in each judicial district;
- Lower judges organized according to different specializations;
- Judges of peace in law; and
- Judges of peace, located in rural areas.

The Peruvian justice system guarantees two instances. This means that the judgment issued by the first instance may be reviewed (through an appeal) by a lower specialized judge or a superior court, depending on the level the judicial process was initiated.

In the case of judgements issued in second instance by a Superior Court, it is possible to file an extraordinary appeal in Cassation.

The grounds for filing an appeal in Cassation are:

- Law infringement that directly affects the contested decision.
- Unmotivated withdrawal of judicial precedent.

The decision of the Supreme Court may annul, confirm or revoke the decision of the Superior Court.

20.4. Arbitration jurisdiction

Almost all disputes can be subject to arbitration, except for some controversies such as criminal law, family and public interest matters, industrial property, bankruptcy proceedings, etc. Once the parties have signed an arbitration agreement, a court can no longer rule on the matter, unless the matter is not subject to arbitration (e.g., a murder) or neither party objects the ordinary jurisdiction in the event of a possible judicial process.

20.5. Arbitration jurisdiction- Arbitration agreement

The arbitration agreement may be related to disputes which have already arisen as well as those that may arise in the future. The agreement must be in writing, whether as a clause inserted in a particular contract or as a separate agreement. If there is no previous agreement, it is deemed to exist if both parties give their consent to the jurisdiction of the arbitrators and defend their interests in the event the arbitration commences.

The elements that an arbitration agreement should include are, among others, the legal relationship covered by the arbitration agreement, the indubitable intention to participate in arbitration, the controversies that would get resolved by arbitration, the applicable law to the arbitration agreement, the seat of arbitration, the type of arbitration, the institution in charge of administrating the arbitration, the number of arbitrators, the procedure to appoint them, etc.

20.6. Arbitration jurisdiction- Types of proceedings

Arbitration can be of two types: conscience arbitration and law arbitration. The main difference between them is that in the first case the arbiters resolve a proceeding according to their own knowledge and understanding, while in the second, the arbitrator bases its award on the laws that are applicable to the merits of the dispute. In addition, for conscience arbitration the arbiter can be any natural person, national or foreign, whereas for law arbitration, the arbiter must necessarily be an attorney, unless the parties have agreed otherwise. In case of international arbitration, it is not necessary for the arbitrator to be a lawyer.

20.7. Arbitration jurisdiction- Process

The type of an arbitration proceeding is elected by the parties. Otherwise, if the parties refer to an arbitration institution, the rules of such institution are applicable. The parties are also free to agree on the seat of arbitration. In the absence of such agreement, the seat will be determined by the arbitrators. Unless stated otherwise in the agreement, the arbitration tribunal will operate with the concurrence of the majority of the arbiters appointed. Resolutions and the award should be based on the vote of the majority of the arbiters. The president of the arbitration tribunal has the decisive vote. In other words, he or she acts as the umpire arbitrator.

The Award has the authority of res judicata and the parties are obliged to comply with it, once notified. The prevailing party may request judicial support to enforce the award if the losing party is reluctant to do so, through an award enforcement procedure before commercial judges.

20.8. Arbitration jurisdiction- Remedies against arbitration awards

There is not a second instance in arbitrations.

However, the Peruvian arbitration law enables the appeal for annulment of the award before de Judiciary, under specific grounds.

20.9. Free Trade agreement (FTA); Bilateral International Trade (BIT)

It is usual to draft measures of protection for investors in agreements such as the FTA or the BIT. Thus, if any controversy arises, the first stage is consultation and negotiation and the second (in case the first is not successful) is arbitration.

This method of arbitration proceeding uses one of the following mechanisms:

- The procedural Arbitration Rules of the ICSID of the International Centre for Settlement of Investment Disputes (ICSID); or
- Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- If the plaintiff or defendant agrees it, before any other arbitration center.

20.10. Enforcement of foreign judgments or awards

Foreign Judgments or Awards can be enforced in Peru. The existence of reciprocity is presumed between the country of origin of such Judgment or Award and Peru, unless proven otherwise based on treaties signed between the countries of the parties. Once the foreign judgement or award gets recognized, it acquires the same force as a national judgement.

