

Doing Business in Peru 2022



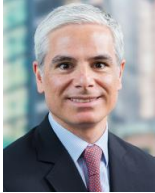
Doing Business in Peru

2022

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Introduction



Juan Carlos de los Heros
Managing Partner

2021 was an encouraging year for Peru at the economic level. Despite various challenges, both internal and external, the country achieved double-digit GDP growth, high export rates, and the expansion and consolidation of trade partners.

However, the new government's failure to take the right measures, the prevailing political instability, and the geopolitical international situation have given rise to an environment of great uncertainty, which has directly affected our economy. In addition, the COVID-19 pandemic continues to affect us, although now to a lesser extent.

Our Firm, being committed to development and investment in Peru, has published this Legal Guide to Doing Business in Peru 2022. This guide contains useful and current information related to the evolving legal framework that every investor must take into account when starting or maintaining a business in Peru. It includes chapters regarding laws, systems, guarantees and other peculiarities of local regulations.

We update our guide yearly since the legal framework is constantly evolving and it is essential to identify the relevant aspects in doing and maintaining business in our country.



25,245
25,215

ECONOMIC OVERVIEW

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Overview¹

On the economic front, 2021 was quite a positive year for Peru, with double-digit GDP growth, record export rates, expansion and consolidation of trade partners. The government acted correctly regarding economic matters on issues as diverse as protecting mining investments by mediating with indigenous peoples, as well as partnering with the private sector for the export of certain agricultural goods such as blueberries.

Nevertheless, political instability and institutional paralysis in Peru are symptoms of Pedro Castillo's diminished capacity as a policymaker and persistent governance challenges. Tensions between the president, cabinet and Congress have undermined policy formulation and execution and heightened political uncertainty.

According to Fitch, the deterioration of Peru's political situation and the consequent weakening of the economic outlook would further weaken its "BBB" rating, potentially leading to a rating revision. The process of impeachment of the president by Congress is the latest sign of continuing domestic political tensions. On 28 March 2022, Pedro Castillo appeared before Congress to vote on his removal. In any case, in the face of this political back-and-forth, Peruvian institutions demonstrated their firmness and legislators showed that they were following constitutional processes.

Political situation

Despite the current instability and uncertainty, one should not overlook the fact that there are relatively **strong political institutions, a growing middle class and a representative legislature**.

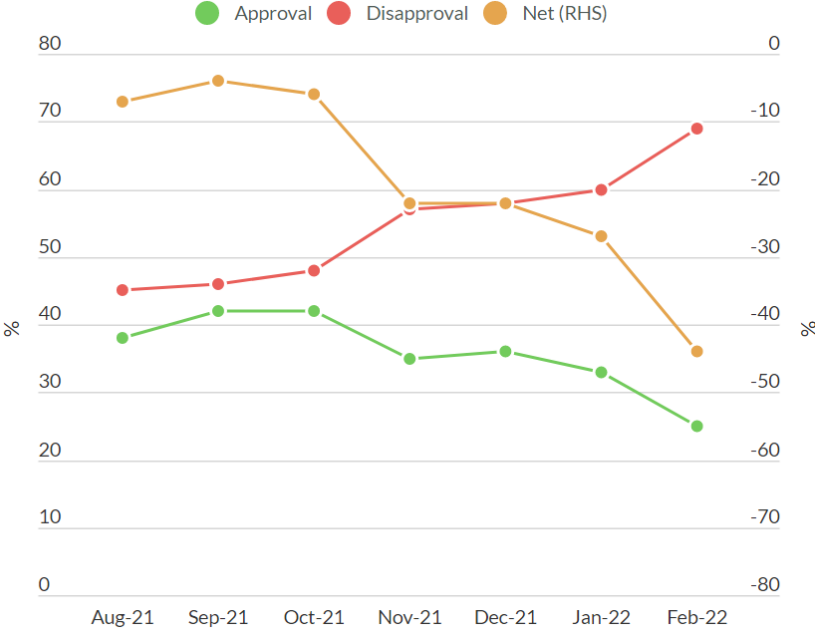
According to the famous political scientist Juan Linz, the possibility of impeachment is not purely negative. This mechanism guarantees the

¹ This document is based on reports from Fitch, BN Americas and the Peruvian Ministry of Foreign Affairs website.

continuity of democratic institutions and the existence of this escape valve would avoid the interruption of a non-democratic actor such as the Armed Forces. In any case, it is necessary to point out that since Vizcarra was removed by impeachment as was his predecessor, the effects of an eventual impeachment of Castillo would not be the same.

Castillo's image is weakened by three impeachment attempts; high ministerial turnover; and tensions among far-left politicians led by Vladimir Cerrón, who supported the president's campaign.

Presidential approval ratings

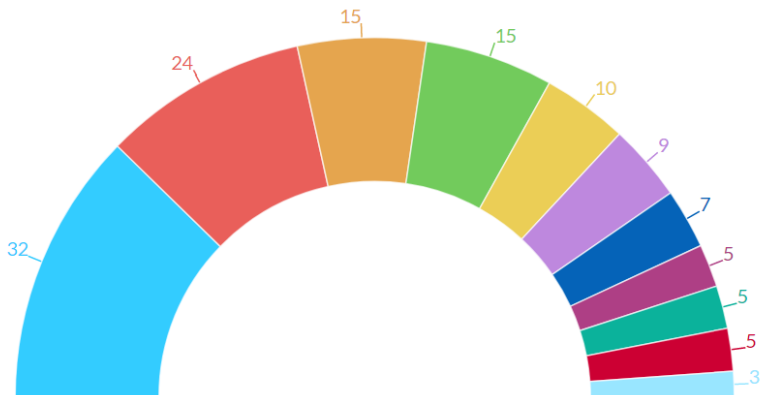


Source: Fitch

To be removed from office, two-thirds (87 out of 130) of the deputies must vote in favor. If an impeachment attempt is successful or the

president resigns, the constitutional succession process could move quickly. In the event that the vice president decides not to govern, the head of Congress becomes interim president and must soon call a presidential election to complete the term.

Peru Congress (distribution as of March 2022)



If the impeachment happens, it opens the possibility of elections in the short term. New elections are unlikely to solve the underlying structural political problems, such as deep polarization, the weakness of the political center and the fragmentation of Congress.

Such a polarized political spectrum increases the likelihood of political paralysis and the kind of rifts that have characterized recent national politics. This can be inferred by the fact that no centrist candidate made the top four in the first round of the 2021 presidential election.

Another frantic presidential campaign with a wide range of candidates and limited visibility of potential administration policies over the next

six to 12 months, repeating the 2021 process, would amplify political uncertainty.

Although presidential instability is not something to be welcomed, Peru's institutions have remained solid in the face of it. **Individuals pass but institutions remain.**

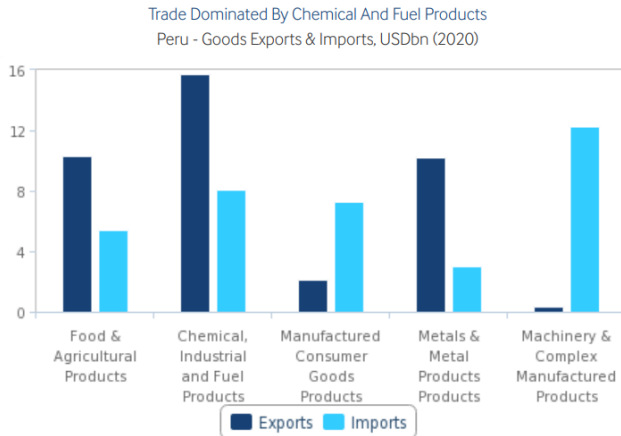
A strong, representative parliament that respects the democratic game is synonymous with predictability and lack of arbitrariness — fundamental elements of a legal framework suitable for the development of projects.

Industry and trade

Despite social and political tensions, 2021 was a year of economic growth for Peru. The economy grew 13.3% last year, according to the statistics agency INEI. For the current year, the IMF forecasts growth of 4.6% (estimate made prior to the sanctions against Russia).

In 2021, Peru's foreign trade of goods reached record levels. It was 36% and 19% higher than in 2020 and 2019, respectively. It has shown higher growth rates than Latin America and the world, highlighting the growth of its trade with Asia and Europe.

According to SUNAT, the local reactivation and the high international prices made it possible to reach USD 56 billion in exported goods.



- **By region**

In **2021**, Peru's foreign trade reached an all-time high (USD 102,679 million), driven by increased trade with Asia (+39%) and Europe (+37%).

Peru-China trade (30.2% of Peru's trade) grew 39% in 2021, reaching a record high (USD 30,985 million) thanks to sales of minerals and fishery products. Trade with Saudi Arabia (+175%), Turkey (+113%), Russia (+99%), India (+81%), Hong Kong (+72%), and Indonesia (+64%), among others, also grew.

Increased trade with Europe was mainly due to higher sales of natural gas, given the severe shortage of this commodity in Europe. Trade with the US grew by 30% due to higher imports (+43%), hydrocarbons (+81%) and vehicles (+70%). Exports grew by 16% in 2021.

In **South America**, Peru increased its trade with Brazil (+62%), Peru's fourth largest trading partner, thanks to higher sales and purchases of phosphates and oil respectively. Trade with Bolivia (+52%) and Ecuador (+52%) also grew significantly due to higher imports of

soybeans and oil, respectively. Trade with the Pacific Alliance increased by 30%, trade with Chile (+39%).

- **Traditional exports**

Mining increased its sales mainly due to higher mineral prices, especially of tin (+135%), molybdenum (+83%), iron (+58%), copper (+37%) and zinc (+27%). The mining sector accounts for 59.3% of exports and in 2021 represented USD 33.338 billion, an increase of 33% compared to 2020.

The government has been an important player in the sector, forging an agreement for the southern corridor in the province of Cusco for access to the Las Bambas copper mine and economic support for mining companies that develop projects beneficial to the communities.

There are multiple such projects for the country, including AngloAmerican's planned investment of USD 5.5 billion in Quellaveco.

According to Raul Jacob, president of the mining-energy union trade union SNMPE, USD 60 billion has been invested in the last 10 years and another USD 15 billion is expected in the next five years.

He also states that the sector is highly competitive and macroeconomic conditions are good.

Oil and gas exports represented 5.5% of total exports or USD 3.089 billion, 108.1% more than in 2020.

In contrast to the strongly statist approach of many of its Latin American peers, Peru has adopted a more market-oriented approach to the development of its oil and gas sector. NOC participation is competitive and non-binding, companies enjoy a high degree of operational independence, and investors are offered significant legal guarantees on their investments. Contractually, it is one of the most attractive oil and gas markets in the region.

Oil and gas exploration and production in Peru are carried out under a license contract or a service contract granted by the government. Under license contracts, the oil and gas extracted becomes the property of the concessionaire; the resources can be counted as reserves and the production can be sold on domestic and international markets. In service contracts, the government contracts a private company to carry out exploration and production, but the resources remain the property of the state. Normally, the contracted party is compensated with a share of the production.

Once in force, the contract cannot be modified unilaterally by the State, a fact that provides certain guarantees to the investing companies. However, in order to enter into the contract, the company needs to create and operate via a subsidiary registered in the country.

One of the greatest risks presented by the industry is the reluctance of certain communities to refuse exploration (generally for ecological reasons).

In the **agricultural industry**, sugar and coffee exports grew 1.5%. In 2021, they increased by 16.3% to USD 857 million. The **fishing industry** represents 4.2% of total exports. In 2021, this meant USD 2.335 billion, 51% more than in 2020.

- **Nontraditional exports**

Grapes, blueberries and avocado are still considered non-traditional exportable products, but for the last 10 years they have accounted for the largest percentage of exports within the agricultural industry. This trident has a greater weight than goods considered traditional such as coffee or sugar.

In millions of dollars, FOB.

Green: Avocado; Blue: Blueberry; Violet: Grapes



Grapes, blueberries and avocado (6.7% of Peru's total exports) are the only three products in this industry that exceeded USD 1 billion in exports. This was made possible in part by the activation of the Multisectoral Commission for the Facilitation of Foreign Trade (Comufal) since the beginning of the state of emergency. Interaction between the public and private sectors ensured an efficient supply chain for producing and exporting these goods.

The country's high biodiversity and favorable climate encourage the expansion of the agricultural frontier and a favorable environment for its continuous growth.

- **Macro**

The Peruvian economy's strengths include extensive trade links with North America and Asia Pacific, which underpin sustained export growth, as well as the stability of steady domestic demand from a strong middle class. At the same time, Peru has a low level of indebtedness relative to the region.

One of the country's areas for improvement is the need for a more developed infrastructure. This could be an opportunity for foreign companies looking to invest in infrastructure projects in the country. Due to rising fuel prices, projects focused on the extraction and processing of gas and other natural resources represent very good opportunities.

- **Risks and opportunities**

As a **price taker**, Peru is exposed to commodity price volatility. This can be both beneficial and detrimental, but is beyond its control.

Its main trading partner is **China**, which shows a dependence on the Asian giant. Nevertheless, this **dependence** is a general rule in the region.

Due to the conjunctural nature of the situation, it is difficult to establish the consequences of the **sanctions on Russia**. What can be determined is that they will generate an increase in the prices of international commodities. Due to the Eurasian country's export profile, the sanctions will affect the supply, generating a price increase that would have a double effect. Positive, due to the increase in the prices of mining goods (33.8 billion in 2021). Negative, due to the increase in the price of oil (5.7 billion in 2021) and fertilizers (555 million). Therefore, the final effect is uncertain, but it would represent more of an opportunity than a threat — especially if we take into account the secondary character of Russia as a trading partner. There is no bilateral trade agreement between Moscow and Lima, and Russia represents only 0.7% of the trade balance.

Outlook

According to Fitch's estimates, due to a decrease in domestic demand, Peruvian GDP would grow by around 3%. In turn, Fitch has estimated that the central bank will raise interest rates by 150 basis points to 5.5% by the end of the year.

With Russia's recent invasion of Ukraine, risks to growth prospects are an uncertainty. The price of commodities have risen sharply. Taking into account Peru's export matrix, this event could be beneficial for the country. However, it is too early to draw any conclusions.

The predictability of institutions, steady economic growth in recent years and a pro-market environment are Peru's main strengths, making it one of the best performers in the region.



THE ROLE OF THE STATE

The General Law for the Growth of Private Investment ("**Legislative Decree No. 757**"), passed in November 1991, eliminated and banned all forms of reserving economic activities for the state. These reserves must only be held for reasons of public interest or national security and approved by Congress. Equal conditions for public and private activities were established.

According to the Peruvian Constitution, the state can perform business activities only as a subsidiary and when authorized by law, for reasons of public interest or national need.

The state has the mission of supervising and favoring free competition and of repressing any conduct that restricts it. It must also fight any practice that limits free competition and penalize the abuse of dominant positions or monopolies. No law or agreement may authorize or establish monopolies.



PROMOTION OF PRIVATE INVESTMENT

Promotion of private investment

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What is new for investors?

The Agency for the Promotion of Private Investment, on its last presentation made on November 2021, published its projects portfolio and reported that they have 20 mature projects to be promoted over 2022, worth USD 6.3 billion in investments. The agency also announced 24 projects on maturation worth USD 2.1 billion in investments, which represents a total reference investment amount of USD 8.04 billion.²

General guarantees for investment

The Peruvian constitutional and legal framework opens the economy to private investment, which is practiced in the context of a social market economy. It also promotes competition and ensures foreign investment in any type of company.

It provides that prices be governed by the law of supply and demand, indicating that the only prices that are administratively regulated are tariffs for public services, which are established by law and approved by Congress.

It also recognizes the freedom of trade and industry and of exports and imports.

In the early 1990s, investment guarantees were introduced, such as the right to freedom of ownership and disposal of foreign currency and repatriation of capital and dividends to all natural and legal persons, both national and foreign.

It is also guaranteed that there shall be no discriminatory or differential treatment in foreign exchange, prices, customs tariffs or duties among investors based on sectors or types of activity or geographic location, nor between natural or legal persons, domestic or foreign.

² https://www.investinperu.pe/RepositorioAPS/0/2/JER/PPT_PROYECTOS/2021/PPT-noviembre-15-11-Esp.pdf

In addition, there is a legal stability regime for investors' rights and in fiscal and labor matters.

Guarantees for foreign investment

Article 63 of the Constitution of 1993 stipulates that foreign investors have the same rights as domestic investors.

Investors are guaranteed the right to freely transfer abroad — in freely converted currency and without any authorization whatsoever — their entire capital, dividends, profits, royalties and consideration for the use and transfer of technologies and elements of industrial property. Where conversion from national currency to foreign currency is deemed necessary, they shall be entitled to the most favorable exchange rate. Investor rights can be stabilized through legal stability agreements, by meeting the requirements established by law.

No authorization is required for foreign investments, which may only be subject to subsequent registration.

The only restriction on foreigners allowed by the Constitution is that they cannot acquire or possess, within 50 kilometers of the border, mines, lands, forests, water, fuels and energy sources, unless an exception is declared by a supreme decree due to public necessity or national interest.

As for hydrocarbon projects, the Organic Law considers the exploration and exploitation of hydrocarbons to be of public necessity and national interest; therefore, these activities are exempt from the abovementioned restriction.

Privatizations and concessions

Regarding the evolution of private investment in Peru, the Peruvian government established in 1991 a framework to promote private investment in public companies. In line with the constitutional definition that the state may only perform business activity in a subsidiary manner, a privatization project was implemented, the

consequence of which was the transfer of many public companies to the private sector.

As a result, all telecommunications companies, banks and production sectors in general in which the state participated were transferred to the private sector.

Additionally, Peru has had a legal regime for public private partnerships (PPP or *Asociaciones Público Privadas* (APP)) since 2008, which promotes private investment in infrastructure and public services projects through the granting of concessions.

Legislative Decree No. 1362 regulates the promotion of private investment through public-private partnerships and projects in assets, and its regulations were approved by Supreme Decree No. 240-2018-EF. It provides a unified regulatory framework for the promotion of private investment at the three levels of government, contributing to the growth of the national economy with the closing of gaps in infrastructure or public services as well as the generation of employment. Likewise, the purpose of this legal framework is to regulate the institutional framework and processes for the development of investment projects under PPP modalities and projects in assets.

According to the current legal framework, PPPs are those modalities of participation in private investment, through long-term contracts in which the state intervenes through a public entity and one or more private investors, and in which risks and resources are distributed, preferably private, to develop public infrastructure projects, public services, services linked to public infrastructure and public services, applied research, and/or technological innovation.

PPPs can be implemented through concession, operation and maintenance contracts and management, as well as any other modality permitted by current regulations. They may also originate from state or private initiative and may include, among other things, general public infrastructure projects such as road networks,

multimodal networks, railways, airports, ports, logistics platforms, urban recreation and cultural infrastructure; penitentiary, irrigation, health or education infrastructure; as well as public services such as sanitation, telecommunications, energy and lighting, hydrocarbons, and other services of social interest related to education, health and the environment such as waste treatment and processing. Likewise, PPP projects can be executed for the provision of services linked to public infrastructure and/or public services that the state needs to provide, such as tolling and rate collection systems, centers for better citizen services, applied research, and/or technological innovation.

PPPs may or may not require co-financing from the state, depending on whether they require the granting of money or state guarantees.

On the other hand, the regulatory framework regulates projects in assets, which are a form of private investment participation promoted by public entities that have the power to dispose of their assets. It is done through the disposition (transfer or exchange) or through the signing of contracts of assignment in use, lease, usufruct, surface or other modalities permitted by law. Unlike PPPs, projects in assets cannot involve public resources or transfer risks to the public entity.

These projects can be promoted through the different state offices in charge of promoting private investment, which include investment committees from each ministry, regional or local government — according to the ownership of the project — or for national projects, the Private Investment Promotion Agency or PROINVERSION (www.proinversion.gob.pe).

In the case of projects that originated as private initiatives, if there are no third parties interested in executing such a project or an alternative within the period foreseen for said third parties to express intent, the projects may be awarded directly to the proponent.

On the contrary, if any third parties are interested in the execution of the project, it shall be submitted to a bidding process. In addition, if the proposal of another bidder wins, the proponent of the project has

the right to match the best offer and obtain a percentage of money for the reimbursement of expenses for not being awarded the bid.

Some of the most noteworthy concessions that have been granted under this legal framework as PPPs are the concession for the construction and operation of the Transmantaro national electrical interconnection line; the concession for the telecommunications PCS Band, National Dorsal Fiber Optic Network, Lima International Airport Jorge Chavez, Interoceanic Highway, Longitudinal de la Sierra Road Project - Section 2; and the concessions for the Callao and Paita Ports, the Lima Metro Line 2 and regional airports.

Important concessions have also materialized because of private initiatives. The most significant examples are the concession for the execution of the Taboada wastewater treatment plant by PROINVERSION; the concession granted to a private company for the construction and operation of an expressway for the city of Lima under the name "Linea Amarilla" (Yellow Line), which was granted by the municipality of Lima, as well as the Port Terminal of Salaverry in the province of Trujillo and of minerals in Callao; and the Concession for the execution of the Wastewater System of the Lake Titicaca Basin.

Legal stability agreements

This type of agreement, signed between PROINVERSION on behalf of the Peruvian state and the investors, guarantee to the private companies that subscribe to them the permanence of certain legal regimes, although these are subject to modification. Among the rights that are stabilized are the following:

- Income tax regime
- The regime of free disposition of currencies
- The right to remit abroad the total capital and dividends of the company

- The right to the most favorable exchange rate
- The right not to be discriminated against
- Worker-hiring regime
- Export-oriented regimes, such as temporary admission, duty-free zones and the like

Legal stability agreements have the rank and force of law and stabilize the granted rights for 10 years from their subscription dates.

In order to be eligible for a legal stability contract, a minimum investment of USD 5 million is required in all sectors, except for the mining and hydrocarbons sectors, which require a minimum investment of USD 10 million.

Additionally, in December 2021, Legislative Decree No. 1516 was issued, through which the cost for access to the stability provided for in the legal stability agreements is standardized. Meanwhile, in the legal stability agreements to which companies receiving investment subscribe, the corresponding income tax is stabilized in accordance with the regulations in force at the time of the subscription of the corresponding agreement. The current rate referred to in the Income Tax Law at the time of subscription time is applied, plus 2%.