Foreign Judgments or Awards must be recognized in order to be enforceable in Peru. The Commercial Superior Court is in charge of verifying the following:

- the foreign Judgment or Award must not resolve issues of exclusive Peruvian jurisdiction;
- the foreign Judgment or Award has to be rendered by a competent forum;
- the defendant must be properly summoned;

- the Judgment or Award must be res judicata according to the laws of the place of the process;
- there should not be a pendent Judgment in Peru between the parties involved and related to the same purpose;
- the foreign Judgment or Award should not be incompatible with any other Judgment or Award previously dictated in Peru; and
- the foreign Judgment or Award must not be contrary to international public order and morality.

20.11. Areas of specialty for each judicial district

Each judicial district has the following areas of specialty:

- Constitutional
- Criminal
- Labor
- Contentious administrative
- Family
- Civil
- Commercial
- Transit

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CHAPTER 21

Criminal Matters

CHAPTER 21

Criminal Matters

21.1. Peruvian ordinary criminal jurisdiction

The rules of jurisdiction in criminal matters in Peru are established in the Peruvian Criminal Code, so it is not possible for the parties to agree to submit to a jurisdiction other than the predetermined one.

Regarding territorial application, the general rule in the Criminal Code is that a person who commits an offense in the territory of the Peruvian State (which includes the soil, subsoil, air, and sea space up to 200 miles) will be investigated and prosecuted.

In addition, Peruvian criminal law applies to subjects involved in crimes committed on public Peruvian vessels or aircraft -regardless of where they are located- and in crimes committed on private Peruvian vessels whenever the acts occur in international waters or airspace in which a third country exercises sovereignty.

Infringers in foreign countries are subject to the Peruvian criminal law when:

- The infringer is a public functionary or public servant and commits the crime while on duty.
- The infringer threatens the public security, or the offence is typified as assets laundering when the consequences of the illegal activities take place in Peru.
- The crime affects the state and the national security and defense, the branches of the state, the constitutional order, and the monetary order.
- The crime is perpetrated against a Peruvian citizen or by a Peruvian citizen and the crime is suitable for extradition according to law. In the last case, only when the action is also considered crime in the country in which it was committed and when the agent entered by any means into Peruvian territory.
- When a Peruvian or a legal representative of a company domiciled in Peru commits the crime of active transnational bribery.
- Peru is forced to sanction the illegal activity according to International Treaties.

Finally, in order to safeguard the guarantee of double jeopardy, the Supreme Court acts as a court of appeal for those cases in which the judgments originated in a Superior Court or in the Supreme Court.

21.2. Criminal consequences for enterprises and their representatives

Criminal sanctions require the liability of the infringer. This means that any criminal liability based on objective liability is forbidden. If a company is used to commit a crime, but the representative does not participate in the acts, or has no knowledge of such illegal acts, or could not have knowledge of the illegal acts, he or she should not be prosecuted. It is necessary to verify that the representative participated intentionally or by not stopping the crime from taking place despite the knowledge of its commission.

A company´s representative who commit any crime on their own, without any participation of the enterprise they represent, will personally assume the criminal sanctions without any legal consequences to the company they represent.

Representatives of a company who commit a crime in the exercise of the mentioned representation will personally assume the criminal liability even though the especial elements that justify the sanctions for the crime committed are not evidenced in his/her person but in the legal entity. In these cases, the representative will assume criminal liability as the author of the crime.

Generally in Peru, legal entities do not have the capacity to assume by themselves the criminal liability of a crime; however, in the last few years this has changed for the specific case of certain crimes of corruption, assets laundering and financing of terrorism as will be explained later. However, as a general rule (with the exception noted), if in the course of a criminal proceeding it is found that the enterprise benefited directly from the commission of the crime or that the crime was committed as part of an enterprise policy, they could be included in the proceeding as a civilly liable third party so that they could actively participate through a legal representative.

If at the end of the proceeding the defendant is found liable for the crimes charged against him, he will be found guilty by a judicial sentence. This sentence will include the penalty against the subject and the payment of civil reparation for the damage caused. If applicable, this reparation must be paid jointly and severally between the convicted person and the third party who is civilly liable.