Legal stability expires if the investment is not made within the prescribed period, which cannot exceed two years from the conclusion of the agreement. It also expires if the investment is not registered on time or the agreement is transferred without the consent of PROINVERSION.

In cases where legal stability agreements are associated with concession agreements, this stability will be in effect for the duration of the concession contract.

Finally, the Organic Law of Municipalities (No. 27972) establishes that municipalities can sign municipal tax stability agreements.

Public Works Tax Deduction Law

With the passing of Law No. 29230, now ruled by its Ordered Single Text approved by Supreme Decree No. 295-2018-EF, a new investment mechanism for the Public Works Tax Deduction Law was created. Its purpose is the execution of public investment projects at the national, local or regional level by private companies, and financing the work in exchange for the recognition of payment of the income tax of the following fiscal year for up to 50% of the amount.

This mechanism, among other things, reduces the usual time that it takes to develop a public investment project through other modalities, such as construction contracts.

This mechanism can be accessed by regional and local governments as well as by public universities that receive resources from the canon, royalties, customs revenues and participations. Furthermore, since 2015, government entities that deal with health, education, tourism, public order and safety, agriculture and irrigation, sanitation, culture, environment, sport, fishing, urban enabling, rural electrification, social development, social protection, transportation, communications, and justice issues can access this mechanism.

To execute this type of project, government entities are required to send a list of prioritized projects to PROINVERSION for publishing on its website. By doing so, companies interested in the execution of said projects can express their interest. Likewise, companies can prepare a project brief and present it to the public entity as a private initiative that must meet the priorities identified by the sector.

The main benefits of projects executed through the Public Works Tax Deduction modality are as follows:

- The company will be able to collaborate in the execution of an investment project while reducing its payment of income tax.

- The company would not only have a positive impact on the population but also an incentive to fulfil its commitment to social responsibility and improve its public corporate image, helping the state execute projects through a modality that facilitates the projects' completion and preventing cumbersome procedures.

Finally, once the process of selecting the private company that will finance and/or execute the work is carried out, an agreement must be signed for the beginning of the investment phase of the project. At the end of the project, the public entity will request the Ministry of Economics and Finances to issue a Public Investment Certificate, which is the representative document of money that lists the amount invested by the companies in the execution of the project.

The main projects that have been executed through this modality are as follows: interconnecting road construction in the Arequipa region; improvement of the Ilabaya - Cambaya - Camilaca Highway in the Tacna region; installation and improvement of potable water, sewage and storage systems in the Moquegua region; expansion and improvement of the capacity of the San Martín de Porres Support Hospital of Macusani in Puno region; Chilina Bridge; and the modernization of several police stations, among others.

According to data provided by PROINVERSION, approximately 445 projects have been executed through this modality.³

Compliance and anti-bribery

Fighting corruption has become a priority for the government in recent years.

Corruption of national and foreign public officials is criminalized under the Peruvian Criminal Code. This law prohibits acts of bribery involving both the public official who receives the bribe (passive bribery) as well as the private citizen who offers the bribe (active

³ <https://www.investinperu.pe/es/oxi/estadisticas/proyectos-concluidos-y-adjudicados>

bribery). Penalties for active and passive bribery include imprisonment (of up to eight years, depending on the type of bribery), prohibition from being elected or appointed to a public office, and monetary fines. Traditionally, only individuals (and not legal entities) could be held criminally liable for bribery. However, due to recent corruption scandals, the Peruvian government has issued specific measures to tackle this problem more extensively.

One measure is Law No. 30424, modified by Legislative Decree No. 1352, which regulates (for the first time in Peruvian law) the criminal liability of companies for active bribery of domestic or foreign public officials. Both laws entered into force on 1 January 2018.

According to such laws, a company is liable for a crime when it is committed on its behalf or for its direct or indirect benefit by its partners, directors, managers, legal representatives and other individuals under the control and surveillance of the enterprise. Companies found liable may receive the following penalties: fines of up to six times the illegal benefit obtained or expected to be obtained with the commission of the crime; prohibition from conducting economic activities; cancellation of licenses and other authorizations; closure of premises; definitive prohibition from participating in government procurement; and dissolution of the company.

However, companies may obtain certain benefits if they implement a "prevention model" or compliance program that includes adequate monitoring and control measures to prevent crimes or to significantly reduce the risk of their commission. If the company implements a compliance program before the commission of a crime, it will be exempted from criminal liability. If the implementation occurs after the commission of the crime, the company can be awarded a reduction of sanctions.

In order to be effective, the "prevention model" must include these minimum elements:

- Designation of a person in charge of the prevention function

- Measures for the identification, evaluation and mitigation of risks to prevent the crimes
- Implementation of internal complaint proceedings
- Dissemination of information and periodic training on the prevention model
- Continuous evaluation and monitoring of the prevention model

The Regulation of the Law No. 30424, approved through Supreme Decree No. 002-2019-JUS, establishes how each of the minimum elements should be implemented. The Superintendence of Capital Markets (*Superintendencia Del Mercado de Valores de Perú* or SMV) will perform an evaluation of the suitability of the implementation and functioning of the prevention model upon the request of the public prosecutor. If the report of the SMV determines that the prevention model is adequate, the public prosecutor will order the conclusion of the investigation and/or proceeding by a duly reasoned resolution.

On the other hand, the government has also given signs of its commitment to fight corruption in business. Through Legislative Decree No. 1385, published on 4 September 2018, the crime of private corruption was included in the Peruvian Criminal Code.

Finally, Peru has adopted Technical Standard ISO 37001:2017, "Anti-bribery management systems" and Technical Standard ISO 37301:2021, "Compliance management systems," which guide the implementation of compliance programs; as well as Technical Standard ISO 37002:2021, "Whistleblowing management systems."



COMPANY STRUCTURES FOR ECONOMIC ACTIVITIES

News and recent amendments

Prior merger control

Urgency Decree No. 013-2019 was issued in November 2019, through which a general regime for the prior control of companies' concentration operations was approved. This regime has been in effect since August 2020. For more information, please review the section on Protection of Free Competition.

Extinction of companies with prolonged inactivity

By Supreme Decree No. 219-2019-EF, published on 15 July 2019, the Regulations of the Legislative Decree No. 1427 were approved. This decree regulates the extinction of companies with prolonged inactivity, and has been in effect since January 2020. In accordance with the new regulations, the Public Registry Superintendence (SUNARP) will prepare every year, between 1 January and 31 January, a complete list of the companies registered before SUNARP that have not approved and registered any corporate act for a term of 10 years or more. Such information will also be submitted to SUNAT.

The public recorders, by their own initiative, may extend a preventive annotation (the term of which will be two years) for prolonged inactivity, provided that: (i) there is no pending act or title in course after the approval of the list; and (ii) there is no judicial or administrative precautionary measure in course in the public entry of the corresponding company, nor any bankruptcy or dissolution and liquidation procedure.

After the two-year preventive annotation period, the public recorders, by their own initiative or as may be requested by any third party, will register the extinction of the corresponding company.

This is one of the updates concerning corporate regulation in 2021 of the last year that all companies must take into consideration in order to avoid forced extinction.

Types of companies

The General Law for the Growth of Private Investment, approved by Legislative Decree No. 757 in November 1991, recognizes investors' autonomy to incorporate at their discretion, in order to conduct economic activities.

Only for activities related to the banking system may the law establish the obligation to adopt a certain form of company. In the mining sector, when two or more persons are holders of a mining concession, they must incorporate a legal entity that becomes the sole holder of said concession; otherwise, the Ministry of Energy and Mines will incorporate, *ex-officio*, a limited **liability mining company** governed by mining legislation.

The legal framework fully recognizes the existence and capacity of foreign legal entities to exercise in Peru all actions and rights that may correspond to them on a non-customary basis.

In order for them to exercise all acts included in their corporate purpose on a customary basis, they must adhere to Peruvian law. This supposes that they must at least be recorded in the Public Registry, indicating a domicile and a legal representative. The representative shall be Peruvian or any foreign citizen who should have a formal residence in Peru.

Some sectors may require local incorporation or opening a branch in Peru.

The General Corporations Law (GCL) governs the different types of enterprises investors may use to carry out their business in Peru. The three legal types most commonly used by investors are corporations, limited liability companies and branches (which do not qualify as legal entities different from the headquarters). The abovementioned law governs three special types of corporation: the ordinary corporation (*Sociedad Anonima* or SA), the closely held corporation (*Sociedad*

Anonima Cerrada or SAC) and the public corporation (*Sociedad Anonima Abierta* or SAA).

The shareholders or stockholders of any kind of company may enter into shareholders' agreements among them or that may involve third parties, with the purpose of regulating their rights and obligations in the company, to establish investment commitments, minimum periods of permanence in the company and voting pool agreements, etc.

Corporations

The ordinary corporation is the most widely used form of running a business in Peru. It is eminently capitalist, offers limited liability, and structured to allow the separation of management from ownership. A minimum of two shareholders (individuals or legal entities) is required to incorporate a company. The share capital shall be divided into transferable titles known as shares. The transfer of shares is free, unless the shareholders agree otherwise.

Regarding the capital stock of the corporation, the law does not establish a minimum amount of capital. Nevertheless, some industries — for example, the financial system — establish some minimum capital requirements. The initial capital contribution for incorporation must be deposited in a local bank.

General shareholder's meetings, the board of directors and general management are the bodies involved in corporate governance. Bylaws shall be contained in a public deed and recorded in the Public Registry.

Furthermore, Peruvian law stipulates that there are two special types of corporations. Therefore, the rules of the ordinary corporation shall also be applicable to closely held corporations and public corporations where no special rules are in place.

Closely held corporations

Closely held corporations resemble limited liability companies (see 4.5). They require a minimum of two and a maximum of 20 shareholders.

Certain limitations apply to the transfer of shares, such as right of first refusal (unless otherwise agreed), and in some cases even the corporation's consent (which should be agreed upon in the bylaws).

Shares cannot be listed on a stock exchange. These types of companies may or may not have a board of directors, depending on the provisions set forth in the bylaws. Similarly, this form of corporation allows virtual shareholders' meetings. It is an ideal corporate structure for small businesses or those with a small number of shareholders.

Public corporations

A corporation is deemed public when it complies with at least one of the following conditions:

- The company has made a public offering of shares or convertible bonds.
- The company has more than 750 shareholders.
- Over 35% of the company's share capital is owned by 175 or more shareholders, except those shareholders whose individual holding is less than 0.2% or exceeds 5% of the company's share capital.
- The company incorporates as such.
- All the voting shareholders unanimously approve the adaptation to said system.

A public corporation must list all its shares on the stock exchange. Moreover, it is subject to regulation by the SMV.

Limited liability companies

Incorporation as a limited liability company requires a minimum of two and a maximum of 20 partners. Limited liability companies neither issue shares (the capital is represented by quotas) nor have a board of directors. The procedures for incorporating are the same as for an ordinary corporation. The right of first refusal is mandatory for this type of company.

Branches of foreign corporations

Establishing a branch in Peru is similar to incorporating. It requires formalizing through the execution of a public deed in Peru, which must at least contain: (i) a certificate of good standing for the parent company; (ii) a copy of the bylaws of the parent company; and (iii) a corporate resolution indicating the share capital that the parent company allocates for the branch's operation; the purpose of the branch, business and operations to be conducted; statement that such activities are included in the purpose of the parent company; domicile of the branch in Peru; appointment of at least one legal representative in the country; powers granted to the legal representative; and its adherence to Peruvian laws for the purpose of holding the parent company liable for the branch operations in Peru.

The Peruvian consul nearest to the jurisdiction of the headquarters must legalize the documents, and the Ministry of Foreign Affairs in Lima must certify the consul's signature. If the head company is incorporated in a jurisdiction that is a member of the Hague Convention of 1961, the documents shall be appropriately apostilled instead.

Closed simplified joint stock corporation (SACS)

With Legislative Decree No. 1409, a new corporate regime called Closed Simplified Joint Stock Corporation (*Sociedad por Acciones Cerrada Simplificada* or SACS) was created. The incorporation of this new corporate regime is intended to promote an alternative to the

economic activities of natural persons and promote the development of micro, small and medium-sized enterprises.

Although this new type of corporation is very similar to a SAC, the main difference is that the private document that contains the SACS' incorporation act is generated through SID-SUNARP (the SUNARP portal, through which everything related to incorporation of this type of corporation will be processed) by signing the document by means of a digital signature. Unlike the closely held corporation, it will not be necessary to record the incorporation act in a public deed. Similarly, the application for registration, payment of registration fees, observations, amendments and annotations of registration at the Public Registry must be managed through the SID-SUNARP portal. However, subsequent acts will be processed according to the general rules of the Public Registries and the General Corporation Law.

Companies' reorganization proceedings

Regarding mergers and acquisitions, there is a variety of legal procedures for a company's reorganization under Peruvian law. These mechanisms are applicable to all corporations and other legal entities regulated by Peruvian law. The key mechanisms with which to reorganize a company are as follows:

- Mergers (where two or more companies combine in order to create a new independent company or one company absorbs the entire business of the other company and this target company ceases to exist)
- Simple reorganization (the segregation of assets and liabilities, and/or business lines in order to transfer these to a subsidiary company)
- Spin-off (the segregation of assets and liabilities, and/or business lines in order to transfer these to another company or to incorporate a new company, or a complete split of the company being spun off in two or more new companies)

- Transformation (the transformation of one company into another form or type of company or even into another kind of legal entity)

Power structures

To enhance their performance, the different corporate structures and business combinations recognized by the Peruvian legal system require an efficient power structure. As governing bodies, the board of directors and the general manager are recognized by the GCL as possessing sufficient powers of representation and management prerogatives to achieve its corporate purpose. Since January 2017, the GCL has also conferred the general manager with powers of disposal and encumbrance with respect to the assets and rights of the company, which enables them to enter into all types of civil, banking, mercantile or corporate contracts provided for in the laws of the matter, as well as to sign and execute all types of securities transactions without reservation or limitation, unless otherwise duly and expressly stated.

Nevertheless, market requirements frequently demand the registration of specific power structures.

Powers become an essential factor for foreign corporations present in the Peruvian market through branches and subsidiaries. They are equally important for corporations established abroad, which lack legal representation in the Peruvian territory. Any proper attempt to start business activities will require the creation of a power structure and the appointment of a representative.

To validly appoint an attorney-in-fact from abroad, the Peruvian legal system demands a precise legalization sequence before relevant authorities, such as the Ministry of Foreign Relations, consulates, chambers of commerce and others. Alternatively, all documents duly apostilled will be valid in Peru.

Associative agreements

Associative agreements are those that create and govern participation and integration relationships for a certain business activity of common interest to the participants. The associative contract does not constitute a legal entity. It must be established in writing and need not be recorded in the Public Registry.

Associative contracts may be association in participation (*contratos de asociación en participación*) or consortium agreements (*contratos de consorcio*). In an association in participation, the managing partner grants the contributing partners a participating interest in the earnings or profits of one or more businesses or enterprises belonging to the managing partner in exchange for a specified contribution. In a consortium, two or more parties become partners and have an active and direct participation in a specified business or company, for obtaining an economic profit.

Joint ventures

Even though joint ventures are not contemplated in domestic regulation, these contractual forms have widely spread within the main domestic economic sectors. A joint venture generates a legally binding relationship between two or more individuals or legal entities willing to develop a certain economic activity for a specific period.

Unlike other partnership agreements, this form may generate an independent legal entity. Without an exact and final definition, a joint venture is a very versatile legal form, which may be adapted to a variety of situations.



PUBLIC PROCUREMENT

Public procurement

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Public procurement

The purchase by government entities (including public companies) of goods, services and works financed with public funds is regulated under the Ordered Single Text of the Public Procurement Law, approved by Supreme Decree No. 082-2019-EF (*Ley de Contrataciones del Estado* or LCE) and its regulations approved by Supreme Decree 344-2018-EF and its amendments made by Supreme Decrees No. 377-2019-EF, 168-2020-EF and 162-2021-EF (RLCE). Public-private partnership agreements, such as public services and infrastructure concessions, or public asset projects, are not regulated by the LCE but by Legislative Decree No. 1362 and its regulations, as approved by Legislative Decree No. 240-2018-EF.

Participation of foreign companies

Foreign companies may participate in public procurement on equal footing with Peruvian companies. The participation of foreign companies is not subject to special requirements. It is not necessary for foreign companies to have offices or to incorporate a company in the country to be able to participate in public bids and procurement proceedings.

To participate in a public bidding process, both foreign and domestic companies must register with the National Supplier Registry ("**Registry**"), before the Public Procurement Supervisory Body (*Organismo Supervisor de las Contrataciones del Estado* or OSCE). The OSCE is the state entity responsible for the promotion and supervision of the contracts carried out by government entities and for ensuring compliance with the LCE and the RLCE.

In order to request registration before the Registry, the company must have a representative who has faculties registered with Peru's Registry Office, as well as sufficient capacity to participate in tenders and enter into agreements.

The process for registration as a provider of goods and services has an automatic approval but may be subject to observations by the Registry. Meanwhile, the process for registration as a provider of works execution and consultancy is subject to a prior evaluation of 30 business days. In the latter case, it is necessary to prove experience and financial capacity before said Registry.

The validity of the registration in the Registry is unspecified. The company is obliged to periodically update the information declared in the Registry; otherwise, the OSCE may order the temporary withdrawal of the registration.

Procedures included in the LCE and the RLCE

Public procurement is carried out by competitive tendering procedures. The most important ones are described below.

Public tender

This selection process facilitates the hiring of external contractors to accomplish the execution of works or to acquire goods for contracts amounting to approximately over USD 735,000 (works) and USD 105,000 (goods). Bids are submitted electronically through SEACE, except where the bases state that they will be presented at a public event. The technical offer must contain the documentation provided for in the bases. The economic offer is registered directly in the relevant form in SEACE. If a public act is arranged, the offers are presented in one sealed envelope. There is a period of at least 22 business days between the call and the submission of offers.

The bidder must have the necessary expertise with regard to the bid's subject matter (execution of similar works / manufacturing or commercialization of similar goods).

Public bid

This is a selection process to facilitate the hiring of services or construction consulting for contracts amounting to approximately over USD 105,000. The call for bids is public and is made through SEACE.

Bids are submitted electronically through SEACE, except where the bases state that they will be presented at a public event. The technical offer must contain the documentation provided for in the bases. The economic offer is registered directly in the respective form in SEACE. If a public act is arranged, the offers are presented in one sealed envelope.

The bidder must prove experience in the object of the call (provision of services or consultancy in works).

Simplified award

The simplified award process applies to the hiring of goods and services and construction consulting for contracts amounting to approximately lower than USD 105,000 and higher than USD 9,700.00, and lower than USD 735,000 for works.

The call for bids is public and is made through SEACE. The selection process takes only eight to 10 business days between the call for bids and the filing of bids. Offers are submitted electronically also through SEACE.

Direct hiring (waivers)

This is a procurement procedure used by the government to hire the provider directly without conducting any competitive procedures. It only applies to exceptional situations set forth by law, such as compelling urgency, shortages, sole provider situations on national market, secret or military secret hiring, and duly justified personal services.

Stages in the selection procedure

- The procurement specifications may be freely accessed through SEACE.
- Providers intending to participate in the selection procedure must register as "participants" by electronic means, free of charge.
- After registration, providers will be able to submit questions and raise objections regarding the procedure specifications.
- The entity that called for the selection procedure, through the selection committee, then answers the questions and objections raised.
- In public bids and tenders, the OSCE may be required to issue a decision on the objections to the specifications, in which case the OSCE will draft the final rules applicable to the process (final specifications).
- Providers shall submit their bids to the entity that called for the selection procedure.
- Providers may submit their bids individually or in consortium with other companies or persons, whether domestic or foreign. In order to act in consortium, it is necessary to submit an affidavit bearing the signatures of all representatives certified before a notary public (promise to form a consortium).
- The selection committee shall verify if the bid meets the eligibility criteria and assign a rating to the bidders based on the best price offered, the level of improvement offered, and/or the offer of staff with better qualifications (in services).
- The successful bidder who shall execute the agreement with the entity is the one that obtains the highest rating and meets the mandatory requirements.

- Bidders may not withdraw their bids once submitted, and the successful bidder may not refuse to execute the agreement. Otherwise, they will be imposed a fine of between 5% and 15% of the bid amount.

Dispute resolution during the selection procedure

- The result of the selection procedure and/or bid disqualification may be challenged through an appeal.
- The appeal may be filed within eight business days (in public bids and tenders) or five business days (in simplified awards).
- To file the appeal, it is necessary to post a bond equal to 3% of the reference value (price tendered).
- If the estimated or referential value of the selection procedure is equal to or less than USD 60,500, the appeal will be resolved by the entity that convened the selection procedure. If this figure is exceeded, the appeal will be resolved by the OSCE State Procurement Court.
- For the admission of the appeal, a guarantee must be presented in favor of the OSCE or the public entity that convened the selection procedure, for a sum equivalent to 3% of the estimated or reference value, which in no case may exceed approximately USD 363,000. The guarantee can be a letter of guarantee or a deposit in the bank account of the OSCE or the public entity.
- The resolution of the court or the public entity of the appeal exhausts the administrative procedure, and no administrative appeal can be filed.

Dispute resolution related to contract performance

Any dispute between the parties regarding contract performance, construction and/or termination shall be mandatorily resolved,

pursuant to the LCE, through conciliation⁴ and/or institutional arbitration, as agreed by the parties.

Also, for contracts for the execution of works amounting to approximately more than USD 5260 billion, the parties must incorporate a Dispute Resolution Board for the resolution of controversy. The incorporation of the board in contracts for lower amounts is optional. The decisions of the board are binding on the parties.

Guarantees

Offering a guarantee to be a bidder is not necessary during the tender bid.

For the contract to become binding, the successful bidder must give the institution a bond to guarantee faithful performance (a performance bond or surety bond), in an amount equal to 10% of the contract's original value.