In addition, in some cases in which the offense is committed using the enterprise as a mean or conduit for its commission or in which it is remarked that the enterprise has been used to hide or facilitate the commission of the offense, the judge has the faculty to order one or more of the following measures called accessory consequences of the sentence:

- The closure of its offices or stores, temporarily or permanently. In the case of temporary closure, it will

not exceed five years.

- The dissolution and liquidation of the company, association, foundation, cooperative or committee in case it is proven that its creation had as its purpose the commission of illegal acts.
- The suspension of the activities of the society, association, foundation, cooperative, or other entity for no more than two years.
- The temporary (no more than five years) or final prohibition to the society, association, foundation, cooperative, or other entity to carry out in the future activities such as the ones in which the crime was committed, allowed, or covered.
- Penalty fee not less than five nor more than 500 UIT (approximately US$ 600,000).

When any of these measures is applied, the judge will order the competent authority to order the intervention of the legal person to safeguard the rights of the workers and creditors of the legal entity for up to a period of two years.

The change of the corporate name, the legal status, or the corporate reorganization will not prevent the application of these measures.

21.3. Criminal consequences for companies and their representatives- Autonomous liability of the legal entity according to Law N° 30424

Notwithstanding the above, on January 21, 2016, Law No. 30424 was published in the official daily gazette "El Peruano". This law regulates the administrative liability of legal entities who, as a consequence of their operations, incur in the commission of the crime of Transnational Active Bribery regulated in section 397-A of the Peruvian Criminal Code. Subsequently, by Legislative Decree No. 1352 dated January 7, 2017, the administrative liability of legal entities was expanded, to attribute liability for the commission of the following crimes:

- Active bribery (section 397° of the Criminal Code).
- Transnational active bribery (section 397°-A of the Criminal Code).
- Jurisdictional active bribery (section 398° of the Criminal Code).
- Money laundering (section 1°, 2°, 3° and 4° of the Legislative Decree N° 1106).
- Terrorism financing (section 4°-A of the Law Decree N° 25475).

Additionally, through this Legislative Decree No. 1352, it was established that Law No. 30424 would enter into force in January 2018.

Subsequently, through Law No. 30835 dated August 2, 2018, the name of Law No. 30424 was modified to "Law that regulates the administrative liability of legal entities" and its article 1 was modified to incorporate the crimes of Simple and Aggravated Collusion (article 384 ° of the Criminal Code) and Trafficking of Influence (article 400 of the Criminal Code).

Under this new system, legal entities will be able to be investigated, prosecuted and punished autonomously and independently of the criminal prosecution that could be brought against their representatives, directors, executives or employees for the commission of the above-mentioned crimes. In this criminal investigation -and eventual process-, the company will enjoy all the rights of defense and due process recognized in the criminal legislation.

The application of this rule extends to legal entities under private law, associations, foundations, NGOs, unregistered committees, autonomous asset management entities and Peruvian State enterprises or mixed economy companies.

The liability will be autonomously attributed as long as the offences have been committed:

1. In the name of the company or on its behalf.
2. In the direct or indirect benefit of the company.
3. That the illicit has been executed by:
    - Its partners, directors, managers, legal representatives, or attorneys-in-fact of the company, or of its affiliates or subsidiaries.
    - A person under the authority and control of the previously mentioned administrative bodies when the crime was committed under their orders or authorization.
    - A person under the authority and control of the mentioned administrative bodies, when the person commits the crime because of negligence in the supervision, vigilance and control duties about the task commended by the administrative bodies.

It is important to note that legal entities having the status of parent companies will be liable and sanctioned only if the executives or workers of their affiliates or subsidiaries who commit the crimes mentioned have acted under their orders, authorization or with their consent.

On the other hand, legal entities are not liable when the persons specified above have committed the offences in reference, for their own benefit or for the benefit of a third party other than the legal person.