The bond shall be valid until the expiration of the contract, and its purpose is to compensate the government entity for any breach of contract by the contractor.

Further, if the entity gives the contractor any money as "advance," the contractor must give a guarantee in the same amount. This advance shall be paid back on a monthly basis and the guarantee shall be valid until full payment has been made.

The guarantees accepted by the entities will be unconditional, joint and several, irrevocable and automatic in Peru, upon demand by the relevant entity, under liability by the issuing company, which may be financial institutions overseen by the Superintendency of Banking and

⁴ In the Peruvian legal system, conciliation is a mandatory step before filing for arbitration.

Insurance of Peru, or foreign banks included in the list that is published by the Central Reserve Bank of Peru.

* In procurement systems other than those under the LCE, entities carry out selection procedures with other rules.



TAX REGIME

Tax regime

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What is coming in the following years

The Peruvian tax regime continues to undergo structural reform regarding tax transparency and taxpayer information access by the tax authorities in general, aiming at a broader tax base and tax compliance pursuant to OECD standards.

For the fiscal year 2022, the Peruvian government complied with all the requirements to carry out the automatic exchange of financial information in accordance with the Common Reporting Standard approved by the OECD (and became a reciprocal part of the common reporting standard).

Peru exchanged information for the first time in December 2020. The information exchanged corresponded to the 2019 financial year.

To date, Peru could carry out an automatic exchange of financial information reciprocally with the following jurisdictions: Belgium, Cyprus, Estonia, Guernsey, Ireland, Japan, Jersey, Liechtenstein, the Netherlands, New Zealand, Norway, Slovenia, South Africa, Spain, and Switzerland.

As a consequence of the exchange of information, financial institutions have the obligation to present the Financial Report-ECR. The deadline for complying with this formal obligation is April of each year.

General standards

The Framework Law on Private Activity Growth, approved by Legislative Decree No. 757 in November 1991, develops the constitutional principles of legality and publicity in tax matters. In particular, it sets limits on the capacity of regional and local governments to create, modify or delete taxes.

International agreements

Peru has double tax treaties currently in force with Brazil, Canada, Chile, Korea, Mexico, Portugal, Switzerland, and with the member countries of the Andean Community (i.e., Bolivia, Colombia and Ecuador).

In December 2020, the Peruvian Congress ratified the double tax treaty signed with Japan. As a result, the double tax treaty entered into force on 29 January 2021. Thus, it is applicable from 1 January 2022.

Single taxpayer's registration or tax ID (RUC)

Any subsidiary or branch incorporated or established in the country must obtain a single taxpayer's registration or taxpayer ID (*Registro Unico de Contribuyentes* or RUC) number.

Although from the point of view of company law there are no restrictions on the general manager being a foreign individual, the tax administration requires that the general manager of a Peruvian company be a Peruvian citizen, or a foreign citizen but with an immigration card. The purpose of this requirement is so that such person may be registered as the legal representative of the company in the Single Registry of Taxpayers.

Entities that are considered "principal taxpayers" by the Peruvian Tax Authority as of 30 November 2019 must disclose their ultimate beneficial owners by means of a tax return. Legal entities not considered "principal taxpayers" will file Ultimate Beneficial Owner's (UBO) tax return according to the schedule to be published by the Peruvian Tax Authority in the future.

Income tax

Companies incorporated in Peru are subject to income tax, both from domestic- and foreign-sourced income. The fiscal year ends on

31 December, and there are no exceptions. The annual tax return is normally filed by 31 March of each year.

Monthly payments are generally required to be made based on the estimated annual tax.

There is currently no inflation adjustment of accounting for tax purposes.

Expenses incurred to generate income or maintain their source in terms of productivity are deductible for income tax purposes, provided certain requirements are met regarding specific expenses.

Effective 1 January 2021, a new thin capitalization rule applies. The rule limits corporate income tax deductions for "net interest" on all financing. Net interest equals the difference between interest expense and interest income. The interest expense limitation equals 30% of EBITDA (defined for Peruvian income tax purposes as net income after offsetting losses plus net interest, depreciation and amortization). This rule does not apply to taxpayers whose net income is equal to or less than 2,500 tax units, insurance and banking companies, and other specific exceptions.

No expenses, except for some special cases (such as interest on loans) arising from transactions directly or indirectly carried out with residents in tax havens are deductible for tax purposes.

Depending on the system elected by the taxpayer, losses can be carried forward for a maximum of four consecutive years (System A) from the year following that in which they are incurred, or until the aforementioned losses are fully offset, in which case the amount of the annual offset is limited to 50% of the net taxable income of each respective year (System B). For fiscal year 2020, the tax loss carry forward period was extended. This exceptional extension only applied to tax losses generated during fiscal year 2020 and to taxpayers that chose the tax loss carry forward system under which tax losses can be carried forward for four fiscal years (System A).

For purposes of the Income Tax Law, capital gains are those derived from the sale of goods that are not intended to be marketed within the scope of a line of business of the company (i.e., as opposed to business income).

In general, the capital gain derived by non-Peruvian tax resident investors from the sale of securities (i.e., stock, bonds, etc.) issued by companies incorporated in Peru will be subject to Peruvian income tax. The income tax rate applicable to the aforementioned capital gain shall be 5% or 30%, depending on whether the sale is made within or outside the Lima Stock Exchange, respectively. If the seller is a Peruvian tax resident, the income tax rate mentioned above shall be 5% or 29.5%, depending on whether the seller is an individual or a company, respectively. The income tax rate could be reduced if certain double tax treaties come into play.

Capital gains derived from the sale of shares listed and sold on the Lima Stock Exchange are exempt from income tax until 31 December 2022, provided that: (i) 10% or more of the total shares issued by the respective company (or securities representing such shares) had not been transferred in the previous 12 months; and (ii) such shares qualify as having "stock market presence," as defined in the relevant law establishing such provisions.

Capital gains derived from the transfer of securities in general are also exempt from income tax until 31 December 2022, provided that: (i) the transfers take place through the Lima Stock Exchange; and (ii) the securities qualify as having stock presence, under applicable law. Common shares, investment shares, American Depositary Receipts (ADR) and Global Depositary Receipts (GDR) must additionally fulfill the condition of not transferring more than 10% of the securities issued by the company in a period of 12 months.

Capital gain derived by Peruvian tax resident individuals from the sale of securities issued by a foreign company is subject to 8%, 14%, 17%, 20%, and 30% progressive income tax rates. However, if the securities issued by the foreign company are registered in the

Peruvian Public Registry of Securities and the sale is made: (i) through a centralized negotiation mechanism of the country; or (ii) foreign trading mechanisms subject to an integration agreement (currently, there are agreements with Chile, Colombia and Mexico), the applicable income tax rate shall be 6.25%. Companies incorporated in Peru shall be subject to the regular 29.5% income tax rate on the aforementioned capital gain.

Capital gain derived from the indirect sale of shares representing the equity of a company incorporated in Peru is considered Peruvian-sourced income.

An indirect sale occurs when the stock of a foreign company that owns stock in a company incorporated in Peru (directly or through one or more companies) is transferred, provided that in any of the 12 months before the sale, the market value of the stock of the aforementioned Peruvian company is equivalent to 50% or more of the market value of the stock of the foreign company (50% equivalence rule).⁵

The indirect sale of shares of a Peruvian company described above shall be triggered after the transferor or its related parties transfer a minimum 10% of the stock of the foreign company, within a 12-month period. If the aforementioned threshold is not met, the indirect sale provisions do not apply.

In addition, an indirect transfer of Peruvian shares shall also occur when the total value of the shares issued by the Peruvian company, subject to the indirect transfer within any 12-month period, exceeds 40,000 tax units. The aforementioned value shall be determined by applying: (i) the equivalency percentage (proportion) of the market value of the shares of the Peruvian company represented in the market value of the shares of the foreign company (shareholder of the

⁵ Specific valuation methods will apply in order to determine the fair market value of the shares of the foreign entity and the Peruvian entity(s), for purposes of applying the 50% equivalence rule.

Peruvian company); to (ii) the price agreed by all related parties on the transfer of the shares of the aforementioned foreign company.

An indirect sale of the shares of a Peruvian company is also deemed to occur when the foreign company issues new shares upon a capital increase — pursuant to a capital contribution, debt capitalization or a reorganization — below market value, if the 50% equivalence rule described above is met.

As in any other transaction, for tax purposes, a sale of shares, either direct or indirect, shall be made at market value. The market value of listed shares shall be the stock exchange price. If the company does not trade on the stock exchange and the transaction is between unrelated parties, the market value for direct sales is the value of the transaction, which shall not be less than the net equity value of the shares transferred. The net equity value shall be calculated using the latest balance sheet of the issuing company, issued prior to the date of the sale and no older than 12 months. For indirect sales, the market value is generally the amount determined according to the discounted cash flow method. For transactions between related parties, the market value must be determined according to the transfer pricing rules.

The capital gain derived from the indirect sale of shares issued by a Peruvian company shall be subject to a 30% income tax rate or 5% if that sale is carried out through the Lima Stock Exchange.

The capital gain subject to Peruvian income tax, as described in previous paragraphs, shall be calculated by deducting the cost basis from the assets transferred. For such purposes, the non-Peruvian tax residents must file a "cost certification" before the Peruvian tax authorities, which requires the fulfillment of certain legal and formal requirements. This requirement does not apply if the transfer takes place through the Lima Stock Exchange.

Interest earned by a company on its bank deposits are subject to a 29.5% income tax rate. Such interest earned by individuals shall be exempt from income tax until 31 December 2023.

The income tax depreciation rate is 5% for buildings and constructions. The following maximum income tax depreciation rates are also applicable: 20% for vehicles; 25% for livestock; 20% for machinery and equipment used in mining, oil and industrial construction; 25% for hardware; and 10% for other fixed assets.

Since 2021, taxpayers may elect to apply the following accelerated depreciation rates for certain assets: 20% for buildings and other constructions that begin to depreciate in 2020; 50% for data processing equipment purchased in 2020 and 2021; 20% for machinery and equipment purchased in 2020 and 2021; 33.3% for land vehicles used in passenger transport purchased in 2020 and 2021; and 50% for hybrid or electric land transport vehicles (except rail) purchased in 2020 and 2021. With respect to hotels, travel agencies, restaurants and other tourism businesses, additional depreciation rules are applicable.

Companies incorporated in Peru shall be subject to the 29.5% income tax rate. Dividends distributed to Peruvian tax resident individuals, non-Peruvian tax resident individuals and foreign companies are subject to a 5% withholding income tax rate. Loans provided by a Peruvian non-banking company to its shareholders are deemed dividend distributions to the extent of the company's accumulated earnings and freely disposable reserves.

Royalties paid to non-Peruvian tax residents are subject to a final 30% income tax rate, to be withheld by the local taxpayer. Interests paid to non-Peruvian tax residents are subject to a 4.99% withholding income tax rate, provided certain debt and interest-related requirements are met. Otherwise, the withholding income tax rate on interest shall be 30%. Interest paid to a foreign related company is also subject to the 30% withholding income tax rate.

Payments made abroad for technical assistance services are subject to a 15% withholding rate, provided certain requirements are met. Otherwise, said payments are subject to the regular 30% withholding rate.

Branches are only taxed on their Peruvian income, while affiliates or subsidiaries are taxed on their worldwide income. All forms of corporations are subject to the same taxes.

Local companies that hold foreign investment may enter into tax and legal stability agreements with the Peruvian government. The tax stability regime is limited to income tax, including the tax rate in force at the time such agreements are signed plus two percent (+2%), except for certain economic sectors — such as mining, oil and gas — in which tax stability extends to other taxes.

In December 2020, Law No. 27360 was repealed. This law was related to the investment and development in the agriculture sector. By means of Law No. 31110, new tax benefits were made available for agribusiness. This new law entered in force on 1 January 2021.

The new regime applies to taxpayers engaged in agribusiness activities and who mainly use agricultural products outside Lima and Callao province, as well as to agricultural producers with 5 hectares or less of production. The regime does not apply to taxpayers engaged in activities related to wheat, tobacco, oil seeds, oils and beer. It also excludes producers organized in producer associations.

The regime applies a 15% income tax rate to net revenues at or below 1,700 tax units (equivalent to PEN 7.48 million in 2021) from 2021 to 2030. Taxpayers with net revenues at or below 1,700 UIT in the tax year may also claim an income tax credit equal to 10% of reinvestments (amount from profits used to improve the competitiveness of agribusiness) that prioritize the implementation of a technical irrigation system.

For net revenues over 1,700 tax units, the income tax rate gradually increases as follows:

- 2021 - 2022: 15%
- 2023 - 2024: 20%
- 2025 - 2027: 25%
- 2028 onwards: 29.5%

Companies may also apply a 20% annual depreciation rate to hydraulic infrastructure and irrigation works invested in. These tax benefits will be in force until 31 December 2025.

In addition, Law No. 27037 establishes a regime to promote investment in the Amazon region, including tax benefits that depend on the activity performed by the taxpayer and its specific geographical location.

For purposes of the aforementioned regime, the Amazon region is composed of the following departments: Loreto, Madre de Dios, Ucayali, Amazonas and San Martín, as well as some provinces of the departments of Cajamarca, Huánuco, Junín, Pasco and some districts of the departments of Ayacucho, Cusco, Puno, La Libertad, Huancavelica and Piura.

To qualify for the tax benefits of this Amazon regime, the potential beneficiary's tax address, fixed assets and registration must be in the Amazon region. In addition, potential beneficiaries must be engaged in the following economic activities: livestock; agriculture; aquaculture; fishing; tourism; forest extraction; manufacturing related to the processing, transformation and trading of primary products derived from the abovementioned activities; as well as forest transformation or trade.

The activities listed in the preceding paragraph are subject to either income tax exemptions or reduced 5% or 10% rates, depending on

their geographic location and economic activities. Taxpayers in the Amazon region that mainly develop agricultural activities and/or transformation or processing of products that qualify as native products and/or alternatives in such field will be tax-exempted.

In addition, monthly advanced payments of income tax may be determined by applying either the 0.4% or 0.7% rate to the monthly net income, depending on whether they are subject to the 5% or 10% income tax rate.

The tax benefits described above will be in force until 1 January 2049.

Value-added tax

The Peruvian VAT rate (general sales tax - VAT) is 18% and is applicable to the following activities:

- Sales of goods/products in Peru
- Services rendered or hired in Peru
- Construction contracts
- First sale of real estate by the builder
- Importation of goods

The VAT paid on the purchase of goods or services may be used as tax credit against the VAT deriving from transactions performed by the company.

Exporters can request a refund of VAT paid on the purchase of goods and services. They can also use the refund as a credit against the VAT levied on its operations or against payment of income tax obligations.

Companies that have not initiated productive activities and that import or purchase capital goods for the production of goods and services for export, or which are subject to VAT, are eligible for the general or

special early VAT recovery regime, depending on the requirements met by the participating company. This regime consists of filing before the Peruvian tax authorities a request for a refund of the tax credit derived from the VAT paid on the purchase of goods, services, and imports described above during the company's pre-operative phase.

At the same time, if certain requirements are met, a definitive recovery of VAT regime has been approved for the VAT paid by companies of the mining or hydrocarbons sectors during their exploration phase. This benefit will be in force until 31 December 2022.

Taxpayers registered in the Amazon region are generally entitled to VAT exemption on the sale of goods that are consumed within the Amazon region, the provision of services in the Amazon region, and the construction contracts or first sale of real property performed by the builders of said property in said region. Such benefits will be in force until 1 January 2049.

The sale of some products — mainly agricultural — and the provision of services listed in specific annexes of the Peruvian VAT law are exempt from VAT until 31 December 2021.

Selective consumption tax - ISC (excise tax)

The following activities are subject to the selective consumption tax (*impuesto selectivo al consumo* or ISC) or excise tax:

- Sales in the country at the producer level of certain goods incorporated in a list, including fuel, beer, liquor and cigarettes
- The importation of the listed products mentioned above
- Betting and gambling, including sweepstakes and raffles

Excise tax on soft drinks, alcoholic beverages, certain vehicles, cigarettes and others, as well as activities related to gambling and betting is determined by applying a certain percentage, which varies depending on the specific goods.

Excise tax is also calculated through the *ad valorem* system in certain cases, by applying tax that is based on the retail price (e.g., of beer).

Financial transactions tax

The financial transactions tax (*impuesto a la transacciones financieras* or ITF) is a temporary tax levied on certain financial transactions provided in the law creating this tax. This law provides that all obligations in excess of PEN 2,000 or USD 500 must be paid using the so-called "means of payment."

The law considers the following means of payment: i) bank account deposits; ii) drafts and wire transfers; iii) payment orders; iv) debit and credit cards issued in Peru; v) credit cards issued abroad by foreign companies that issue and manage credit cards, as well as by foreign banking or financial entities, provided that payments are channeled through Peruvian financial institutions or banks; vi) checks bearing the "non-negotiable" clause or equivalent; and vii) others to be approved by a supreme decree.

Payments to nonresidents for international trade transactions, the acquisition of real estate, or the acquisition of shares and other securities may be made through foreign banking/financial entities (unless the foreign banking/financial entities are residents of tax havens; in that case, the payment will not be valid for Peruvian tax purposes).

The law provides that payments made through means other than those described above shall result in expenses, costs or credits not being deductible for the assessment of taxable income for income tax purposes.

The financial transactions tax shall be withheld and paid by the financial institutions and other companies specified by law. This tax is deductible for income tax purposes.

ITF is applicable regardless of the amount of the transaction, whenever a means of payment is used, regardless of whether it was required by law (i.e., provided the PEN 3,500 or USD 1,000 threshold is not exceeded).

Credits or debits to the accounts of governments, diplomatic and consular missions, and international agencies and organizations authorized to carry out their activities in Peru are exempt from the financial transactions tax.

The current tax rate is 0.005% and this applies to the amount of the financial transaction in local or foreign currency, without any deduction.

Temporary tax on net assets

Temporary tax on net assets (*impuesto temporal a los activos netos* or ITAN) is levied on the assets of persons generating taxable business income (usually companies) in accordance with the applicable provisions of the Peruvian income tax law.

The tax rate is 0.4% and is applied to the value of company assets in excess of PEN 1 million.

The tax actually paid can be used as credit against advanced income tax payments or tax owed on the annual tax return.

By means of Law No. 31104, from 1 January 2021, taxpayers are allowed to claim a refund of all ITAN for fiscal year 2020. The Peruvian Tax Authority has 30 working days to respond to the refund claim. If the Peruvian Tax Authority fails to answer within that period, the refund claim is automatically approved.

Most relevant municipal taxes

Property tax: A natural or legal person in a given district levies this tax on the ownership of property. The rate varies between 0.2% and

1%, depending on the value of the property determined by the municipal tax authorities. The tax must be paid annually.

Alcabala excise tax: This tax applies to the gratuitous or onerous transfer of land property. The rate is 3% and is applied to the value of the property agreed by the parties or the self-appraisal value determined by the district municipality where the property is located, whichever is greater. The buyer must pay the tax.

Automotive tax: This tax is generally applicable to automobiles owned by individuals and companies, and levies an annual 1% of the original purchase price of automobiles no older than three years.

Other municipal taxes: These are public cleaning service fees; local public security services fees and local park maintenance services fees.

Local governments or municipalities are authorized to create, amend or annul certain local taxes related to the services they provide to the public.



LABOR AND IMMIGRATION STANDARDS

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Remote work

As a preventive measure to control the spread of COVID-19, the government has established special and temporary rules to execute remote work until 31 December 2022. Until this date, remote work temporarily replaces the "telework" type of work that requires prior authorization from the employee.

The main characteristics of this modality are as follows:

- (i) It is a temporary modality.
- (ii) It can be implemented unilaterally by the employer, without prior authorization. Also, it can be reverted by the employer unilaterally, anytime.
- (iii) It must be relayed to employees by any physical or electronic means (email, instant messaging, etc.).
- (iv) If necessary, the employer must train its personnel in the use of technologies to carry out remote work.
- (v) The employer is not obliged to assume the costs of the equipment or tools necessary for the execution of the remote work.
- (vi) The employer must inform its workers about the work supervision mechanisms.
- (vii) The employer must send safety and health recommendations during remote work and inform the contact person of any health-related matter.

For the duration of the state of national emergency (until 28 August 2022), employees with disabilities and employees who are pregnant or are breastfeeding have the right to work remotely. If this is not possible, they are entitled to a paid license compensable with future work. Exceptionally, employees who are within the breastfeeding period may return to work after the sixth month, with prior authorization from the occupational physician.

Workers with COVID-19 risk factors (people over 65 years of age, uncontrolled hypertension, diabetes mellitus, moderate or severe asthma, chronic respiratory disease, chronic kidney failure with hemodialysis treatment, immunosuppressive disease or treatment, and obesity with BMI over 40) may perform remote work as a priority. Exceptionally, workers with risk factors may work in person, provided that the occupational physician identifies one or more conditions such as: full vaccination, booster vaccination, low risk of exposure, low alert level of the location where the activities are carried out, etc.

Mandatory vaccination for working at the employer's facilities

As of 10 December 2021, it is mandatory to have two doses of the COVID-19 vaccine (one dose when the vaccine requires it) to carry out activities at the employer's facilities.

Workers who do not have completed the vaccination scheme, whose tasks can be carried out remotely, must provide services through this modality of work. When the nature of the work is not compatible with remote work, the suspension of the employment relationship and the employer's obligation to pay salary can apply.

COVID-19 preventive measures in the workplace

Employers that will restart activities at their premises must adopt preventive measures to avoid the spread of COVID-19 within the workplace. The government has established specific obligations for each economic sector, and we list below the most important general obligations:

- (i) Have an updated COVID-19 surveillance, prevention and control Plan submitted to the Ministry of Health.
- (ii) Guarantee the cleaning and disinfection of all workplace environments, including furniture, tools, equipment, stationery, etc.

- (iii) Identify the exposure risk level to COVID-19 (low, medium, high or very high) of each employee. If employees do not work in close and frequent contact with others, their risk will be low.
- (iv) Take the employees' temperature upon entering the workplace, in order to identify people with temperatures over 37.5 C°.
- (v) Provide adequate personal protection equipment for each risk of exposure to the virus. KN95 face mask, or the combined use of a surgical mask with a cloth mask over it, is mandatory.
- (vi) Have health personnel in accordance with the size and number of workers in the company.
- (vii) Observe social distancing of 1 meter.

Employment contracts

General characteristics of contracts

The agreement to render personal, subordinated and remunerated services is deemed an indefinite-term labor contract.

The only requirement for hiring local personnel is that the employee must be of the age of majority (i.e., 18 years). Minors between 15 and 18 years must have parental permission and the approval of the Ministry of Labor (www.mintra.gob.pe).

Local personnel are usually hired for an indefinite period. In this case, it is not mandatory to enter into a written labor contract. In case of part-time, fixed-term or foreign employees, the agreement must be executed mandatorily in writing. Fixed-term employment agreements are allowed, but only in cases provided by law.

Part-time employment contracts

Part-time employees are those who work — on average — less than four hours a day. Part-time employees may work 24 hours a week if the employer establishes a six-day work week. If the work week

mandates working for five days or less, then the maximum working hours a week must be less than 20 hours.

Part-time employment agreements must be executed in writing and be submitted to the Labor Authority.

Part-time employees are only entitled to certain mandatory labor benefits. Specifically, they are only given legal benefits that do not require rendering service of four hours or more a day (i.e., vacations-only six working days, legal bonuses, life insurance policy, family allowance and profit sharing (when applicable)).

Fixed-term employment contracts

Fixed-term employment contracts are permissible, but only in the cases provided by law. Employers must describe in detail the cause that justifies the utilization of this type of contract.

Employers no longer have the obligation to register fixed-term employment contracts at the virtual platform of the Ministry of Labor or the Regional Labor Offices. The non-mandatory registration applies to contracts signed from 11 November 2016.

The Peruvian legal system has established nine modalities of fixed-term employment contracts:

- (i) Beginning of a new corporate activity – This is an agreement between the employer and employee upon the beginning of a new activity. The law considers as "new activity" the beginning of a productive activity of a company, the installation or opening of new establishments or markets, as well as the beginning of new activities or the increase of already existing activities within the same company. The maximum duration is three years, that is to say, this type of contract may be executed for shorter periods and renewed subsequently, as long as these do not exceed the mentioned maximum term.

- (ii) Market needs – This is an agreement executed due to temporary and unforeseeable increases in production, brought about by substantial market variations. Its maximum duration is five years, including the initial contract and its extensions.
- (iii) Corporate reconversion – This is used to accomplish activities derived from the replacement, extension or modification of the ordinary or complementary activities of the company. Its maximum duration is two years, that is to say, this type of contract may be executed for shorter periods and renewed subsequently, as long as these do not exceed the mentioned maximum term.
- (iv) Occasional – This is executed for contracting services derived from transitory needs other than the ordinary needs of the company (in our opinion, complementary). Its maximum duration is six months per year.
- (v) Replacement – This is a contract for the replacement of an employee subject to an indefinite-term employment agreement, whose relationship is suspended due to any of the grounds set forth by law or the performance of tasks entrusted to them. Its duration depends on the term of suspension of the replaced employee.
- (vi) Emergency – This is a contract executed in case personnel are needed due to the occurrence of force majeure events. Its duration is that necessary to cover the emergency.
- (vii) Certain work or specific service – This refers to a contract for the performance of transitory and specific works or services. The duration of this type of contract is for the entire time needed to complete the work or service.
- (viii) Intermittent service – This is a contract executed to perform permanent but discontinuous activities in the workplace. The original contract and extensions may be executed with the same employee, who has preferential right to reinstatement, as may be set forth in the original contract and will be effective without an

express extension of the contract. The term depends on the activity to be performed, which is either short-term or discontinued.

- (ix) Seasonal contract – This contract may be used for the coverage of seasonal activities. Its duration depends on the extension of the season.

The Peruvian legal system allows the execution of different and continuous fixed-term contracts with the same employee, under different modalities, depending on the needs of the employer. The only requirement is that they do not go beyond the maximum duration of five years, except in cases where the law provides a shorter maximum term.

Certain situations provided by law may lead to fixed-term employees as indefinite-term personnel (fixed-term contract's distortion) being considered.

There is no limit to the number of employees who can be hired under fixed-term contracts, provided their contracts are included in the cases set forth by law.

In addition, a permanent employee who is terminated cannot be contracted under a fixed-term contract, unless one year has elapsed since their termination.

Trial period

Peruvian labor regulation establishes a three-month trial period for regular personnel. Upon the expiration of this period, the employee is protected against unlawful dismissal. Only management or trusted qualified employees may agree on a longer term. The extension of the trial period must be made in writing and may not exceed, along with the original trial period, six months for trusted employees and one year for management employees.

Quota of employees with disabilities

Pursuant to Law No. 29973, at least 3% of employees in private companies with more than 50 employees must be disabled employees.

The calculation is performed taking into account: (i) the number of employees registered in the payroll; and (ii) the period between 1 January and 31 December of each year. The labor authority has been checking companies' compliance with the quota since January 2016.

Working hours

Employees must render an eight-hour workday or a 48-hour workweek at the maximum.

Overtime is calculated based on the hourly rate. The first two hours of overtime are paid at 25% of the employee's regular hourly pay. All additional hours are paid at 35% of the employee's regular hourly pay.

Accumulative or atypical work periods are allowed, provided they do not exceed the average of 48 hours of work per week.

Management personnel, employees who are not under immediate supervision and those who perform intermittent services with waiting periods or security services are not entitled to overtime pay.

Paid leaves

As established by Peruvian rules, the main paid leaves (in addition to vacations) are as follows:

Weekly rest

Employees are entitled to a minimum of a 24-hour rest period per week, which normally corresponds to a Sunday.

They may work on Sunday and take the day off on another day of the week. If an employee works on a weekly rest day without taking a substitute day off, the employer will pay them an additional 100% of the daily salary.

National holidays

Employees do not have to render services on holidays established by law, but they do have the right to earn the salary corresponding to such days.

The employer and the employee may agree on substitute day off work. If an employee works on a legal holiday without taking a substitute day off, the employer shall pay an additional 100% of the daily salary.

Sick leave

The duration of the sick leave depends on the employee's inability to work due to sickness or any disability.

For the first 20 days of sickness/disability, the employer has to pay the employee's corresponding salary to cover the sick leave period. After 20 days, the Social Security Service pays the employee's salary, with a disability subsidy for a maximum of 11 months and 10 days. Under this arrangement, the employer pays first and is later reimbursed by the Social Security Service.

Maternity leave

Law No. 30367 has extended the maternity leave period. Currently, maternity leave is at 98 days (49 days of prenatal leave and 49 days of postnatal leave). Additionally, in cases of multiple childbirth or if the child has a disability, postnatal leave will be extended for another 30 calendar days.

Paternity leave

The duration of this leave period is 10 consecutive labor days as of the childbirth date certified by the relevant medical center. According to law, the employer pays this leave. Additionally, in the case of premature birth and/or multiple births, the period may be extended to 20 consecutive days.

If the mother dies during childbirth or while on maternity leave, the father will be the beneficiary of the paid maternity leave. In this case, he can use the combined maternity and the paternity leave periods.

Adoption leave

Employees who have adopted a child are entitled to a leave of 30 days if the child is no more than 12 years old. According to law, the employer pays this leave.

If the petitioners are spouses, the woman will take the leave.

Leave due to serious illness or accident of direct relatives

Employees are entitled to a paid leave for a maximum of seven days in case their child, parent, spouse or partner has been diagnosed with a serious or terminal disease or if they have suffered a serious accident.

If the employee needs more days to assist their relative, they will be permitted to take leave for no more than 30 days, which will be taken from their vacation days' allocation. If, on an exceptional basis, the employee needs to extend their leave, they may agree with the employer to set off the leave/s with overtime work.

Leave to take care of disabled relatives

Employees who take care of disabled relatives who require medical assistance or to attend therapy sessions are entitled to take paid leave of up to 56 hours, continuous or not, in a year. If a worker is

primarily responsible for a person with disability, they may take leaves until the transition to an alternative support system is completed.

Mandatory employee benefits

An employer is not only required to accomplish all the obligations related to the payment of the employee's remuneration but is also obliged to grant all mandatory rights and benefits decreed by Peruvian labor regulations.

These rights and benefits are as follows:

Minimum wage

The new minimum wage since May 2022 will be PEN 1,025. The government may adjust this minimum wage periodically.

Legal bonuses

There are two mandatory bonuses within the year, each of which is equivalent to one month's remunerations. If the employee works the complete semester, the first bonus is payable during the first half of July while the second one is payable during the first half of December. The bonuses are calculated on the basis of the monthly remuneration received by the employee, plus the regular remunerations received during the corresponding semester. If the employee is not employed during the complete semester, the bonus is pro-rated and the employee receives one-sixth of the bonus per worked month.

Pursuant to Law No. 30334, bonuses are not subject to any social contribution, except income tax. Therefore, the employer shall pay directly to its employees, as an extraordinary bonus, a figure amounting to 9% of the contribution to the Social Security Service (ESSALUD). If the employee is covered by a private healthcare provider, this extraordinary bonus must be equivalent to 6.75% of the bonus.

Compensation for length of services (CTS)

This is a legal benefit consisting of semiannual deposits of approximately 8.33% of the wages — including bonuses — earned each semester.

The deposits are made every May and November to an account called "CTS account" in the bank chosen by the employee. The semesters considered for each deposit are November to April for the May deposit and May to October for the November deposit.

Employees may freely use the total amount deposited to their accounts once the employment relationship is terminated. However, at any time before the termination of employment, employees may withdraw from their CTS accounts up to 100% of the excess of four gross monthly remunerations.

Vacations

Employees are entitled to a 30-day paid vacation period for each completed year of service. The vacation remuneration is equivalent to an employee's monthly remuneration and has to be paid before the employee leaves for their vacation. The vacation remuneration may also include other complementary and regular remunerations according to law.

To enjoy this benefit, the employee must have completed a full year of service, which is calculated considering the beginning date of the labor relationship.

The 30-day vacation period must be enjoyed without any interruption. However, employees may agree with their employer to break down, accumulate or reduce this period. As of 13 September 2018, the annual vacation may be used according to the following rules:

- At least 15 of the 30 vacation days must be taken in periods no shorter than seven days.

- The remaining days (up to 15) can be taken in periods shorter than seven days.

In any case, the employee must request the breakdown in writing. There is no obligation to accept the employee's request.

The employer and the employee will decide by mutual agreement the time the vacations will be enjoyed, considering the company's needs and the employee's interests. However, in case of disagreement, the employer's decision will prevail.

Family allowance

The family allowance may be availed by employees whose remuneration is not regulated by collective bargaining. It gives the employee the right to receive a monthly amount equivalent to 10% of the minimum wage (since May 2022 that percentage will be equivalent to PEN 102.50), as long as they have one or more children under the age of 18, or up to the age of 24 if the child is pursuing higher education.

Profit sharing

Employees have the right to receive profits through the distribution of an annual percentage in the company's income before taxes (between 5% and 10%, according to the kind of activity).

Profit sharing is applicable to companies that have more than 20 employees (to establish that a company has 20 employees, it is necessary to consider personnel under indefinite contracts, temporary contracts or part-time contracts).

The applicable profit sharing rate is 10% for fishing, telecommunications and industrial companies; 8% for mining, trading activities and restaurants; and 5% for other activities.

Profit sharing is paid according to these percentages, which are calculated based on annual income before taxes. However, the

company is entitled to offset the net profits with accumulated losses from previous fiscal years, without including the deduction of the employees' profit shares. Please note that the deduction that came from applying the statutory profit sharing rate is considered an expense for tax purposes, and therefore may be deducted for income tax purposes.

Life insurance

The employer is obligated to obtain a life insurance policy for all its employees who have rendered more than four years of service, since the beginning of the employment relationship.

Establishment of a lactation room and its use

Supreme Decree No. 001-2016-MIMP was published on 9 February 2016. This decree establishes the employer's obligation to provide a place especially designed for expressing breast milk in workplaces where 20 or more women of childbearing age (between 15 and 49 years old) work, and to grant at least one hour of daily use for mothers with children up to 2 years old.

The lactation room must include, at a minimum, an area of 10 square meters, and should be in a private comfortable environment that must be accessible to mothers with disabilities. It must also have a refrigerator, water dispenser and cleaning utensils, among others.

In addition, employers have the obligation to regulate the use of the lactation room in the Working Rules or in a similar document, and to inform the Ministry of Women and Vulnerable Populations about the establishment of this room within a 10-day period.

Equal Pay Act

The Equal Pay Act (Law No. 30709) aims to prevent salary discrimination as well as guarantee the right of employees to receive the same salary for equivalent services, not only for identical ones.

To achieve this, employers will have to comply with the following specific obligations: (i) formulate a clear staffing table; (ii) prepare and introduce a salary policy; and (iii) inform employees about their salary policy.

Employers must take all measures to guarantee the fulfillment of these obligations.

Prevention and punishment of sexual harassment

There is a "sexual harassment" case under any of the following circumstances:

- An unwanted conduct of a sexual or sexist nature has occurred, which creates an intimidating, hostile or humiliating environment for the victim of harassment.
- An unwanted conduct of a sexual or sexist nature has occurred that may affect the work situation of the victim of harassment (this includes sexual blackmail).

For conduct to be classified as sexual harassment, the following conditions are not necessary:

- The victim rejects the reported harassment behaviors.
- The reported harassment behaviors are repeated.

Employers must meet the following obligations:

- (i) Provide training about prevention and punishment of sexual harassment, at the beginning of the employment relationship and annually.
- (ii) Provide materials, complaint channels, complaint formats, etc., on the prevention of sexual harassment.

- (iii) Establish an Intervention Committee against sexual harassment (if they have more than 20 employees) or elect a delegate (if they have 20 employees or less).
- (iv) Implement a Policy on Prevention and Punishment of Sexual Harassment (only if they have more than 20 employees). Investigate any complaint filed by its employees.

Social Security and taxes

Social Security in Health (ESSALUD)

Pursuant to Law No. 26790, all employees and their dependents are statutory affiliates of ESSALUD.

Monthly ESSALUD contributions are equivalent to 9% of the employee's monthly remuneration and shall be paid by the employer.

Private healthcare providers

In addition to ESSALUD coverage, the employer may grant private healthcare plans to its employees through a healthcare provider (Entidades Prestadoras de Salud or EPS). In such cases, the employer may have a credit against the ESSALUD contribution equivalent to 25% of the applicable contribution. That is to say, of the 9% ESSALUD contribution, only 6.75% shall be allocated to such entity, and the remaining 2.25% shall be remitted to the EPS.

In no case may this credit exceed the amount allocated by the employer to finance health coverage in the corresponding month, and 10% of the tax unit multiplied by the number of employees who received EPS coverage.

In order to use the aforementioned credit, the employer must follow the legal procedure in selecting the EPS.

The plan coverage offered by the employer through an EPS will provide the same benefits to all covered employees and their

dependents, regardless of their remuneration. Such coverage shall not be less than the minimum care plan offered by ESSALUD. The healthcare plans may include co-payments, to be borne by the insured, which shall be paid upon receipt of the assistance, and unless with the express consent of the employee, co-payments may not exceed 2% of the monthly remuneration for each ambulatory healthcare appointment and 10% for each hospitalization. Furthermore, such coverage should include care for being in accidents and for having occupational diseases, as appropriate, and shall not exclude care for having pre-existing ailments.

Retirement contribution

Employees may choose between the public or private pension systems.

Monthly contributions to the private pension system are equivalent to 10% of the employee's remuneration. Additionally, there is a premium for disability insurance, survival insurance and burial expenses (1.35% of the remuneration) (between 0.18% and 1.69% of the remuneration) and for the commission of the Pension Fund Administration (Administradora del Fondo de Pensiones or AFP). All these items are deducted by the employer from the employee's salary and paid to the administrator of the pension.

The monthly contribution to the National Pension System is equivalent to 13% of the employee's remuneration. The employer shall deduct the contribution and pay it to the National Tax Authority or SUNAT, which collects this contribution.

Income tax

The employer must withhold and pay to the Tax Authority on a monthly basis income tax generated by employees.

A domiciled employee's income is taxed in Peru on a worldwide income basis. For its determination, a first deduction of 7 tax units (equivalent to PEN 32,200 in 2022) is made from the employee's

income. Notwithstanding this, domiciled employees may be deducted an additional amount (up to 3UIT (PEN 13,800)) due to the following concepts: lease payments; receipt for fees of doctors or dentists; payments made for professional services; contributions to social security made on behalf of domestic workers; the amounts paid for hotel accommodation and restaurant consumption; and the amounts paid for tourism services.

After all possible deductions have been made, the following annual progressive rate is applied to the remainder of the employee's income: 8% for the first 5 tax units of net income (PEN 23,000); at 14% of net income for amounts higher than 5 tax units to 20 tax units (PEN 92,000); at 17% of net income for amounts higher than 20 tax units to 35 tax units (PEN 161,000); at 20% of net income for amounts higher than 35 tax units to 45 tax units (PEN 207,000); and capped at 30% of net income in excess of 45 tax units.

Due to the condition of non-domiciled taxpayers in Peru, foreign employees are taxed on Peruvian-sourced income only, according to the non-domiciled income tax criteria. The income tax rate for non-domiciled individuals is a flat 30% rate.

A non-domiciled individual will be deemed a domiciled individual once they have resided in Peru for at least 183 days within a 12-month period. The change of status (non-domiciled to domicile) will be effective as of the next fiscal year (1 January) following the year in which they have stayed in Peru for the required period.

Termination of the employment relationship

Legal causes of termination

Peruvian regulation provides the following possibilities to conclude employment relationships:

- (i) Death of the employee or of the employer if they are a natural person

- (ii) Resignation of the employee
- (iii) The termination of the work or service, the fulfillment of the resolutive condition, and the expiration of fixed-term employment agreements
- (iv) Mutual agreement
- (v) Employee's permanent and absolute disability
- (vi) Retirement
- (vii) Dismissal under circumstances provided by law
- (viii) Termination by objective cause

Dismissal

Employees who work four or more hours daily are protected against unfair dismissal.

The reasons that justify the dismissal of an employee are explicitly contained in the refunded text of the Labor Productivity and Competitiveness Act, approved by Supreme Decree No. 003-97-TR, which has classified the dismissal cases related to the ability of the employee and their conduct.

Termination by objective causes

Termination by objective causes is also known as "collective dismissal" and is applicable in the following cases:

- (i) Act of God or force majeure
- (ii) Economic, technological, structural or analogous reasons
- (iii) Dissolution and liquidation of the company; bankruptcy
- (iv) Patrimonial restructuring, under the pertinent law

To make this type of termination effective, the procedure established by law must be followed, which involves a notice to or the approval of the Labor Authority.

In cases of economic, technological, structural or similar motives, collective termination must involve at least 10% of the total number of employees of the entity.

Termination without cause: severance pay

In the event that the termination of an employee is unfair (i.e., it is not based on a legal cause or is successfully challenged by the employee at court), the employee is entitled to a severance pay consisting of 1.5 times their monthly salary for each year of service plus fractions up to a maximum of 12 monthly salaries in case of an indefinite-term relationship.

When dealing with fixed-term employment contracts, the severance pay consists of 1.5 times the monthly salary for each month until the completion of the contract, with a maximum of 12 monthly salaries.

The mandatory severance payment is not considered taxable income for income tax purposes.

The employer must pay the corresponding severance pay within 48 hours of the employee's termination.

Due to decisions of the Constitutional Court, employees that are dismissed without any cause may refuse to collect the severance payment and request to be reinstated, except in the case of management or trust personnel hired since the beginning of their employment to render management or trust services.

Foreign employees in Peru

When hiring foreign personnel, it is necessary to execute a written employment contract according to certain formalities and limitations

(i.e., its term shall not exceed three years, which could be extended for similar periods).

The Labor Authority has created a virtual system of registry of foreign employment agreements. Therefore, these contracts will now be considered automatically approved once they have been so registered.

The following documents must be submitted to the Ministry of Labor, which approves these contracts: (i) the labor contract; and (ii) a sworn affidavit in which the company states that all the legal requirements are fulfilled and that the foreign employee has the training or work experience required to occupy the position offered.

It is no longer necessary to submit to the Ministry of Labor documents such as the certificates of previous employment or professional titles, which generally have to be translated and legalized or apostilled. However, it is advisable to have a copy of these documents in case of future inspection.

Foreign employees should not exceed 20% of the total workforce and their combined salaries should not exceed 30% of the total company payroll.

The applicable law provides for exceptions to those restrictions, such as high-level executives of a new company, high-level executives going through corporate restructuring, qualified professionals or technicians. Those restrictions do not apply to: (i) citizens whose spouse, ancestors, descendants and siblings are Peruvian; (ii) citizens whose countries of origin have entered into an international dual nationality or a labor reciprocity treaty.

Foreign employees may only begin their services once the Ministry of Labor has automatically approved the contract, and when the adequate migratory status (resident visa) has been obtained. Foreign employees may not be included in the payroll until they fulfill both requirements.

Special rules apply to Spanish citizens and to citizens from countries of the Andean Community and MERCOSUR.

Hiring through labor intermediation companies

The general rule is that personnel must be hired directly by the employer. However, third-party companies may provide personnel to their clients to render only the following services:

- (i) Temporary services – Occasional services or temporary replacement of personnel (the number of seconded workers cannot exceed 20% of the client company's total workforce.)
- (ii) Supplementary services – Services that are not part of the client's main activity and whose absence does not affect the activity of the company, such as courier, surveillance, security, reparations and cleaning
- (iii) Highly specialized services – Complex and specialized services that are not part of the client's main activity, such as specialized sanitation and maintenance

Labor intermediation companies must provide bail to the client company in order to guarantee compliance with their assigned employees' labor and social security obligations. If the bail is insufficient for the payment of labor rights owed to the assigned employees, the labor intermediation company and its client shall be jointly responsible for the payment of such debts for the time of the assignment.