The sanctions that may be imposed on legal entities in the event of a conviction are:

1. Penalty fee calculated between the double and sextuple of the benefit received or expected to receive for the commission of the crime.
2. Disqualification, in any of the following modalities:
    - Suspension of the activities (between 6 months and two years).
    - Temporary (between 1 and 5 years) or definitive prohibition to carry out in the future, activities such as the ones in which the crime was committed, allowed or covered up.
    - To contract with the State of a definitive nature.
3. Cancellation of licenses, concessions, rights and other administrative or municipal authorizations.
4. Closure of its premises or establishments, either temporarily (1 to 5 years) or permanently.
5. Dissolution.

Notwithstanding the above, the legal entity may be exempted from liability when it has implemented, before the commission of the crimes in reference, a prevention model appropriate to its nature, risks, needs and characteristics.

For this purpose, it is important to mention that in 2019, the Supreme Decree No. 002-2019-JUS was published, through which it was approved the Regulation of the law No. 30424. In this Regulation, it is developed the minimum elements of the prevention model and it sets out the guidelines, policies and procedures to be followed, in order to prevent and/or significantly reduce the risk of the commission of the previously mentioned crimes.

In this sense, firstly, it must be developed a policy of the prevention model, through which the commitment and leadership of the governing body and the top management for the implementation and supervision of this model is reflected, showing an absolute rejection of the commission of the mentioned crimes. The legal entity must also approve a code of conduct in which all members of the organization compromise to not commit the referred crimes and to contribute to the proper functioning of the prevention model.

Without prejudice to the above, the minimum elements that the prevention model must contain are:

- A prevention officer in charge of ensuring the application, execution, fulfillment and continuous improvement of the prevention system (compliance officer).
- The identification, evaluation and mitigation of risks to prevent the crimes in question.
- Whistle-blower procedures.
- Periodic diffusion and capacitation of the prevention model.
- Continuous evaluation and monitoring of the prevention model.

Likewise, in a complementary manner and under the principle of self-regulation of the legal entity, the following measures may be implemented:

- Policies for specific risk areas (specific controls on facilitation payments; gifts, sponsorships, travel; and contributions to political campaigns).
- Registration of activities and internal controls.
- Integration of the prevention model into the business processes of the legal entity.
- Designation of an internal audit person or body.
- The implementation of procedures that guarantee the rapid and timely interruption or remediation of risks.
- Continuous improvement of the prevention model.

However, it will be the Superintendence of the Stock Market (SMV on its Spanish acronym) which, at the request of the Public Prosecutor's Office, will evaluate whether the prevention model implemented by the legal entities is adequate or not. For that matter, the SMV will issue a technical report after the analysis of the documentation provided by the company, the inspection visits and the employees´ and third parties´ statements.

It should be pointed out that the law provides for the implementation by the judiciary of a public computerized register for the registration of penalties imposed on legal entities. The company will be withdrawn from the register once it has fully complied with the sanction, except in cases where the measures imposed are definitive.

Finally, it is pending the approval of Bill No. 676/2021, issued by the Executive Power on November 10, 2021, through which it was proposed several modifications of Law No. 30424. Some of the objectives of this Bill are the following:

- Incorporate new crimes in which autonomous liability could be attributed to the legal entity during its activities.
- Expand territorially and subjectively the scope of the effects of Law No. 30424.
- Establish a calculation measure for the penalty fines to impose, relating to each legal entity´s characteristics.
- Regulate the discretion of the legal entities concerning the elaboration of the prevention model.

Bill No. 676/2021 is currently in the law autograph stage. This means that the Bill was sent to the Congress´ Justice and Human Rights Commission for it to issue a report that i) request the Congress´ Plenary the approval by insistence or ii) modify the autograph considering the observations made by the Executive Power on July 04, 2022.

21.4. Criminal protection for intellectual and industrial property

The Peruvian Criminal Code sanctions various offenses against intellectual and industrial property. The main requirement to obtain protection in criminal courts is to have the intellectual property (IP) rights duly registered in Peru.

In October 2008, as part of governmental measures taken for the implementation of the Free Trade Agreement with the United States, new criminal offenses were incorporated into the criminal code regarding Intellectual Property and Industrial Property rights, the same that are already being actively prosecuted by the Public Ministry and the Judicial Power. Specialized District Attorney's offices have been created to investigate these kinds of crimes.

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CHAPTER 22

Infrastructure

CHAPTER 22

Infrastructure

22.1. Generally

Private companies can build and operate public infrastructure through concessions granted by the State (at different Government levels: central, regional or municipal). Infrastructure concessions can be granted on the initiative of the State itself or by private parties. In the case of initiatives that come from private companies, the latter can propose infrastructure projects to investment promotion entities. When the infrastructure in question has a national impact the governmental agency in charge of promoting private investment is ProInversión. The same figure can apply to local or regional government investment promotion entities when the infrastructure involves only the territory of one specific local or regional government. These projects can be based on existing infrastructure in the hands of the State or can propose the creation of new infrastructure.

If ProInversion or the corresponding regional or local government considers that the private initiative is of public interest based on its viability and social relevance, it will declare such project as one of interest, and will publish information on the corresponding project in order to know if there are other parties interested in developing it. If third parties show interest for which it is necessary to file a guaranty (e.g., bank bond), the corresponding governmental agency will call for a public bid so that the proponent of the initiative can compete with other interested private parties for doing the project. If the proponent of the initiative does not win the bid, the bid will have a second round only between the winner of the first round and the proponent. In this second and final round both parties will have the chance to make new economic offers.

22.2. Relevant laws and policies

By means of Legislative Decree 1362, the Law for the Promotion of the Private Investment through Public-Private Partnerships and Projects related to Assets was approved, to contribute to (i) the growth of national economy, (ii) the closing of gaps in infrastructure or public services, (iii) the generation of productive employment, and (iv) the country's competitiveness. This law implements a legal framework to regulate the participation of the private sector (through Public-Private Partnerships) in the development of (i) public infrastructure, (ii) public services, (iii) services related to (i) and (ii), and (iv) projects of applied research and/or technological innovation. Likewise, by Supreme Decree 240-2018, regulations of Legislative Decree 1362 were approved, containing the regulatory provisions for its application, such as the different stages applicable to State initiatives.

Public-Private Partnerships, as its name may indicate, are long term modalities of participation of the private

investment, in which experience, knowledge, equipment and technology are incorporated, and risks and resources are allocated, preferably of the private sector, for the purpose of developing, improving, operating or maintaining public infrastructure and/or providing public services through contractual mechanisms.

22.3. Opportunities

Peru has an infrastructure deficit in respect to public services.

During the last years, the Peruvian Government has initiated several reforms destined to establish proper conditions and to promote a major and better use of public resources allocated to public investment projects, as well as a more active participation of the private sector in order to cover the works needed in the energy, roads, ports, telecommunications and health sectors, among others.

Concessions are usually financed as "project finance". In these cases, the term for payment of the credit should be adequate for the cash flow to be obtained through the administration of the concession. In the case of highway construction projects, for example, the finance of the operation is repaid with the funds obtained through fee toll collection. The administration of these fees is usually done through trusts. In these kinds of concessions, sometimes the Peruvian Government guaranties a minimum income, which, when not covered by the toll's collection, is directly covered by the Peruvian State. On the other hand, in certain concessions, the Peruvian Government issues a document called Certificate of Work Performed (CAO) which represents the obligation of the Government or of a Government-owned-company to pay for certain investment in infrastructure made by the concessionaire. The CAO could be transferred to a financing third party.

Please find below some opportunities in the Peruvian market:

22.4. Industrial Park of Ancon

This project consists in the creation of a modern space for industrial companies in order to offer them sanitation services, electric power, telecommunications, maintenance, vigilance, cleaning, management, and technologic and business development, among others. The project is located in the district of Ancon, Department of Lima and has an extension of 1,338.22 hectares. Estimated Investment: USD 762 million.

22.5. Integrated transport system of natural gas-Central and South of Peru

This project comprises a natural gas transport system that will allow the safety provision of natural gas and liquid natural gas for the users in the main cities of the south of Peru. Estimated Investment: USD 4. 320 billion.

22.6. Peripheral ring road

The concession holder of this project will be in charge of implementing a highway of 33.2 Km. of length, allowing to optimize the connections between the districts of the north and east areas of Lima with the rest of the metropolitan area. Estimated Investment: USD 2.380 billion.