Outsourcing

According to Peruvian regulations, "outsourcing" is defined as the business organization by which a company entrusts or delegates the development of one or more parts of its main activity to one or more companies (outsourcing companies) that procure works or services related to their main activity.

The regulation is applied to outsourcing relationships with continuous displacement of personnel to the main companies' facilities, but not to outsourcing events without displacement or with eventual or sporadic displacement.

Outsourcing will be lawful when, besides complying with the aforementioned definition, the outsourcing companies do the following:

- (i) Bear the services provided at their own account and risk.
- (ii) Have their own financial, technical or material resources.
- (iii) Become responsible for the result of their activities.
- (iv) Place their employees under their exclusive subordination (this means that the employees shall receive instructions and sanctions from, and be supervised only by, the outsourcing company).

The requirements mentioned above shall be jointly complied with, because noncompliance with any of these will invalidate the outsourcing activity.

The following are additional characteristic elements of outsourcing activities:

- (i) The outsourcing company must have more than one client.
- (ii) It shall have its own equipment and capital investment.
- (iii) The compensation to be paid to the outsourcing company will be calculated based on the services rendered by the company.

If the outsourcing relationship does not meet the aforementioned requirements, or if after a reasonable analysis of the characteristic elements the outsourcing company is deemed to lack autonomy, the outsourcing activity will be deemed distorted. In that event, the outsourced personnel of the outsourcing company will be deemed personnel of the main company.

In addition, it is worth considering that pursuant to outsourcing regulations, the main company is jointly liable for the payment of the outsourced employees' remunerations, labor benefits and social security contributions accrued during the term of outsourcing. Rights and benefits because of collective bargaining and labor agreements, or those unilaterally set forth by the employer, are excluded.

Outsourcing companies must be registered with the Labor Authority. However, this obligation is fulfilled by declaring the outsourcing of the employees on its electronic payroll.

Health and safety at work

The obligations regarding occupational health and safety for all economic activities have been established in the Occupational Health and Safety Law, Law 29783 and its Regulations, approved by Supreme Decree No. 005 -2012-TR. In addition, there is a special regulation for various economic activities, such as those related to mining, hydrocarbons, electricity and construction.

Legislation on occupational safety and health requires that every employer implement a system of occupational safety and health management, which will be composed of a series of instruments and documents that are mandatory, examples of which are as follows:

- (i) Occupational health and safety policy
- (ii) Internal regulations for occupational health and safety
- (iii) Hazard identification matrix and risk assessment
- (iv) Risk map for each work environment
- (v) Annual occupational health and safety program
- (vi) Occupational health and safety committee, or an occupational health and safety supervisor for companies with less than 20 workers

- (vii) Face-to-face training in occupational safety and health (no less than four sessions per year)

Until the National State of Emergency established by the government in response to the global pandemic generated by the SARS-CoV-2 virus ends (28 August 2022), the following obligations are suspended:

- (i) Entrance or periodic medical examinations (it will be mandatory to carry out a medical entrance examination if the employee does not have an occupational medical evaluation in the last year)
- (ii) Organizing the election process for the Occupational Safety and Health Committee
- (iii) Internal audits of health and safety matters



INTELLECTUAL PROPERTY PROTECTION

In Peru, protection of intellectual property can be divided into the protection of industrial property and the protection of copyright.

Industrial property protection applies to all economic activities. All natural or legal persons recognized by the constitution and laws of Peru, whether or not domiciled in Peru, are entitled to industrial property protection.

The protected components of industrial property are: (i) invention patents; (ii) certificates of protection; (iii) utility models; (iv) industrial designs; (v) trade secrets; (vi) layout designs of integrated circuits; (vii) goods and services marks; (viii) collective marks; (viii) certification marks; (ix) trade names; (x) commercial slogans; (xi) appellations of origin; (xii) geographical indications; and (xiii) guaranteed traditional specialties.

Industrial property in Peru is governed mainly by the following: the Paris Convention for the Protection of Industrial Property; the Agreement on Related Aspects of Intellectual Property Rights (TRIPS); the General Inter-American Convention for Trade Mark and Commercial Protection, or the Washington Convention; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; the Treaty on the Law of Marks; Singapore Treaty on the Law of Trademarks; Decision 486 of the Andean Community - Common Intellectual Property Regime; Legislative Decree No. 1075 (which approves complementary provisions to Decision 486); Legislative Decree No. 1309 (of the Simplification of Administrative Proceedings in Matters of Intellectual Property followed before the Resolutive Bodies of the National Institute for the Defense of Competition and Protection of Intellectual Property or INDECOPI); Supreme Decree No. 059-2017-PCM (Regulation of Legislative Decree No. 1075); Legislative Decree No. 1395 (Modifying the Legislative Decree No. 1075); Legislative Decree No. 1092 (approving Border Measures for the Protection of Copyright and Related Rights and Trademark Rights); the Patent Cooperation Treaty Patent (PCT); and Law No. 29316 (which modifies, includes and regulates various

provisions to implement the trade promotion agreement signed between Peru and the US).

INDECOPI is the authority in charge of maintaining records and amendments to industrial property registrations and the correct application of the respective rights.

Patents are granted for inventions, whether products or processes, in all fields of technology, provided the invention is new, involves an inventive step, and has industrial application or applicability. The invention patent has a term of 20 years from the date the application is filed. After the term expires, the invention enters the public domain.

At the applicant's request, the Office of Inventions and New Technologies may adjust the patent term if the patent grant was subject to unreasonable delay (this adjustment is not available for pharmaceutical products and procedures).

Licenses to invention patents must be in writing and registered with the Office of Inventions and New Technologies to be deemed enforceable against third parties.

Similarly, a patent holder or patent challenger may file any action claiming ownership and compensation in order to assert a right to the patent.

A utility model is any new form, configuration or arrangement of components of any device, tool, instrument, mechanism or other object, or any part thereof, which allows a better or different operation, use or manufacture of the object incorporating the utility model or that provides the object usefulness, advantage or technical effect that it did not have before. The utility model has a term of 10 years from the date the application is filed. Once the term has expired, the utility model enters the public domain. The utility model can also be licensed.

Industrial designs cover any arrangement of lines or combination of colors, or any two- or three-dimensional external shape that is incorporated into an industrial product or handicraft to give it a special appearance but does not change the target or purpose of the product and serve as type or pattern for its manufacture. Industrial design protection has a term of 10 years from the date the application is filed. After the term expires, the industrial design enters the public domain. The industrial design may be transferred or licensed.

Product and service marks must be registered with INDECOPI to obtain legal protection. Registration is done according to the International Classification of Goods and Services for the Purposes of the Registration of Marks (i.e., Nice Classification) and can be carried out through a multi-class registration request. Upon completion of the registration procedures, the competent authority issues a certificate that grants the holder exclusive rights to the mark for 10 years. Owners of registered marks may divide their trademark certificates as trademark applicants may also divide their applications.

Registration may be renewed six months prior to expiration and up to six months after the expiration date.

If the owner or a licensee has not used in Peru or in any Andean Community member country a registered mark for three consecutive years, any person having a legitimate interest in the mark may apply for the mark's cancellation.

Similarly, the competent authority may, either on its own motion or at the request of an interested party, annul the registration of a mark if: (i) the mark does not meet the requirements for registration; (ii) the right to the mark has been granted contrary to laws or regulations; or (iii) the registration has been granted in bad faith.

A trade name does not require registration to be protected. However, an unregistered trade name is only protected in the geographical area where it is used.

If its industrial property rights are violated, the holder of an industrial property right may initiate an administrative proceeding before INDECOPi or criminal proceedings before the criminal courts. After the administrative authorities or the criminal court determines that there was a violation, the holder of such rights may also file a civil lawsuit seeking compensation for damages.

Copyright protection applies to all intellectual works in the literary and artistic domain, whatever their type, form of expression, merit or purpose. Copyrights are compatible with: (i) existing industrial property rights to the work; and (ii) derivative rights and other intellectual property rights recognized by the law. In resolving conflicts, emphasis shall always be placed on what may be most favorable to the author.

Copyright in Peru is governed mainly by: the Rome Convention for the Protection of Performers; Producers of Phonograms and Broadcasting Organizations; Decision 351 of the Andean Community: Common Regime on Copyright and Related Rights, Law on Copyright (Legislative Decree No. 822) as amended by Legislative Decree No. 1076 and Legislative Decree No. 1391; Legislative Decree No. 1092 (approving Border Measures for the Protection of Copyright and Related Rights and Trademark Rights); and Law No. 29316 (which modifies, incorporates and regulates various provisions to implement the trade promotion agreement signed between Peru and the United States of America); as well as Supreme Decree No. 053-2017 (which approves the Regulation of the National Record of Copyrights and related rights). As in the case of industrial property rights, INDECOPi is the authority in charge of maintaining records and amendments to copyright and of monitoring the proper use of these rights.

The following are protected under copyright law: (i) literary works expressed in writing through books, magazines, pamphlets or other writings; (ii) literary works expressed orally such as lectures, speeches, and sermons or didactic explanations; (iii) musical compositions with or without words; (iv) dramatic, musical,

choreographic, pantomime and performing arts works in general; (v) audiovisual works; (vi) works of plastic arts (including paintings, sketches, works of engraving and works of lithography); (vii) architectural works; (viii) photographic works and works expressed by a process analogous to photography; (ix) illustrations, maps, drawings, plans, sketches and plastic works relative to geography, topography, architecture or science; (x) slogans and phrases to the extent that they have a form of literary or artistic expression with original features; (xi) computer programs; (xii) anthologies or compilations of assorted works or expressions of folklore, and databases, provided that such collections are original by reason of the selection, coordination or arrangement of their contents; (xiii) newspaper articles, whether or not on current events, reports, editorials and commentaries; and (xiv) any other product of the intellect in the literary or artistic domain, which is characterized by originality and is susceptible to being disclosed or reproduced by any means or process, known or yet to be known.

Copyright recognized in Peru is independent from the ownership of the material in which the work is embodied, and its enjoyment or exercise is not subject to registration or compliance with any other formality.

Unlike moral rights, which exist indefinitely, economic rights are granted for the life of the author, and will continue for 70 additional years, wherever the country of origin of the work.

Economic rights to works may be transferred by mandate or legal presumption, by transfer inter vivos or mortis causa, or by any means permitted by law.

A copyright holder whose rights have been violated may initiate an administrative proceeding before INDECOPI or criminal proceedings before the criminal courts. After the administrative authorities or the criminal court has determined that there was a copyright violation, the holder of such rights may also file a civil lawsuit seeking compensation for damages.

Regarding effective technological measures, the rules currently in force provide that the law penalizes, either administratively or criminally, any unauthorized circumvention of said measures used by copyright holders to protect their works. Further, the law also sanctions the manufacturing, importation, distribution or commercialization of products or components thereof to elude such technological measures. For these purposes, some exceptions to the sanctions imposed for circumvention of effective technological measures have been established.

National legislation has also established the application of border measures to intercept counterfeit and pirated goods when imported, exported or in transit.



PROTECTION OF FREE AND FAIR COMPETITION

Protection of free and fair competition

In June 2021, a new law that implements a general merger control regimen, which applies to all sectors, went into effect. This law provides that certain business transactions exceeding the established thresholds will be subject to prior approval of the Commission for the Defense of Free Competition of INDECOPI.

In the prior approval procedure, the free competition authority examines if the business concentration may reduce, harm or prevent competition, in which case it may subject the approval to conditions or prohibit the transaction.

Moreover, in order to promote economic efficiency for the benefit of consumers, the law prohibits and penalizes anticompetitive behaviors. These anticompetitive behaviors include: (i) abuse of a dominant position; (ii) horizontal collusion; and (iii) vertical collusion.

Furthermore, all acts of unfair competition that have the effect of preventing the proper functioning of the competitive process are prohibited. An act of unfair competition is one that is objectively contrary to the requirements of good faith in business, rules of good market conduct, and efficiency in a social market economy. Business advertising is also subject to the unfair competition rules



DATA PRIVACY

The fundamental right to data protection was first introduced by the Peruvian Constitution of 1993 (currently in force), which states that "(...) information services, computerized or not, public or private, should not release information that affects an individual's privacy and family life."

To guarantee the effective exercise of such right, in 1994 the Habeas Data process was regulated by Law No. 26301 (later replaced by Law No. 28237 - Constitutional Procedural Code). Pursuant to Habeas Data, all individuals are entitled to access, update, cancel or rectify their personal information stored or registered, whether manual, mechanical or informatics, in files, database, and registries of public or private entities. The Habeas Data is a constitutional process that follows a procedural path for guaranteeing a fundamental right; it is performed before the judiciary, which takes time and has a considerable cost for the majority of citizens. Consequently, it is difficult to achieve effective protection.

It was not until 2011 that a general framework for data protection applicable to all activities and industries was issued, establishing more expeditious mechanisms for protecting the fundamental right above. Law No. 29733, the Peruvian Data Protection Law (PDPL), published on 3 July 2011, and its Regulation approved by Supreme Decree No. 003-2013-JUS ("**Regulation**"), published on 22 March 2013, seek to guarantee said protection recognizing specific rights of the data subjects and obligations of those who are responsible for the processing of such data. These norms are supervised and controlled by the Peruvian Data Protection Authority, a body that reports to the Vice-ministerial Office of Human Rights and Access to Justice of the Ministry of Justice (DPA).

The PDPL applies to personal data (defined as any information regarding a person that identifies them or makes them identifiable through reasonable means) contained or intended to be contained in public or private databanks, and processed in Peruvian territory.

Data processing is defined by the PDPL as any operation or technical proceeding, automated or not, that allows the collection, storage, organization, modification, usage, suppression, transfer — among others — of personal data.

In order to satisfy the scope of application of the PDPL, its Regulation (approved through Supreme Decree No. 003-2013-JUS) stated that the PDPL and its complementary norms will be applicable when:

- (i) Data processing is carried out in an establishment located in Peruvian territory that belongs to the holder of the databank ("**Data Controller**").
- (ii) Data processing is carried out by a third party ("**Data Processor**"), regardless if its location, on behalf of a Data Controller established in Peruvian territory.
- (iii) Neither the Data Controller nor the Data Processor is established in Peruvian territory, but PDPL applies to them by contractual provisions or international law.
- (iv) The Data Controller is not established in Peruvian territory, but it uses means located in Peru for the processing of personal data.

The main obligations imposed by the PDPL on Data Controllers include:

- (i) Register with the DPA the database(s) under control.
- (ii) Process personal data only with the prior, express, informed and unequivocal consent of the data subject (except for very exceptional cases).
- (iii) Adopt technical, organizational and legal measures to guarantee the security of data and prevent its alteration, processing or non-authorized access.
- (iv) Inform the DPA about any cross-border transfer of information.

- (v) Avoid collecting data using fraudulent, illegal or unfair means.
- (vi) Collect only the necessary and pertinent data for the purposes informed to the data subjects.
- (vii) Allow the exercise of data subjects' rights to access their information, rectify it or require its elimination.
- (viii) Allow the DPA to access database(s) and provide the information required in an administrative proceeding.

Noncompliance with the obligations imposed by the PDPL leads to the imposition of administrative sanctions (fines), without prejudice to any civil and/or criminal liability.



INTERNATIONAL TRADE AND CUSTOMS

International trade and customs

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Hot topics

In recent years, substantial changes have been made to the Peruvian trade and customs regulatory framework:

- Related to trade operators: implementation of categories based on an assessment of infringements committed (A, B and C). The categories determine different obligations (e.g., amount of the customs guarantee) and requirements for its operations.
- Related to operability: advance clearance is mandatory for definitive importation; different deadlines for submission of transport manifest or discharge merchandise in the territory.
- Related to customs sanctions: new guidelines have been developed for evaluating the internationality (or otherwise) of the behavior, the voluntary disclosure of infringements, the category of the operator, and the incentive regime was eliminated.⁶

In addition, Peru has implemented the Logistics Platform Law, the Single Trade Window System (VUCE) and Legislative Decree No. 1492, which, along with its Regulations, includes provisions for the digitization of foreign trade processes in the public and private sectors.

On the other hand, maritime cabotage services have also been liberalized, and the elimination of non-tariff trade barriers at the sectoral level has been promoted, publishing a new procedure for such complaints before the National Institute for the Defense of Competition and Protection of Intellectual Property - INDECOPI.

Trade openness

By means of Legislative Decree No. 668, in force since October 1991, the Peruvian government approved a regime to guarantee freedom of

⁶ Guidelines have been issued for the application of facts and circumstances (aggravating and mitigating circumstances) in certain customs infringements.

domestic and foreign trade. This regime mainly accomplished the following:

- Gave economic operators free access to the acquisition, processing and marketing of both final goods and raw materials, and provision of services
- Eliminated and prohibited all types of exclusivity, limitation, or any other restriction or monopolistic practices in the production and marketing of goods and services
- Prohibited the imposition of surcharges, tariff quotas, or any other charges on the importation of goods, with the sole exception of customs duties and applicable taxes levied on the domestic sale of products
- Annulled all types of licenses, reports, records and certifications for import and export customs operations, and forbade the creation of para-tariff restrictions

Additionally, in accordance with the provisions of the Peruvian Constitution, this legislative decree guarantees the free ownership, use and disposal of foreign currency, as well as the free convertibility of the national currency at a single exchange rate.

On the other hand, the Peruvian government shall ensure that the technical regulations and standards are not prepared, adapted and applied with a view or with the effect of creating unnecessary obstacles to trade of any kind, and shall ensure an equivalent treatment between similar domestic and foreign products. This will apply to final goods, raw materials and inputs of any kind, inclusively domestic and foreign trade services.

Finally, it is important to mention that the Ministry of Foreign Trade and Tourism defines, directs, executes, coordinates and supervises foreign trade policies, which, in certain cases, require coordination with other ministries.

Authorized Economic Operator or OEA

The OEA is an international trade operator certified by the customs authority, SUNAT, which has complied with all the conditions and requirements according to the General Customs Law, the OEA Certification Law and related Customs Procedures, and will enjoy benefits before SUNAT.

OEA certification can be obtained by the following types of operators: (i) exporters; (ii) importers; (iii) customs brokers; (iv) customs warehouses; and (v) couriers.

Accomplishing the requirements begins with the presentation of a questionnaire made by SUNAT. The general requirements are as follows:

- Satisfactory trajectory of compliance with the current standard
- Appropriate accounting system and logistic records that allow traceability of operations
- Financial solvency verification
- Adequate level of security

The general requirements are found in the OEA Certification Regulations - Supreme Decree No. 184-2016-EF and the procedure in the General OEA Certification Procedure, approved by Resolution No. 35-2016-SUNAT. The facilities can be found in Annex 1 of the General OEA Certification Procedure. Finally, the implementation of the OEA 2.0 focused on unblocking barriers in border regulation (sanitary and phytosanitary issues) is being evaluated.

Customs procedures

Customs clearance is governed by the General Customs Law⁷ and its regulations.⁸ In addition, SUNAT is responsible for controlling the entry or exit and transportation of goods inside of the Peruvian customs territory.

It is relevant to mention that in 2018, the General Customs Law was modified through Legislative Decree No. 1433, which provides amendments on obligations, new requirements for authorizations, audits for operators through categories, changes on terms and new system of customs sanctions.

Likewise, in 2019, the Regulation of the General Customs Law was modified, which provides for several modifications: mandatory advance clearance for definitive importation and new guarantees to operate as an international trade operator.

Meanwhile, customs clearance agents or other persons legally authorized by the Customs authority request goods declaration to be submitted under the following customs clearance processes:

Advance clearance:⁹ This allows the importer to import goods released within a period not greater than 48 hours as from their arrival. This procedure requires the electronic arrival of the transportation and the prior presentation of a financial guarantee to the customs administration, which could be global (12 months of validity) or specific (three months of validity for one operation) so as to obtain the release or disposal of the goods without prejudice to

⁷ Legislative Decree No. 1053, and its amendments (Legislative Decree No. 1235) and Legislative Decree No. 1433

⁸ Supreme Decree No. 010-2009-EF and its amendments. The last amendment was under by Supreme Decree No. 367-2019-EF.

⁹ Legislative Decree No. 1433, which amends the General Customs Law - Legislative Decree No. 1053, established the mandatory application of advance clearance as of 31 December 2019.

continuing the customs clearance process, and then pay customs duties and taxes on imports. It is mandatory for definitive importation.

Delayed clearance: After the arrival of the imported goods into Peruvian territory, the importer has a deadline of 15 calendar days as from the date of the end of unloading to dispatch the goods under a customs procedure. Applied under exceptional situations for definitive importation and used in other customs regimes.

Urgent clearance: This refers to the customs clearance of some goods considered as relief consignments or emergency goods, such as medications, among others. The dispatch can be started 15 days before the arrival of the transportation or seven days after the arrival of the transportation at the destination, according to the term established in its regulation.

Customs clearance is necessary for goods to be subject to a customs procedure, which commences upon the submission of a goods declaration to Customs authorities.

In order to commence customs clearance, any customs tax debt and any anti-dumping or countervailing duties, if applicable, must be paid. After that, on the SUNAT website or by electronic notice, the importer may check the assigned channel determining the type of control that will be applicable to the goods for entry into Peruvian territory. This control is assigned randomly and may be one of the following:

Green channel: The goods will require neither any document review nor any physical inspection.

Orange channel: The goods will be subject only to document review.

Red channel: The goods will be subject to document review and physical inspection.

The import or export clearance of goods that have no commercial value, or that do have commercial value that is, however, not

significant for the country's economy, may be processed under any of the following:

Simplified import declaration: In this process, clearance for import of goods that in quantity, quality, species, use, origin or value, have no commercial purpose, or if they do, are not significant for the country's economy, is facilitated. Simplified declaration is performed under a simplified customs procedure.

The maximum amount of goods that an importer may submit a simplified import declaration for is USD 2,000. If it does not exceed the maximum amount, the process can be performed directly by the importer of record.

Simplified export declaration: In this process, the clearance for the final export of goods that in quantity, quality, species, use, origin or value, have no commercial purpose, or if they do they are not significant for the country's economy is facilitated. This clearance is processed under a simplified declaration. The maximum amount of goods that an exporter may submit a simplified export declaration for is USD 5,000. If it does not exceed the maximum amount, the process can be performed directly by the exporter of record.

Tariff classification

Peru's tariff schedule is based on the nomenclature of the Harmonized Commodity Description and Coding System (HS) developed by the World Customs Organization (WCO). The Sixth Amendment to this system was approved in 2017 by Supreme Decree No 342-2016-EF.

Determining the correct tariff classification of the merchandise upon importation into Peru is a key issue. Consequently, the importer could be sanctioned for any tariff classification mistakes committed. The tariff classification of the merchandise determines the customs duty and applicable taxes upon importation, as well as whether any non-tariff requirements apply. It also identifies the applicable rule of origin

under the Free Trade Agreements signed by Peru in order to qualify or not for a preferential duty treatment.

Under this tariff schedule, merchandise is identified by a 10-digit tariff number called the national subheading tariff. The subheadings tariffs make up the Common Tariff Nomenclature of the Member Countries of the Andean Community (NANDINA), approved by the Commission of the Andean Community (CAN), which incorporates the various amendments to the HS as seen in the table that follows:

DIGITS					DENOMINATION
1° 2°					Chapter
1° 2°	3° 4°				Harmonized Tariff System
1° 2°	3° 4°	5° 6°			Harmonized Sub Tariff System
1° 2°	3° 4°	5° 6°	7° 8°		Sub Tariff NANDINA
1° 2°	3° 4°	5° 6°	7° 8°	9° 10°	Domestic Sub Tariff

The Most Favoured Nation (MFN) tariff that is commonly applied in Peru is 3.2%, one of the lowest rates in the continent. Peru's tariff schedule comprises three rates: 0%, 6% and 11%, excluding tariffs that might apply as a result of the price band. The percentage of lines with a zero rate (0%) is 55.9%. Raw materials and consumer goods receive more protection than semi-processed or finished products.

Customs and administrative sanctions

The General Customs Law and its regulations govern customs infractions and their respective sanctions, which are classified as fines and administrative sanctions: (i) suspension; (ii) cancellation; and (iii) disablement.

The importer may use a regime that will allow them to cancel tax debt with preferences. In addition, the customs legal framework establishes voluntary disclosure programs and gradual payment of the tax debt as incentives.

It is important to mention that SUNAT has the power to apply the sanctions objectively or subjectively.

The new table of customs sanctions is grouped according to the type and severity of the infraction (authorizations, manifest, declaration, information, customs control and security). A mitigating regime is implemented for certain customs infringements.

Customs valuation

Customs valuation is a procedure that determines the customs value of imported goods. The mentioned valuation procedure must be done according to the methods established in the Valuation Agreement of the WTO, which are applied mutually exclusively in the following order:

- **First method:** Transaction value of imported goods
- **Second method:** Transaction value of identical goods
- **Third method:** Transaction value of similar goods
- **Fourth method:** Deductive method
- **Fifth method:** Computed value method
- **Sixth method:** Full-back method

There have been modifications in the national customs valuation procedure. Among the main modifications are: (i) the customs methodology to identify valid references to determine reasonable doubt; (ii) criteria for the conditions to apply the transaction value method; and the assumptions that adjust the extension of the reasonable doubt period; and (iii) the possibility for the importer to correct material errors that are noticed in the commercial invoice presented as support for the declared value, among others.

Conditions for import and export

Owners, consignees and consignors must obtain a valid single taxpayers' registration number (RUC) before they can carry out trade operations, such as import and export. Peruvian natural persons can import and export goods using a national identity document, and foreigners, using a foreign identity card, passport or safe conduct. Simplified customs clearances are allowed according to the amount of the transaction and require simplified documentation. Under the normal clearances, the main documents required by the administration for the definitive importation of goods into Peruvian territory are as follows:

- (i) Customs declaration form (DAM)
- (ii) Commercial invoice, or any other equivalent document
- (iii) Transport document (bill of lading, air way bill depending on the mode of transport)
- (iv) Insurance, if applicable

It is worth noting that when goods are considered restricted, customs will request other documents such as permits, authorizations or registries issued by the competent authorities. Exceptionally, for reasons of security or public health, the importation of some goods may be prohibited (e.g., some animals, pharmaceuticals and agrochemicals, used goods — used cloth —, etc.).

Furthermore, each customs regime governed by the General Customs Law requires a different list of required documents for import.

As a general rule, imports are levied with the payment of custom duties (**ad valorem** CIF), VAT (IGV in Peru), municipal tax (IPM) and luxury tax (ISC). Other taxes are also applied, especially to agricultural goods.

On the other hand, the main documents required by the administration for the definitive export of goods out of the country are as follows:

- Customs declaration of goods
- Transport document, depending on the mode of transport
- Invoice, document of the participant or operator, or ballot sale, or any other proof of transfer of goods to a customer domiciled abroad; or affidavit of value and description of goods where there is no sale
- A document testifying to the power vested in the customs clearance agent: transport document duly endorsed or special power of attorney
- Any other document required for export due to the nature of the goods

Customs regimes

The Customs Law sets out a number of procedures and customs operations applicable to goods that enter or leave the country. The main customs regimes are as follows:

- (a) **Importation for consumption regime:** This is the most common type of customs regime and involves the definitive entry of foreign goods into Peruvian customs territory for the purpose of being consumed in the country. The entry of goods into Peru is made after paying customs duties and applicable taxes, if any, and

complying with any formalities and other customs obligations, if applicable. Foreign goods shall be considered nationalized when clearance is granted by the customs authority.

- (b) **Definitive exportation regime:** This customs regime enables the exit of national or nationalized goods from Peruvian customs territory to be used or consumed abroad. It is not subject to any taxes. Goods shall be shipped within a time limit equal to or greater than 30 calendar days¹⁰ as from the day following the submission of the customs declaration. The regularization of this customs regime will be carried out within a period of 30 calendar days from the day following the shipping date of term, in accordance with its regulations.

The law also sets forth customs procedures for export promotion, such as the following:

- (a) **Drawback regime:** This allows for the full or partial recovery of customs duties levied on imported inputs that have been incorporated into exported goods or that were consumed during their production. In this regime, the beneficiary can get a refund repayment of 4% of the Free On Board - FOB - value (Incoterm 2010) of exported goods, provided that some requirements are met. For example, the value of the imported inputs may not surpass 50% of the exported good's FOB value. The recovery rate is 3%.
- (b) **Temporary importation for outward processing regime:** This regime allows the import of certain goods to the customs territory after paying the customs duty, which is equivalent to the customs duties and other applicable taxes on imported inputs, if these are transformed or manufactured and materially incorporated into export goods that will be exported within 24 months after their entry. In addition, goods used directly in the production process,

¹⁰ Article 61 of Legislative Decree No. 1433, which amends the General Customs Law - Legislative Decree No. 1053, establishes that the regulations may establish longer periods for the regularization of the regime in special cases.

such as catalysts, accelerators or retarders, which are consumed during the process, may be subject to this customs regime, and the fulfillment of the customs formalities and liabilities.

- (c) **Reposition of merchandise in franchise tariff regime:** This regime allows the importation – without payment of customs duties and applicable taxes on imports – of goods equivalent to nationalized goods, which have been transformed, processed or physically incorporated into definitively exported products.

The imported goods under replenishment are freely available. However, if these have been used for the exported product's manufacture they will benefit from the reposition of merchandise in franchise tariff. In order to apply for this customs regime, the export declaration must be submitted within one year of the day following the customs clearance upon importation that underpins the entry of goods to be replaced. The importation for the consumption of franchised goods shall be submitted within one year of the day following the date of issue of the duty-free replenishment certificate.

Other important regimes are as follows:

- (a) **Temporary admission of goods for re-export in the same condition regime:** Formerly known as temporary importation, this regime allows the entry of certain goods, with the suspension of payment of customs duties and applicable taxes on imports, provided they are identifiable and designed to meet a specific purpose in a specific place, to be re-exported without any modification whatsoever in their nature, within a period not exceeding 18 months (for the packaging of export goods, an additional six-month period may be requested).
- (b) **Customs warehouse:** This customs regime allows the storage of goods arriving at Customs territory in a Customs warehouse facility for such purpose for a certain time limit (12 months) and under Customs control, free from Customs duties and other taxes applicable to importation for household use, provided that they

have not been claimed for any Customs procedure or abandoned. Deposited goods may be totally or partially designated for importation, for the purpose of household use, reshipment, temporary admission for re-exportation in the same condition, or temporary admission for inward processing.

Multilateral agreements on trade and integration

Peru is a founding member of the World Trade Organization (WTO). Consequently, the WTO rules on antidumping, subsidies and countervailing measures, as well as on liberalization of markets, technical barriers to trade, among others, are applicable in the country.

Similarly, Peru is currently a member of CAN, which consists of Peru, Bolivia, Ecuador and Colombia. The following are state parties to the Andean Community: Chile,¹¹ Brazil, Argentina, Uruguay and Paraguay.

Following the relief program as agreed within the Andean Community, trade of goods between Bolivia, Colombia, Ecuador and Peru enjoys total tariff relief, constituting a free trade area.¹² Peru joined the program according to a relief schedule established by Decision 414 of the Andean Community.

On the other hand, Peru is a party to the agreement between countries in South America called MERCOSUR. That agreement has been entered into by Argentina, Brazil, Paraguay, Uruguay, Chile, Ecuador, Colombia and Bolivia.

Peru has signed agreements with other countries in Latin America, under the rules of the Latin American Integration Association (ALADI),

¹¹ On 20 September 2006, Chile formalized its entry as party to this sub-regional agreement.

¹² However, from January 2009, Ecuador has implemented safeguards for certain products.

and has entered into trade agreements with Mercosur together with other members of the Andean Community.

In addition, Peru has executed investment protection agreements that are currently in force, either in the form of a bilateral investment agreement or through an investment protection chapter contained in a free trade agreement (FTA). The most important investment treaties executed by Peru are with the following:

- | | | |
|--------------------------|--------------------|------------------------|
| 1. Germany | 16. France | 30. Portugal |
| 2. Argentina | 17. Holland | 31. UK |
| 3. Australia* | 18. Honduras* | 32. Czech Republic. |
| 4. Belgium | 19. Italy | 33. Republic of China* |
| 5. Bolivia | 20. Iceland* | 34. Republic of Korea* |
| 6. Canada* | 21. Japan* | 35. Romania |
| 7. Chile * | 22. Liechtenstein* | 36. Sweden* |
| 8. Colombia | 23. Luxembourg | 37. Singapore* |
| 9. Costa Rica* | 24. Malaysia | 38. *Switzerland |
| 10. Cuba* | 25. Mexico* | 39. Thailand* |
| 11. Denmark | 26. Norway* | 40. Venezuela* |
| 12. Ecuador | 27. Netherlands | |
| 13. El Salvador | 28. Panama* | |
| 14. Spain United States* | 29. Paraguay | |
| 15. Finland | | |

The countries marked with an asterisk have an investment chapter in an FTA entered into with Peru.¹³

Listed below are the current FTAs of Peru with our business partners:

- MERCOSUR (since 2 January 2006)
- United States of America (since 1 February 2009)
- Chile (since 1 March 2009)
- Canada (since 1 August 2009)
- Cuba (since 5 October 2000)
- Singapore (since 1 August 2009)
- People's Republic of China (since 1 March 2010)
- European Free Trade Association (EFTA) (Norway, Liechtenstein and Switzerland since 1 July 2011; Iceland since 1 October 2011)
- South Korea (since 1 August 2011)
- Thailand (since 31 December 2011)
- Mexico (since 1 February 2012)
- Japan (since 1 March 2012)
- Panama (since 1 May 2012)
- European Union (since 1 March 2013)
- Costa Rica (since 1 June 2013)
- Venezuela (since 1 August 2013)

¹³ Peru has executed a trade agreement with the European Union that includes an investment chapter with member countries of the agreement.

- Pacific Alliance Agreement (since 1 May 2016)
- Honduras (since 1 January 2017)
- Australia (since 11 February 2020)
- United Kingdom (since 13 December 2020)¹⁴
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership - CPTPP (since 19 September 2021)

The main areas covered by the abovementioned trade agreements are: customs affairs and trade facilitation; technical barriers to trade; sanitary and phytosanitary measures; trade protection; services, establishments and capital movement; public procurement; intellectual property; competition; dispute resolution, horizontal and institutional affairs; trade and sustainable development; technical assistance and skills building, among other matters.

Negotiations with Guatemala, Brazil, and amendments of Pacific Alliance are finished but those treaties are not in force.

Finally, treaties with El Salvador, India, Turkey, (TISA - Trade in Services Agreement) and Doha Development Program are still under negotiation.

¹⁴ On 31 December 2020, the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Peru entered into force, incorporating by reference the Trade Agreement with the European Union, in order to ensure the operability of the new Agreement and the continuity of the trade relationship between both parties as a consequence of Brexit.



HEALTH REGULATIONS

Health regulations

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COVID-19

The Peruvian government declared a state of national health emergency on 15 March 2020 because of the COVID-19 pandemic.

At the beginning of the pandemic, through Emergency Decree 059-2020 published in May 2020, medicines, medical devices, biosafety equipment and other products for the management and treatment of COVID-19 were declared essential goods in the framework of the state of national health emergency, whose list is approved and is being updated by the Ministry of Health. It was also established that all public and private pharmaceutical establishments are obliged to report to the Peruvian Observatory of Pharmaceutical Products all data (stocks, sales prices, imported units, and units produced) of the list of essential goods for the management and treatment of COVID-19.

Likewise, by means of Act No. 31091, published in December 2020, the Peruvian state guaranteed the free and voluntary access to preventive and curative treatment of COVID-19 and other diseases that generate national health emergencies and other pandemics declared by the World Health Organization.

Medicines and vaccines for the cure and prevention of these diseases will be considered essential goods, while their acquisition and distribution are a public utility need considered of national interest. Likewise, it was established that their distribution will be free and universal in public health establishments.

In this sense, by means of Supreme Decree No. 002-2021-SA, published in January 2021, the Ministry of Health approved the Regulations for the Conditional Sanitary Registration of Medicines and Biological Products. This will allow a special health registration to be granted to medicines and biological products ("**Products**") related to emergency situations, such as the current pandemic due to COVID-19.

This conditional health registration will be valid for one year (renewable for a maximum of four times) and will be granted to those Products that have phase III clinical studies with preliminary results.

The term to grant this conditional registration is up to 90 calendar days, and for Products approved by the High Sanitary Surveillance Countries or prequalified by the World Health Organization, up to 30 calendar days. The depletion of stock of the Products may be requested one time for a maximum period of six months.

A health registration certificate cannot be obtained based on the conditional registration. In other words, the parallel import of these Products will not be allowed.

However, laboratories and drugstores established in Peru may request this conditional registration, as well as the import and marketing of the Products. To date, only the Peruvian government can directly acquire vaccines from the laboratories, with the participation of the private sector not yet allowed.

As of March 2022, the vaccines authorized by the health authority, DIGEMID, correspond to conditional health registrations of foreign biological products and exceptional authorizations for importation and use in a public health situation.

Regarding the responsibility for the adverse effects that vaccines could cause, a government position has not been made public to date.

In the current situation, certain other mechanisms offer parallel alternatives to the conditional health registration. In this regard, our health regulations provide for exceptional health authorization for the import, manufacture and use of pharmaceutical products, medical devices and health products without marketing approval or under conditions not established in the marketing approval, in certain cases, the relevant ones being: (i) declaration of a state of emergency (health emergency); (ii) exclusive research purposes; (iii) prevention and individual treatment; and (iv) public health.

In requesting exceptional authorizations for health emergencies, it is not required to establish a pharmaceutical establishment. Moreover, these exceptional authorizations will be in force until the state of emergency is lifted, after which they will be without effect. Therefore, no stock depletion is possible.

Currently, DIGEMID has been providing measures (for example, extension of qualifying titles, post-authorization inspections, prioritizing procedures related to products and/or devices for the treatment of COVID-19, implementation of online procedures, among others) and granting exceptional authorizations for the importation, manufacture and use of pharmaceutical products (medicine, medicinal oxygen, medicinal alcohol) and medical devices (molecular and rapid tests, PSA-type medicinal oxygen generating plants, ventilators, pulse oximeters, gloves, thermometers, among others). In addition, as mentioned, the import and use of vaccine due to a public health situation is also exceptionally authorized.

Likewise, as of 1 January 2021, marketing approval must be obtained for surgical respirators for medical use (N95, KN95, FFP2, FFP3, or their equivalents), which were imported without marketing approval before the pandemic and during 2020.

To date, vaccination continues to be voluntary, using a three-dose vaccination schedule for those over 18 years of age; and two doses for children and adolescents from 5 to 17 years old. Likewise, measures such as the use of masks (KN95 or other types of masks) and the distance of one meter in closed and open spaces remain in place.

Regulated products

In this category, we find health regulations applicable to pharmaceutical products, health products (cosmetics, household hygiene products, absorbent personal hygiene products and baby care products) and medical devices on the one hand, and industrially processed food and beverages on the other.

As of the end of 2019, a regulatory framework for the use, research, production, importation and commercialization of cannabis and its derivatives only for medicinal and therapeutic use has been established.

Pharmaceutical products, health products and medical devices

As regards pharmaceutical products, health products and medical devices, the governing authority is the Directorate-General for Medicines, Medical Supplies and Drugs (Dirección General de Medicamentos, Insumos y Drogas or DIGEMID), an agency independent from the Ministry of Health that is responsible for securing people's access to safe, effective and good-quality medicines.

The applicable rules to pharmaceutical products, health products and medical devices are: Act No. 29459 on Pharmaceutical Products, Medical Devices and Health Products; Supreme Decree No. 016-2011-SA, which sets forth the regulations for the Registration, Control and Health Surveillance of Pharmaceutical Products, Medical Devices and Health Products; and Supreme Decree No. 014-2011-SA, which sets forth the regulations on Pharmaceutical Establishments.

Pursuant to applicable health regulations, to enter the Peruvian market, a company must first obtain a marketing approval (known as "sanitary registration") for pharmaceutical products, health products and medical devices. The marketing approval authorizes the manufacture, import, storage, distribution, sale, promotion, dispensing, delivery and use said products or devices under the terms and conditions of approval.

However, this marketing approval shall be granted only if the following two conditions are met: (i) the incorporation of the company in Peru; and (ii) the obtaining of a health authorization to operate as a pharmaceutical establishment. The main types of pharmaceutical

establishments are drugstores (commercialization purposes) and laboratories (manufacturing and/or commercialization purposes). The health authorization is a requirement to obtain a license to operate from local governments (municipalities).

To operate as a laboratory or a drugstore, the company must hire the services of a technical director (a pharmaceutical chemist, but it could be another health professional in the case of establishments of medical devices), who shall be the professional accountable for the pharmaceutical establishment before DIGEMID. Therefore, any liability attributed to said director will also affect the owner or legal representative of the establishment. Likewise, the director will ensure that the quality requirements for pharmaceutical products, health products and medical devices are duly met.

The facilities where the pharmaceutical establishment shall operate must comply with the requirements or obtain the certificates of Good Practices (Manufacturing, Laboratory, Storage, Dispensation, Distribution and Transport, Pharmacovigilance, and/or Pharmaceutical Office Practices), as applicable according to the nature of the facilities, and considering that the grant of the health authorization shall be subject to prior inspection to verify that the legal requirements are duly met.

Another relevant factor that may ensure the grant of a health authorization to operate as a drugstore is having a warehouse, which can be owned or outsourced (i.e., hire the services of a warehouse that has a health authorization to operate as a drugstore).

Legal terms also play an essential role in the proceedings, inasmuch as they differ in practice from the legal provisions. The term of a health authorization to operate as a pharmaceutical establishment is legally 30 business days. In practice, however, this term may last up to two months.

Meanwhile, the legal terms for the marketing approval of products vary according to the type and category of products. In practice, they usually last for double the duration of those terms.

The legal term of the health authorization to operate as a pharmaceutical establishment is indefinite, and it is mandatory to communicate or obtain authorization prior to any change, as applicable. Marketing approval for pharmaceutical products and medical devices is in force for five years and can be renewed one year prior to its expiration. For health products, marketing approval is in force for seven years.

Generic medicines

In October 2019, Urgency Decree declaring Medicines, Biological Products and Medical Devices as an essential part of the right to health, and providing measures to guarantee their availability ("**Urgency Decree No. 007-2019**") was published. The decree seeks to promote better and greater access to medicines and establishes several obligations regarding the commercialization of generic medicines and biological products. Among these, companies are obligated to inform DIGEMID about the temporary or definitive discontinuity of the manufacture or importation of medicines or biological products. Likewise, pharmacies must have certain generic products in stock, under penalty of fine. The list of generic essential drugs is constantly updated by the Ministry of Health.

Cannabis for medicinal and therapeutic use

In October 2017, Act No. 30681 on the medicinal and therapeutic use of cannabis and its derivatives was published, which was further regulated by Supreme Decree No. 005-2019-SA in February 2019.

The act authorizes the informed use, research, production, importation, and commercialization of cannabis and its derivatives for medicinal and therapeutic use. With the exception of informed use, it further establishes that such activities require the obtaining of the

following licenses: (i) license for scientific research; (ii) license for importation and/or commercialization; and (iii) license for production.

Further, the following bodies were created: (i) National Registry of Patients of Cannabis and its Derivatives for Medicinal and Therapeutic Use; (ii) National Registry of Importing and/or Commercializing Natural or Legal Persons; (iii) National Registry of Research Entities Authorized to study Cannabis and its Derivatives for Medicinal and Therapeutic Use; and (iv) National Registry of Public Entities and Laboratories Authorized and Certified for Production.

By means of its regulations issued in February 2019, the Ministry of Health, through DIGEMID, grants sanitary registration to cannabis derivatives for medicinal and therapeutic use in the categories of: (i) herbal medicine for medicinal use (pharmaceutical product); and (ii) natural products derived from cannabis for use in health.

Furthermore, it was specified that cannabis derivatives for medicinal use will be sold upon verification of the National Registry of Patients of Cannabis and its Derivatives for Medicinal and Therapeutic Use, and by means of a special prescription (when it has THC) or simple prescription (when it has CBD only), which must be prescribed by a surgeon physician only.