22.7. New hospitals of high complexity in Piura and Chimbote

The concession holder of this project will be in charge of the implementation, operation and maintenance of two hospitals. Estimated investment: USD 254 million.

22.8. Huancayo-Huancavelica railway

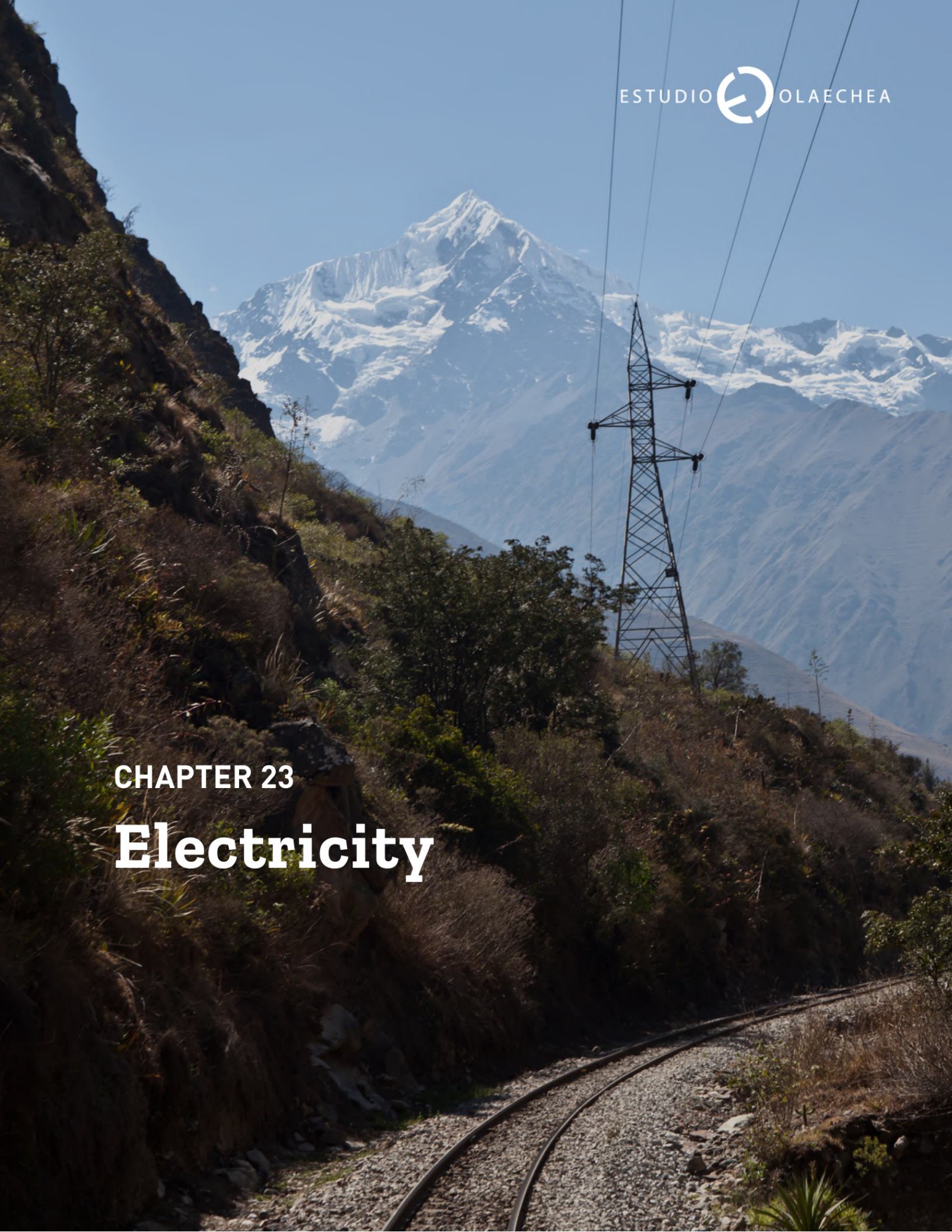
The concession holder for this project will be responsible of the execution of the necessary rehabilitation works along the railway (128.7 km), and its subsequent operation and maintenance stage. The project follows a DFBOT scheme (design, finance, build, operate and transfer), and therefore the future concession holder will be responsible for developing the Final Studies of Engineering Works and Rolling Material, as well as the Semi-detailed Environmental Impact Study. It will also be responsible for the execution of the Rehabilitation Works and Provision of Rolling Stock, to subsequently provide rail service through an Operator, as well as to provide maintenance to the Infrastructure and Rolling Stock. Estimated Investment: USD 263 million.

22.9. New San Juan de Marcona port terminal

This project consists in the execution of a concession contract for the design, financing, construction, operation and maintenance of a new port terminal for public use, specialized in providing storage and cargo loading of iron and copper concentrates as well as raw materials for the mining production. Estimated Investment: USD 520 million.

22.10. Project of construction for the supply of drinking water for Lima

The concession holder for this project will be responsible for the design, finance, construction, operation and maintenance of the new and existing works, with the objective of increasing and improving the drinking water service to 1.5 million citizens of the east and south regions of Lima. Estimated Investment: 480 million.



CHAPTER 23

Electricity

CHAPTER 23

Electricity

23.1. Generally

The electric business scheme, as established in the Electric Concessions Law, is divided into four activities:

- generation;
- transmission;
- distribution; and
- commercialization

The Ministry of Energy and Mines is the policy maker and the entity in charge of granting concessions or authorizations for generation, transmission or distribution, when applicable. On the other hand, the Supervisory Agency of Investment in Energy and Mines (Osinergmin) is the governmental entity in charge of supervising the compliance with electricity regulation while the supervision of compliance with environmental obligations is in charge of another governmental agency, that is, the Environmental Evaluation and Supervisory Agency (OEFA), which belongs to the competence of the Ministry of Environment. Finally, the Economic Operation Committee of the Interconnected National System (COES) is the private non-profit organization (with public law nature) that is in charge of coordinating the operation of the National Electric Interconnected System (SEIN) to the minimum cost, preserving the security of the system and an efficient use of its energetic resources. The COES is formed by all the agents of the SEIN (generators, transmitters, distributors and free users).

23.2. Private participation

The electric rights that the Government grants for the development of the electric activities referred in the latter point are concessions and authorizations:

Concessions: It is necessary to obtain an enabling title (concession), for the development of the further activities:

- Generation of electric energy that uses hydraulic resources with an installed power greater than 500 KW.
- Transmission of electric energy, when the installations affect goods that are property of the State and/or require the creation of eases by the State.
- Distribution of electric energy with the nature of Public Service of Electricity, when the demand is greater than 500 kW.
- Generation of electric energy with renewable energy resources with an installed power greater than 500 kW.

Authorizations: Also, The Ministry of Energy and Mines has determined that these authorizations are required in order to undertake thermoelectric generation activities with an installed power that exceeds 500 kW.

Based on the Legal Decree Nº 25844, Law of Electric Concessions, and the Law Nº 27867, Organic Law of the Regional Governments, the granting of these rights, both concessions and authorizations, may be processed before the Ministry of Energy and Mines or the Regional Governments, depending on the required capacity and the geographic location.

Free Activities: In case a person wants to carry out electric generation, transmission or distribution activities that do not fulfill any of the quoted conditions for the concessions or the authorizations, such activities may be developed in a free manner. Nevertheless, they must comply and follow technical and environmental obligations, as well as inform the Ministry of Energy and Mines of the beginning of the activities and the constructions and installation's characteristics.

The holders of concessions and authorizations have some obligations. The most important are: to carry out the studies and/or the execution of the works in compliance with the deadlines indicated in the corresponding schedule; to preserve and maintain its works and facilities in adequate conditions for their efficient operation, in accordance with the concession contract; to respect regulated prices (when applicable); to preserve the environment and national patrimony of the Nation; to contribute to the maintenance of regulatory entities; among others.

The holder of a concession of distribution has exclusive rights for distribution service in the concession area. This, in accordance with the distributor's legal obligation of supplying energy to everyone who requests it within the concession area or to anyone located outside the concession area who can reach it by means of its own lines.