Meanwhile, the following are specified regarding licenses:

- License for scientific research is granted to: (i) health research universities and institutes that carry out scientific research; and (ii) agricultural research universities and institutes that carry out scientific research on cannabis and its derivatives for medicinal use. This license includes all activities needed to comply with the research protocol, such as importation, storage, cultivation, harvesting, propagation, transportation and manufacture of derivatives.
- License for the importation and/or commercialization is granted to natural or legal persons incorporated as pharmaceutical

establishments authorized and certified by DIGEMID. The customs proceedings for importation are carried out in accordance with the regulations covering drugs and psychotropic and other substances subject to sanitary inspection, approved by Supreme Decree No. 023-2001-SA.

Exceptionally, DIGEMID authorizes importation for personal treatment and for public health reasons, which requires a special prescription involving six-month treatment at most. Likewise, patients must be registered in the corresponding registry of patients.

- License of production is granted to a public entity or authorized laboratory and certified by DIGEMID. It authorizes the following activities: purchase of cannabis seeds/seedling; cultivation, propagation, harvesting, post-harvesting and manufacture of products derived from cannabis; and the storage and transportation of seeds, seedling, plants, flowers and products derived from cannabis for medicinal use. There are three types of licenses: (i) including cultivation; (ii) not including cultivation; and (iii) including production of seeds.

Depending on the type of activity, the competent regulatory authorities are as follows:

- DIGEMID for production, importation and commercialization
- National Institute of Health (Instituto Nacional de Salud or INS), for research in human health
- National Institute of Agricultural Innovation (Instituto Nacional de Innovación Agraria or INIA) for agricultural research
- National Service of Agricultural Health (Servicio Nacional de Sanidad Agraria or SENASA) for the importation of seeds and quarantine post entrance.

As of December 2019, the Ministry of Health, through the institutional pharmacy of DIGEMID, is the only one commercializing the pharmaceutical preparation containing a concentration of cannabidiol (CBD) 48.752 mg/mL and tetrahydrocannabinol (THC) 0.449 mg/mL, in a volume of 10 mL. According to regulations, a pharmaceutical preparation is made by a pharmaceutical chemist or under their direction and requires no marketing approval.

Industrially processed food and beverages

The competent authority is the Directorate-General for Environmental Health and Food Safety (Dirección General de Salud Ambiental e Inocuidad Alimentaria or DIGESA), an agency independent from the Vice Ministry of Public Health under the Ministry of Health, whose functions primarily concern public health protection.

Among the main regulations that govern industrially processed food and beverages are: Act No. 26842 - General Health Act, Supreme Decree No. 007-98-SA, which sets forth the Regulations on Food and Beverages Health Surveillance and Control; Legislative Decree No. 1062 on Food Safety; and Act No. 28405 - Law on Industrially Processed Products Labeling.

As regards food and beverages, marketing approval is required only for industrially processed food and beverages that are marketed within the country. For these purposes, "industrially processed food or beverages" refer to end-products intended for human consumption obtained by physically, chemically or biologically transforming raw materials of plant, animal or mineral origin, and including food additives.

In this regard, no marketing approval is required for food and beverages in their natural state (whether packaged for sale or not, such as grains, fruits, vegetables, meat and eggs), free samples and products donated by foreign entities for charitable purposes.

Marketing approvals are granted on a per-product basis or to a set of products and manufacturers. For these purposes, a "set of products" means products manufactured by the same manufacturer, having the same quality composition of basic ingredients that identifies the set, and including the same food additives. These marketing approvals allow the holder to manufacture or import and market the authorized products in their state when approved, and consider the holder responsible for the health quality and safety of the products.

As regards the marketing of food and beverages, maintaining their conditions when approved is required; otherwise, sanctions will apply. Should a modification or change to said data or conditions occur, it must be notified in writing at least seven business days before said change takes place or is effected. No information is included as regards the type of change; as this is a general rule, it may be a minimum weight change or the addition or subtraction of ingredients.

Although companies are not required to obtain a preliminary permit prior to the grant of a marketing approval for food or beverages (unlike in the respective cases of pharmaceutical products, health products, and medical devices), the regulations set forth that the holder thereof must be a company organized in Peru. This could pose a problem for foreign companies wishing to enter the Peruvian market without opening a Peruvian branch. If the foreign company is not interested in opening a local branch, marketing approvals may be obtained through a Peruvian distributor.

The legal term for the grant of the marketing approval is seven business days. In practice, however, it may last up to one to two months.

The effective term of a marketing approval is five years, which may be renewed between 60 to seven business days prior to its expiration.



SECTORS

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Agriculture and agro-industry

News

Through Supreme Decree No. 164-2021-PCM, the General Government Policy for the next five years was approved. It includes plans and measures for the reactivation of the economy and the promotion of productive activities within the agricultural sector.

In that regard, the so-called 'Second Agrarian Reform' was included as a priority action, aiming to grant access to extension services, training, technical assistance, and credit to more than 2 million agricultural producers, promoting associations and cooperatives. Thus, the 'Second Agrarian Reform,' per the guidelines approved by Supreme Decree No. 022-2021-MIDAGRI, aims to: (i) institutionally reform and strengthen the Ministry of Agrarian Development and Irrigation; (ii) promote better markets for family agriculture and food security; (iii) promote the industrialization of agriculture and the productive transformation of the countryside; (iv) generate water security and increase the development of irrigation infrastructure in a planned manner within the territory; and (v) promote technological change and innovation.

General framework

Through the legal framework for the exploitation of agricultural land, the comprehensive, competitive and sustainable development of the agricultural sector, as well as the preservation and effective exploitation of agricultural land, is declared as of national interest and common well-being. To this purpose, the state ensures free access to land ownership, as well as any rights with which to benefit from land ownership.¹⁵

Likewise, investments in agro-industrial activities are not subject to legal or administrative requirements, restricting the free establishment,

¹⁵ Except for property ownership restrictions for foreigners within the 50-km territory of the Peruvian borders.

operation, setup and marketing of products derived therefrom. Agricultural product prices are determined by free market conditions.

New Agriculture Law

According to the Law No. 31110, Law on the Agrarian Labor Regimen and Incentives for the Agriculture and Irrigation, Agro-Exporter and Agro-Industrial Sectors, the regime is applicable to individuals or companies that: (i) develop/breed; or (ii) conduct agro-industrial activities, as long as they mainly use agricultural products, outside the province of Lima and the Constitutional Province of Callao. To date, it is pending the issuance of the norm that would determine which are the agro-industrial activities included in this special regime. The provisions of the law do not apply to the administrative and technical staff areas of the companies, nor to those dedicated to the production of wheat, tobacco, oilseeds, oils and beer.

The main tax and labor aspects of the new agricultural regime are described in the comparative chart below:

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

ITEM*	GENERAL LABOR REGIME	AGRICULTURAL REGIME				
Income tax rate (3rd bracket)	29.5%	For individuals or legal entities whose net income does not exceed 1,700 UIT in the fiscal year:				
		<table border="1"> <thead> <tr> <th>Year</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>2021-2030</td> <td>15%</td> </tr> </tbody> </table>	Year	Rate	2021-2030	15%
		Year	Rate			
2021-2030	15%					

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

		<p>2031 and forward</p> <p>General regime rate</p> <p>For individuals or legal entities whose net income exceeds 1,700 UIT in the fiscal year:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>2021-2022</td> <td>15%</td> </tr> <tr> <td>2023-2024</td> <td>20%</td> </tr> <tr> <td>2024-2027</td> <td>25%</td> </tr> <tr> <td>2028 and forward</td> <td>General regime rate</td> </tr> </tbody> </table>	Year	Rate	2021-2022	15%	2023-2024	20%	2024-2027	25%	2028 and forward	General regime rate
Year	Rate											
2021-2022	15%											
2023-2024	20%											
2024-2027	25%											
2028 and forward	General regime rate											
Depreciation rate	As provided for by law (usually 10% per year)	20% per year for hydraulic infrastructure works and irrigation works										
Deduction with sale vouchers and payment slips	Expenses duly supported by sales vouchers and payment slips issued by taxpayers from the New Unique Regime may be deducted up to the limit of 6% of	Expenses duly supported by sales vouchers and payment slips issued by taxpayers from the New Unique Regime may be deducted up to the limit of 10% of the expenses (the limit cannot exceed 200 tax units).										

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

	the expenses (the limit cannot exceed 200 tax units).	
Early VAT recovery	<p>An investment agreement must be executed with the state for amounts not lower than USD 5 million.</p> <p>This regime enables the recovery of the VAT applicable to the local import and/or acquisition of new capital goods, new intermediate goods, services and construction agreements executed during the pre-operative stage.</p>	<p>An investment agreement must be executed with the state for amounts not lower than USD 5 million.</p> <p>This regime enables the recovery of the VAT applicable to the local import and/or acquisition of new capital goods, new intermediate goods, services and construction agreements executed during the pre-operative stage.</p>
Prepayments	The taxpayer entity pays to SUNAT, as pre payments, such amount resulting	The taxpayers required to make prepayments under the general regime must make the following payments:

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

from applying to the monthly net incomes, the greater amount between: (i) dividing income tax calculated in the previous fiscal year between the net incomes of the same fiscal year and, in the case of the months of January and February, the coefficient determined over the basis of the fiscal year prior to the previous fiscal year; and (ii) 1.5%.

In the absence of calculated Income Tax in the previous year or, if applicable, in the year preceding the previous year, taxpayers shall

Taxpayers under the following agricultural income tax rates	Applicable rates to the prepayments
15%	0.8%
20%	1.0%
25%	1.3%
Rate of the general regime	1.5%

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

	pay to SUNAT, as a monthly payment on account, the amount resulting from applying 1.5% to net incomes earned in such month.	
Recruitment	Indefinite-term employment agreements and, as an exception, fixed-term agreements, as provided by law	<p>No special rules are established regarding fixed-term agreements, but preference criteria have been established in order to hire employees:</p> <ul style="list-style-type: none"> • The hiring of an agricultural employee for small terms that, within a period of one year, exceeds two months gives him or her the right to be hired preferably every time the employer hires employees in the same cultivation line. • If the employee is hired by the same employer under the modality of intermittent, seasonal or similar contracts two consecutive or non-consecutive times, they have preference to be hired by the

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

		<p>employer in the following seasons.</p> <ul style="list-style-type: none"> • If an agricultural employee works for several employers under seasonal or seasonal contracts, covering a full year in related companies, they are entitled to the preferential right to be hired by the same companies in the following seasons. • If an employee is hired for at least two seasons in the same year by a company that has diverse crops whose joint seasonality covers the entire year, the employee should preferably be hired in the following seasons.
Minimum wage (RMV)	PEN 1025 per month or PEN 34.17 per day, provided an average of more than four hours is worked per day	<p>The basic remuneration cannot be less than the minimum wage (PEN 1025).</p> <p>The daily compensation (RD) is equal to the sum of the basic compensation, plus bonuses, plus CTS, divided by 30.</p>
Special bonus for agricultural	Non applicable	It is 30% of the RMV (S/ 307.50). It is not remunerative or pensionable,

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

work (BETA, in Spanish)		<p>it does not serve as a calculation basis for other benefits. It is subject to the fifth category income tax, if applicable.</p> <p>It is paid monthly, but with prior written agreement it can be paid prorated. It is paid to employees who work at least four hours a day on average. When less, prorated payment is applicable.</p>
Legal bonuses	A monthly remuneration in July and in December, as applicable	<p>Prorated and included in the Daily Compensation</p> <p>The employee can choose to receive the bonuses in regular installments, without them being prorated in the daily remuneration.</p>
Compensation for time of services (CTS)	Semi-annual deposits in May and in November of each year, in a bank or financial institution designated by the workers, consisting of 9.72% of their remuneration – including bonuses	<p>Prorated and included in the Daily Compensation</p> <p>The employee can choose to receive the CTS in regular installments, without them being prorated in the daily remuneration.</p>

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

	– earned in each semester	
Family allowance	This is applicable to workers whose remuneration is not adjusted by collective bargaining. It is the right to 10% of the minimum wage (at present PEN 102.5) if the worker has one or more children under 18 years.	This is applicable to workers whose remuneration is not adjusted by collective bargaining. It is the right to 10% of the minimum wage (at present PEN 102.5) if the worker has one or more children under 18 years.
Profit sharing	<p>A percentage of the company's profits is distributed among all employees. The percentage depends on the type of activity of the company:</p> <ul style="list-style-type: none"> • Fishing: 5% • Telecommunications: 10% 	<p>The percentage for agricultural companies to be distributed among its employees has been established progressively:</p> <ul style="list-style-type: none"> • From 2021 to 2023: 5% of profits • From 2024 to 2026: 7.5% • From 2027 onwards: 10% <p>This percentage is applicable to the total company staff.</p>

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

	<ul style="list-style-type: none"> • Mining: 8% • Commerce and restaurants: 8% • Others: 5% <p>The percentage of profits is distributed among all the company's employees and is not based on salary, but is calculated based on the number of worked days (50%) and the remuneration received (50%) for each employee, during the corresponding exercise.</p>	
Compensation for wrongful dismissal	1.5 monthly remunerations for each complete year of service,	Equivalent to 45 daily remunerations for each complete year of service, with a limit of 360 daily remunerations

COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL REGIME

	with a limit of 12 remunerations	
Employer's contribution to Social Security for Health (ESSALUD)	9% of the monthly remuneration for each worker	<p>Employers with less than 100 workers, or sales less than 1,700 UIT:</p> <ul style="list-style-type: none"> • From 2021 to 2027: 6% of the basic remuneration • From the 2028 onwards: 9% of the basic remuneration <p>Employers with 100 or more workers, or sales greater than 1,700 UIT:</p> <ul style="list-style-type: none"> • From 2021 to 2022: 7% of the basic remuneration • From 2023 to 2024: 8% of the basic remuneration • From 2025 onwards: 9% of the basic remuneration

Any other item not included in this chart will be adjusted in the same manner as it is adjusted in the general system.

Banking, insurance and finance

Banking and insurance

Regulations that deregulate leasing operations have been approved by which, under certain conditions, companies not regulated by the

Superintendence of Banking and Insurance may carry out leasing operations. Moreover, novel mechanisms such as crowdfunding have been regulated. The rules applicable to companies in the financial system and insurance system are found in Law 26702, General Law of the Financial and Insurance Systems and the Organic Law of the Superintendence of Banking and Insurance ("**General Law**"). The General Law establishes the regulatory and supervisory framework to which companies operating in the financial and insurance systems are subject, as well as those carrying out activities related or complementary to their corporate purpose.

Foreign investments in companies in the financial and insurance system authorized to operate in Peru and their subsidiaries are treated as domestic capital subjects, where appropriate, as regards international agreements on the matter.

The Superintendence of Banking, Insurance and Private Administrators of Pension Funds (SBS) (www.sbs.gob.pe), an autonomous entity created by the Constitution, is the authority responsible for authorizing, controlling and supervising the activities of the companies that are part of the Financial System and the Insurance System (banks, financial companies, insurance companies, private administrators of pension funds - AFP). Any person operating under the provisions of the General Law requires prior authorization from the SBS. The purpose of the SBS is to protect the interests of the public in the financial and insurance systems.

In Peru, approval by the SBS is required to carry out activities involving the collection of money from the public. Likewise, companies that want to carry out activities of insurance companies must first obtain a permit from the SBS.

A foreign investor can establish a financial system company or a branch, or designate a representative. Banks must be established in the form of a corporation or as branches of foreign banks.

Representatives are designated by foreign financial companies to promote business with companies of a similar nature operating in Peru, in order to facilitate foreign trade and provide foreign financing and other services. Representatives of financial companies cannot raise funds nor place them directly in the country or perform operations and provide services that are specific to their principal's activity.

Foreign investors may establish an insurance company in Peru or designate an intermediary, or an insurance or reinsurance broker. Insurance companies must be organized as a corporation.

Additionally, the SBS may establish, within the scope of its supervisory functions, the temporary performance of any operation or activity through innovative models, and may grant exceptions to the regulation applicable to individuals and legal entities that carry out such operations or activities, as well as to other provisions necessary for their development (regulatory sandbox).

Companies of the financial system freely determine the interest rates,¹⁶ commissions and expenses for their active and passive operations and services. In addition, interest rates, commissions and expenses for crowdfunding operations, financings through mutual funds, trusts, investment funds whose securities have been placed by a public offer, and of public offers of securities, are freely determined. Similarly, companies of the insurance system freely determine the terms and conditions of insurance policies, their fees and commissions.

Finance

Currently, there is no rule in Peru that prohibits or restricts the granting of credit by persons not domiciled in the country. In this sense, both the non-domiciled lender and the borrower have flexibility

¹⁶ Nevertheless, for the determination of interest rates, companies in the financial system must observe the limits that, exceptionally, may be set by the Peruvian Central Bank.

to agree on the terms and conditions under which credit will be granted.

As for guarantees to ensure compliance with the obligations assumed by the borrower, the parties may agree on the creation of personal and real guarantees, such as sureties, endorsements, mortgages, securities, guarantees on flows, mortgages on infrastructure, etc. It is also possible to provide more complex guarantees, as in the case of trusts. Trusts may be used as an administration mechanism or as a guarantee.

In credit agreements, the parties may agree to submit to foreign laws. They may agree to refer to a foreign court or arbitration, whether local or international, the settlement of disputes arising between them.

With regard to income tax applicable to financing granted by legal persons not domiciled in Peru, interest payable on foreign loans is subject to a retention rate of 4.99%, as long as they comply with the requirements specified in the law. In case of noncompliance with the requirements or if economic ties exist between the parties, interest payments will be subject to a retention rate of 30%.

For purposes of Peruvian tax law, expenses and commissions, bonuses and any other additional amounts paid to foreign beneficiaries beyond the interest agreed on will be considered interest.

Also, interest payments to non-banking, non-financial or non-credit entities shall be subject to VAT at a rate of 18%.

Electricity and hydrocarbons

Electricity

In 2020, the Supreme Court ruled a judicial process: (i) declaring void the regulations for the Declaration of the Single Price of Natural Gas; and (ii) ordering the Ministry of Energy and Mines to issue new regulations.

The regulations declared void established that to determine their variable costs, natural gas generators could declare a single price of natural gas, which did not include "take or pay" or "ship or pay" costs. According to the Supreme Court, excluding these concepts would allow these companies to obtain an undue advantage, violating the efficiency principle of the Electricity Subsector.

As a consequence of this ruling, the Ministry of Energy and Mines published a new procedural regulation for the declaration of the natural gas price, establishing that OSINERGMIN was going to approve the new regulation.

In this regard, in 2021 OSINERGMIN approved new guidelines for the calculation of variable costs of natural gas generators. These guidelines establish that the price of natural gas is determined, among others, considering the monthly payments for supply, transportation and distribution, as well as purchases of transportation capacity in the Secondary Market, and is calculated based on the formulas approved for such purposes.

Peruvian government seeks to promote renewable energies

In 2020, 8.2% of the energy matrix was composed of renewable energies. In January 2022, the government set as a goal to increase this percentage to 20% by 2030.

To achieve this goal, the government will promote the entry of electric, hybrid and green hydrogen-powered vehicles; mechanisms will be designed to promote electromobility and programs will be designed to promote the development of technologies, use and production of green hydrogen; and the government will called public bids for renewable projects.

General regime

The approval of the Electricity Concessions Law ("**Decree Law No. 25844**") in November 1992 put an end to the restrictions on private investment in the electricity sector.

Electrical activities are divided into generation, transmission and distribution. For generation activities with water resources and renewable energy resources (with an installed capacity of over 500 KW), transmission (when these require affecting state property or easements) and distribution (above 500 KW), concessions are required. In the case of thermal generation (with an installed capacity that is greater than 500 KW), authorization is required. The Ministry of Energy and Mines and regional governments, when applicable, grant concessions and authorizations.

Moreover, the 2010-2040 Peruvian National Energy Policy, Legislative Decrees No. 1002, No. 1041 and No. 1058, published between May and June 2008, promote the use of renewable energy sources (biomass, wind, solar, geothermal, tidal, and hydraulic — in the latter case, when the installed capacity does not exceed 20 MW). Thus, it stipulates that the electricity generated from these resources will have priority in the daily dispatch, for which it shall be assigned a variable production cost equal to zero. Similarly, the current legal framework establishes an interconnection priority for power plants based on these technologies, as long as there is sufficient capacity in the transmission and distributions systems. Likewise, and according to the abovementioned regulation and in order to foster investment in these technologies, since 2009 to date, four auctions of renewable energy resources have been called by OSINERGMIN, and several solar, wind, hydroelectric and biomass projects have been granted power purchase agreements accordingly. Likewise, the Peruvian government called for an auction for areas not connected to the grid. All these projects have a payment mechanism designed to guarantee revenues, through the collection of a tariff charge paid by the users.

Recently, the government amended the regulation to recognize firm capacity to wind, solar and tidal technologies, which now allows them to sign bilateral power purchase agreements.

A national grid links facilities throughout the country. However, there are still some isolated systems not connected to the grid. There is a

Committee of Economic Operation System (COES) (www.coes.org.pe), consisting, in accordance with the provisions of Law No. 28832 - Law to Ensure the Efficient Development of Electric Power Generation, of four sub-committees: one of generators, one of distributors, one of transmitters and one of free clients. By means of Supreme Decree No. 027-2008-EM, the COES Regulation was approved.

Hence, the purpose of the COES is to coordinate its operation at the lowest cost, ensuring the security of supply and the best use of energy resources.

The OSINERGMIN (www.osinergmin.gob.pe) is the independent regulatory agency responsible for setting the tariffs and overseeing the quality of electric power service.

Additionally, it is responsible for overseeing compliance with the obligations of the concessionaires, as well as the duties assigned by the COES.

The Electricity Concessions Law distinguishes between the so-called users of the Public Electricity Service (or regulated clients) and free clients. Regulated clients are only entitled to acquire their power supply from the distribution concessioner of the area (Public Electricity Service). Meanwhile, free clients can directly negotiate the conditions of their supply with any generation or distribution company.