Additionally, all distribution and transmission companies must allow the use of their systems and networks by third agents, provided that the technical capacity exists, and that they are duly compensated by the users. This is based on the Open Access principle.

23.3. Electric market

The electric consumers are divided into two main groups in Peru: those whose prices are regulated and respond to the marginal cost of supply and those whose prices and purchase conditions are agreed to by the parties. The instances of regulated prices are the following:

- Power and energy transfer among generators.
- The withdrawals of energy and power from COES made by the distributors and non-regulated users.
- The rates and compensations corresponding to the Transmission and Distribution Systems.
- The power and energy sold from generators to the distribution concessionaires for public service purposes, provided that the origin of the sale is not a tender.
- The selling to a regulated user, which is the one that consumes no more than 200kW per month.

If the user consumes more than 200kW and no more than 2500kW per month, it may choose between being regulated consumers or free consumers. If the user consumes more than 2500kW, he will be considered a free consumer, necessarily.

23.4. Previous consultation

In accordance with the Law 29785, recognized in Convention 169 of the ILO, in case the project involves lands used by an indigenous or native community, the Peruvian Government should perform previous consultation with indigenous or native communities in order to reach an agreement between the Government and the corresponding community, before the concessionaire can initiate operations.

The webpage of the Ministry of Culture contains a list of the indigenous or native communities in the country, and there is also a reference to its location. Nonetheless, this list has constant modifications, because it must be updated every time new information appears on a non-registered community.

23.5. Renewable energy

Since 2008, the Peruvian Government has enacted regulations related to promoting the use of renewable energies, in order to promote the diversification of the Peruvian energetic base, face the challenges of energy provided to our population and mitigate the environmental impact associated to such generation process.

Renewable energies are defined as the ones which origin source is obtained in the nature and are endless. Wind, solar, geothermic, biomass and mini hydroelectric sources are considered as renewable energy pursuant to Peruvian legislation. Currently, the hydroelectric is the main source of energy in our country, according to the statistics of COES; for example, in February, the total production of energy generation plants was 9 001 609 GWg, and 5 806 715 of those were hydroelectric plants, which is more than 50%.

This new legal framework has foreseen several benefits in favor of the holders of this type of projects, such as the granting of priority when dispatching energy, priority in the connection to the system, minimum income guarantees and the execution of long-term agreements. Such projects are selected by means of bidding systems called by Osinergmin.

The Ministry of Energy and Mines is the entitled to set every five (5) years a target percentage in which electricity from renewable energy resources should participate. Hydroelectric plants are not considered in this target percentage.

Based on the guidelines set by the Ministry of Energy and Mines regarding volume and technology, Osinergmin auctions the assignment of a long-term contract to supply energy to the system, according to the Auction Tariff offered by each bidder for each power generation project with renewable energy resources. The last auction was held in 2016.

In year 2020, three electric generation plants with non-conventional renewable energy resources started commercial operations in our country. Said plants are Central Eólica Duna, Central Eólica Huambos in Cajamarca; and, Central de Biomasa Callao in Callao, belonging to GR TARUCA S.A.C., GR Paino S.A.C. and Empresa Concesionaria Energía Limpia S.A.C., respectively. It is projected that at the end of year 2023, all these works will increase the national installed capacity for generation in 264.8 MW, with an investment of 532.5 million.

Likewise, in year 2022, the Ministry of Energy and Mines approved renewable energy projects with investments above USD 3.85 million for nine photovoltaic plants and four wind farms, in addition to other electric works.

On the other hand, in the last few months, bills have been published with the purpose of contributing to sustainable development and environmental care, related to the electric sector. Bill N° 1973/2021-CR, declares of public necessity and national interest, the promotion of the use of electric vehicles, hybrid electric-hybrid electric vehicles and their supply equipment.

Additionally, through Ministerial Resolution No. 227-2022-MINEM, 2022, MINEM published the proposal of legislative initiative "Law that modifies Law No. 28832, Law to ensure the efficient development of Electricity Generation". This proposal raises the possibility of implementing electricity storage systems, so that the energy produced in the Interconnected System can be stored and then injected back into the system.

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