In this sense, users whose maximum annual demand in each supply point is equal to or less than 200 KW have the status of "regulated clients." On the other hand, users whose maximum annual demand in each supply point is at least 2,500 KW have the status of "free clients." Finally, users whose maximum annual demand in each supply point is at least 200 KW and up to 2,500 KW are entitled to choose between being regulated clients or free clients.

Likewise, regulated clients whose maximum monthly demand exceeds 2,500 kW must maintain such condition for a period of one year from

the month in which the limit was exceeded, unless otherwise agreed between the parties.

On the other hand, in order to exercise its right to choose the free client regime, the regulated client has to communicate in writing to its current supplier, with a copy to its future supplier, if applicable, its willingness to change its status, with an anticipation not less than one year from the date on which the condition change will be effective.

The Peruvian government, through the OSINERGMIN, regulates the distribution tariffs for the Public Electricity Service. OSINERGMIN sets the regulated tariff, also called bar tariff. The tariffs and compensation charged by holders of transmission and distribution facilities, the energy sales from generators to distribution concessionaires when they are intended for the regulated clients (except in the case where a tender has been conducted to contract this service), and sales to distributors and users of the public electricity service are subject to bar tariffs.

Furthermore, current law has established merger control for electricity activities, either vertically and/or horizontally, requiring for such cases the authorization of the Antitrust Authority (the Commission for the Defense of Free Competition of INDECOPI). In horizontal integrations, prior authorization must be requested with respect to acts involving, directly or indirectly, companies that have, prior or after the act, jointly or separately, a percentage equal to or greater than 15% of the market. In cases of vertical integration, authorization is required for those acts that involve, directly or indirectly, companies that have, prior to or after the act, a percentage equal to or greater than 5% from any of the markets involved.

Notwithstanding the above, these guidelines will be replaced once the Prior Control of Economic Concentration Transactions Law enters into force. From that moment, the thresholds and requirements established in said law will apply to the electricity sector (refer to section **Protection of free and fair competition**).

As a way to harmonize Convention 169 of the International Labor Organization, in 2011, the Peruvian government enacted the Law on the Right to Prior Consultation with indigenous or native peoples. Consequently, the Peruvian government has to apply this law, among others, in any project that may directly affect the collective rights on physical existence, cultural identity, quality of life or development of indigenous or native peoples.

Finally, and in connection with tax matters, investments in electricity are subject to the following benefits, regardless of the general tax regime applicable:

Accelerated depreciation regime: This brings tax benefits only to investments in electricity generation using renewable resources. In that sense, the company will get access to a special accelerated depreciation regime when determining income tax. This depreciation will apply to machines, equipment and civil works that are necessary to install and operate the electric plant. For this purpose, the global annual depreciation rate will not be higher than 20%. That rate may be changed by the investor each year and have to be communicated to the tax administration.

VAT anticipated recovery regime: This regime comes with tax benefits that gives back to the company the VAT paid on acquisitions needed for the development of the project, if the corresponding requirements are met. First, the project must have been in a pre-operational stage for more than two years. The investor must also have carried out a project that generates corporate income tax, and the investment commitment shall not be less than USD 5 million.

Hydrocarbons

In January 2022, the Energy and Mines Commission of the Congress of the Republic approved a bill that will strengthen the institutional structure of Perupetro S.A.

The relevance of this bill is that it includes issues related to strengthening and redefining the role of Perupetro with the aim of promoting investment as well as unlocking aspects that hinder the development of hydrocarbon exploration and exploitation projects in Peru.

Although to date the necessary political consensus for the modification of the Organic Hydrocarbons Law - Law No. 26221 has not been achieved, in order to update or to cover pending rules within the activity, some regulations were issued in 2020 regarding fuels commercialization, health and safety, environmental liabilities, supervision and natural gas distribution (in this case, there was an important change on the gas and transportation costs allocation in the tariff, which has generated economic impact to the utilities holders). Likewise, in the context of the restrictions derived from the state of emergency decreed because of the COVID-19 pandemic, transitory regulations were issued in order to ensure the continuity of the Peruvian oil and gas supply chain, which is considered an essential activity.

The Hydrocarbons Organic Law regulates the exploration, exploitation, processing or refining, storage, transportation, marketing and distribution of hydrocarbons. The government promotes the development of hydrocarbon activities on the basis of free competition and open access.

The Ministry of Energy and Mines (www.minem.gob.pe) is in charge of the hydrocarbons policies. Hydrocarbons "in situ" are government property. PERUPETRO is the government entity that negotiates, executes and monitors exploration and production (E&P) agreements and also promotes investments in the Peruvian E&P industry.

E&P activities could be carried out through license or service agreements. In the former, the government transfers the extracted hydrocarbons to the contractor in exchange for royalties. In the latter, it pays a fee for the service.

Hydrocarbon agreements usually comprise two stages: exploration, which could last up to seven years as from the agreement's effective date (an extension of up to 10 years is possible, conditioned on the fulfilment of the current obligations and an additional investment commitment); and production or exploitation, which in the case of oil could last up to 30 years, counted from the agreement's effective date, and for natural gas up to 40 years. The exploitation and economic recovery of hydrocarbon reserves are conducted according to technical and economic standards generally accepted in the international hydrocarbons industry, subject to compliance with the health, safety and environmental regulations.

Contractors enjoy customs benefits for the importation of inputs and supplies needed for the fulfilment of the agreements. For example, a contractor can import exempted from any tax its supplies that are exclusively required for exploration activities.

The holders of license agreements have free availability of the hydrocarbons allocated to them under the agreement and can export them tax-free.

The Peruvian government guarantees contractors that the exchange and tax regimes in force at the date of celebration of the license or service agreement will remain unchanged during such term, for the purposes of each agreement. In that sense, those taxes established or created after that date, or subsequent changes in the tax legislation, will not be applicable to the internal activities of the agreement.

Contractors carrying out hydrocarbon exploration or exploitation activities in more than one block and carrying out related activities will determine the annual results separately for each block and activity in order to calculate the income tax.

Exploration and production expenses, as well as any investment made in a block that has not yet reached the production stage, must be accumulated in a separate account, the amount of which must be

amortized per unit of production or by linear amortization, deducting them in equal parts over a period of at least five fiscal years.

Income tax for entities based in Peru is currently 29.5%. An additional 2% surcharge will be applied for hydrocarbon agreements. However, depending on the activities performed and the type of product, the investor may be exempted from such surcharge.

There is a special benefit for investments in hydrocarbons, which consists of obtaining a refund of the VAT and the municipal promotion tax paid by the investor in the acquisition of goods or services directly related to the activities of the contract. Such benefit was extended until 31 December 2022.

Contractors that carry out activities in more than one contract or block, or carry out related activities or other activities, must keep independent financial statements for each agreement and activity, in addition to the obligation to submit consolidated financial statements.

The transportation, distribution and marketing of hydrocarbons are performed under free market rules, subject to the rules approved by the Ministry of Energy and Mines. Transportation by pipelines and natural gas distribution by grid are considered public utilities; hence, the granting of a concession is required to bring such services.

Technical and safety matters related to hydrocarbons are under the supervision of the OSINERGMIN, and regarding environmental matters, under the authority of the Environmental Supervision Agency (OEFA). Hydrocarbon companies must pay contributions to those entities for a maximum amount of 1% of their annual invoicing, minus VAT.

Law No. 28109 promotes investment in the exploitation of marginal resources and reserves of hydrocarbons by reducing royalties in license agreements, or increasing the compensation agreed upon in service agreements, conditioned to an investment commitment.

The exploitation of natural gas reserves of Camisea (Blocks 56 and 88) is the most important project in the hydrocarbons sector in Peru. This is one of the most important natural gas fields in Latin America.

To promote the development of the natural gas industry, the Peruvian government passed several laws and regulations whose purposes are to provide investors with the necessary tools to enable the development of this industry and to develop a local natural gas market. Among these rules, the following are worth noting.

The Law on the Promotion of Development of the Natural Gas Industry, which establishes the conditions to promote investment in natural gas production and the development of natural gas transmission and distribution networks, and for the creation of a market for natural gas

The Law on the Promotion of Investment in Natural Gas Processing Plants, which aims to grant legal and tax benefits as incentives for investment in natural gas processing plants, such as those for the production of liquefied natural gas (LNG)

The Law on the Promotion of Investment in Petrochemical Plants, which provides legal and tax benefits that encourage investment in the construction and operation of petrochemical plants located in decentralized areas designated by the Ministry of Energy and Mines (currently there are three: in San Juan de Marcona and Paracas in the region of Ica, and Lomas de Ilo in the region of Moquegua)

The law that promotes the development of the petrochemical industry based on ethane and the energy node in southern Peru, which declares, of public necessity and national interest, the promotion and development of the petrochemical industry based on ethane contained in natural gas, prioritizing that which would be installed in the south of Peru, and in turn, promotes the decentralized development of pipeline-based transportation systems for hydrocarbons

The law that strengthens energy security and promotes the development of the petrochemical hub in the south of Peru, declares, of national interest, the implementation of measures for the strengthening of the country's energy security through the diversification of energy sources, the reduction of foreign dependency, and the reliability of the energy supply chain.

The regulations for the Natural Gas Secondary Market (SPOT) enables the transfer of gas production and of firm transportation capacity among gas distributors and independent consumers. However, the implementation of regulations of the SPOT was suspended until 30 June 2021 by Supreme Decree No. 043-2020-EM, which was approved on 30 December 2020.

In addition, provision has been made to promote the massive consumption of natural gas to industrial and residential consumers and in public transportation. In the latter case, the use of natural gas for vehicular purposes has been declared of national interest.

Regulations have also been adopted to promote the development of the biofuels industry. These rules establish the conditions for the production and marketing of ethanol and biodiesel.

The Peruvian government has established the percentages of biofuels that must be blended with gasoline and diesel, which can only be done in duly authorized storage facilities.

The Ministry of Energy and Mines has approved the 2010-2040 Peruvian National Energy Policy, which includes, among others, the following guidelines:

1. A diversified energy matrix, with emphasis on renewable sources and energy efficiency, must be established.
2. A competitive energy supply must be set up.
3. Self-sufficiency in energy production must be achieved.

4. An energy sector with minimal environmental impact and low carbon emissions within the framework of sustainable development must be developed.
5. The natural gas industry and its use in home activities, transportation, commerce and industry as well as efficient electric power generation must be advanced.

The Vice Ministry of Hydrocarbons was established through Law No. 30705. This law is responsible for, among others, formulating, coordinating, executing and supervising policies for the sustainable development of hydrocarbons, in accordance with the corresponding national policy.

On the other hand, it should be highlighted that in the framework of Convention 169 of the International Labour Organization, the Law on the Right to Prior Consultation with the indigenous or native peoples was enacted in 2011, which, among others, must be applied by the Peruvian government in any hydrocarbon-related project that may directly affect the collective rights on physical existence, cultural identity, quality of life, or development of indigenous or native peoples. This law is regulated by Supreme Decree No. 001-2012-MC.

Likewise, for all E&P projects, it will be necessary to carry out citizen participation processes, whose purpose is to collect the queries and needs of local people so the project can include them to achieve a positive impact. Such processes shall be performed in two stages: (i) prior to the negotiation and drafting and after the signing of the agreement; and (ii) before the submission of the environmental management instrument and during its assessment.

Environment

Hot topics

Last year, the Peruvian government issued various regulations destined to promote the circular economy, including the prohibition of single-use plastic and the approval of a legal regime applicable to the

management of scrap tires and materials. Likewise, this year, the government approved a Single Procedure for the Environmental Certification Process for the SENACE, to improve and ensure the timely, effective and efficient environmental assessment of the environmental management instruments.

Specifically, in July 2021, the Ministry of Environment approved the Special Legal Framework for the Management for Scrap Tires (NFU), to establish an extended liability regime for the producers of scrap tires (take-back system). The NFU are considered wastes of products that require prioritized management given the impact they generate to the environment.

Furthermore, in December 2021, several prohibitions destined to severely limit the fabrication and consumption of single use plastic, non reusable plastic and expanded polystyrene packages, also to reduce the negative impact on human's health and the environment.

Finally, in January 2022, the Peruvian government approved relevant amendments to the Regulation of the Waste Management Law, approved by Supreme Decree No. 014-2017-MINAM, among which the regulation of the generation and use of scrap materials should be highlighted.

General framework

The Environment Law, approved in 2005, is the legal framework that governs environmental management in Peru. This legal provision: (i) develops various international environmental principles; acknowledges environmentally related rights; and (ii) establishes guidelines for the National Environmental Policy, environmental management, access to information and citizen participation as regards environmental issues. It also governs the liability system for environmental damage in Peru and articulates the national environmental systems in force (the Environmental Impact Assessment System and the National System for Environmental Supervision, among others).

In May 2008, the Ministry of Environment was created by the Executive Branch in order to establish a single environmental policy in Peru, to be duly coordinated and implemented nationwide. The purpose of the Ministry of Environment is to preserve the environment and ensure the sustainable and rational exploitation of natural resources, biodiversity and natural protected areas.

In 2008, private parties that hold any project or activity created the OEFA, with the purpose of supervising and sanctioning any violation to environmental laws.

Environmental powers from sector authorities shall be gradually transferred to OEFA. As of today, the powers related to environmental supervision, monitoring and imposition of penalties for mining (large and medium-scale mining), energy (hydrocarbon and electricity), fishing (industrial fishing processing and large scale aquaculture), the industrial sector (i.e., beer, paper, tannery, metal smelting, biofuel, production of non-alcoholic beverages and mineral water, sugar, among others), internal trade and solid waste infrastructure had already been transferred to OEFA.

Environmental supervision and enforcement

In order to strengthen the environmental compliance system in the country, the Peruvian government enacted in 2013 Law No. 30011, which, among other developments, significantly changed the fines imposed by OEFA. The purpose of this law is to deter persons from engaging in unlawful acts. Therefore, the maximum amount of fines that OEFA can impose for gross violation to environmental laws or for acts that cause serious environmental damage has been increased from 10,000 to 30,000 tax units (i.e., up to PEN 132 million or up to approximately USD 36 million). However, such fines must not exceed 10% of the revenues obtained by the company the previous year.

Environmental certification

In accordance with the National Environmental Impact Assessment Law, Law No. 27446 and its Regulations, approved by Supreme

Decree No. 019-2009-MINAM, any individual or legal entity that intends to develop an investment project that may have an environmental impact must obtain an environmental certificate. This environmental certificate is a ruling to be issued by the pertinent environmental authority that approves an environmental management instrument. That is to say, the environmental certificate is a statement by the pertinent authority that a project is feasible in environmental terms.

The activities subject to an environmental certificate are contained in the List of Investment Projects subject to the National Environmental Impact Assessment System (SEIA), included in Exhibit II of the abovementioned regulations, as amended from time to time. Based on the environmental impact that may arise, all projects must be classified into the following categories:

1. **Category I:** Environmental Impact Statement (DIA):
Environmental assessment that evaluates the investment projects causing minor adverse environmental impacts
2. **Category II:** Semi-detailed Environmental Impact Assessment (EIA-SD): Environmental assessment that evaluates the investment projects that are expected to cause moderate adverse environmental impacts
3. **Category III:** Detailed Environmental Impact Assessment (EIA-D):
Environmental assessment that evaluates the investment projects that are expected to cause significant adverse environmental impacts

As may be observed, each category refers to a different instrument for environmental management. A registered environmental consulting firm in the Registry held by the National Environmental Certification Service for Sustainable Investments (SENACE) must prepare environmental studies.

On 21 May 2015, through Law No. 30327, Law for the Promotion of Investments for Economic Growth and Sustainable Development, the Global Environmental Certificate Procedure was created. This procedure, applicable to EIADs, aims to progressively incorporate in one procedure some licenses or authorizations related to the project and required for its development (such as the Water Use Authorization, Authorization for the discharge of wastewaters, Forest Clearing Authorization, and the Sanitary Authorization for Septic Tanks).

Finally, as of July 2022, the Single Procedure for the Environmental Certification Process of SENACE ("**Single Procedure**"), created by Supreme Decree N° 004-2022-MINAM, will enter into force. Its purpose is to improve the efficiency of the assessment procedures of environmental management instruments. This Single Procedure will apply to:

- Project developers obliged to obtain an environmental certification under the purview of SENACE
- SENACE and other public entities that participate in the environmental impact assessment procedures.

The Single Procedure applies to the following 10 administrative procedures in charge of SENACE:

- Classification of the project;
- Approval of the Terms of Reference;
- Amendment of the Terms of Reference;
- Approval of the Citizen Participation Plan;
- Amendment of the Citizen Participation Plan;
- Approval of the Detailed Environmental Impact Assessment (EIA-d);

- Amendment of the EIA-d;
- Approval of the Semi Detailed Environmental Impact Assessment (EIA-sd);
- Amendment of the EIA-sd; and,
- Approval of the Environmental Technical Report.

SENACE is the entity in charge of reviewing and approving EIA-Ds, which comprises public, private or combined capital investment projects of national and multiregional scope, and which involve activities, constructions, works and other commercial activities and services that are likely to cause significant environmental impacts.

Climate change

2022 Hot topics

On 25 January 2022, the Peruvian government declared of national interest the climate emergency in our country, through Supreme Decree N° 003-2022-MINAM. Its purpose is to establish the measures that need to be urgently implemented to move forward with Peru's climate ambition, as per the international commitments assumed for 2030. These measures are related to climate governance, education on climate change, climate finance, climate justice and others.

General framework

In 2019, the Regulations of the Climate Change Law were approved, and this was considered a relevant milestone for the Peruvian government in its commitment to reduce the threat of climate change in the country. These regulations have been enacted considering the international commitments the Peruvian government has undertaken under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

As a relevant precedent, in April 2018, the Peruvian government enacted the Climate Change Law (Law No. 30754), which sets forth general provisions for the planning, execution, articulation, monitoring,

assessment, reporting and dissemination of climate change management.

The Regulations of the Climate Change Law, approved on 31 December 2019 by Supreme Decree No. 013-2019-MINAM, seeks to establish mechanisms and guidelines to reduce the country's vulnerability to the effects of climate change, promote investment in sustainable and low-carbon activities, and facilitate compliance with the commitments assumed by the state under the Paris Agreement.

The objectives set by the Regulation will be met through: (i) the implementation of climate change adaptation and mitigation measures; (ii) the creation of systems that contribute to account CO₂ emissions; (iii) the reduction of CO₂ emissions; and (iv) the promotion of private sector participation in the execution of sustainable and low-carbon projects.

Fishing

Hot topic

In order to promote the sustainable catch of the perico fish (*Coryphaena hippurus*), a new Regulation for Fisheries Management for the referred species was approved, through Supreme Decree No. 017-2021-PRODUCE. Such regulation considers this fishery resource as a differentiated species with particular ordering and investigation rules.

On the other hand, intending to provide assistance to the fishermen who have administrative debts and to prevent them from being economically affected by coercive fines, the Ministry of Production, through Ministerial Resolution No. 00394-2021-PRODUCE published in November 2021, has modified its regulation allowing them to request the approval of a payment schedule that allows them to fraction debts related to fines imposed during the National Emergency declared due to the spread of COVID-19.

The General Fishing Law, approved by Decree Law No. 25977 ("**Fishing Law**") and its regulations, approved by Supreme Decree No. 012-2001-PE, primarily regulate fishing activities. As required by the Fishing Law, the hydrobiological resources contained in the territorial waters of Peru constitute national patrimony, so the government must regulate their exploitation in accordance with the principle of sustainable use of natural resources. Pursuant to the Constitution of Peru, the maritime domain of the Peruvian government includes the sea adjacent to its coastal water, the riverbed, and the underground water up to a distance of 200 nautical miles. Therefore, the Fishing Law and its regulations are applicable to activities carried out within such jurisdictional waters.

Also, the Fisheries Management Regulations were approved in accordance with the characteristics of each species, geographic area or destination of the hydrobiological resources. Among them, we may find the recently approved Fisheries Management Regulations for Anchovy and White Anchovy Resource for Direct Human Consumption; the Fisheries Management Regulations for the Hake Resource; the Fisheries Management Regulations for the Horse Mackerel and Mackerel Resources (species reserved exclusively for the manufacture of products for direct human consumption — preserved, canned, frozen or cured — among others); the Fisheries Management and Aquaculture Regulations for the Lake Titicaca Basin; and the Fisheries Management Regulations for the Peruvian Amazon.

The Ministry of Production (www.produce.gob.pe) is the administrative authority that supervises fishing activities. Its main functions are the following: to adopt fisheries management measures; grant administrative rights to individuals for the development of fishing activities; and inspect, and if appropriate, punish any infringement related to the rules governing the activity (except for the environmental issues of the activities related to industrial fishing processing and large-scale aquaculture, which are under the purview of OEFA). Among the management measures that the Ministry of

Production regularly approves, we may find the determination of the total quotas of catch per species, the individual fishing quotas in the case of the anchovy and hake species, and the fishing seasons. Further, some of the administrative rights granted are the fishing permit to operate vessels, the license to operate processing plants, and the authorization or concession to carry on aquaculture activities.

At present, the Fishing Law and its regulations recognize five types of fishing activities, as detailed below:

Specialized research and training activities

In order to promote scientific research on fisheries, the Ministry of Production grants individuals authorization to conduct research in Peru's jurisdictional waters. This right allows its holder to operate scientific vessels and extract specimens of various types for fishing investigation purposes.

Hydrobiological resources extraction activities

In general, extraction activities can be divided into commercial and non-commercial. Non-commercial activities encompass research, aquatic hunting and subsistence. On the other hand, commercial activities comprise the artisanal and industrial fisheries.

In order to carry out extraction activities, it is necessary to obtain, among other permits, a fishing permit. This permit entitles the titleholder to operate fishing vessels and to extract hydrobiological resources within the territorial waters of Peru. The fishing permit entitles rights, obligations and conditions applicable, and sets forth the vessel name, the registration number, the storage capacity, the species it may fish, and the fishing gear that may be used. Provided the titleholder complies with the obligations set forth by the Fishing Law, the fishing permit will be valid for an indefinite term.

The transfer of the ownership of fishing vessels in Peru involves the transfer of the fishing license as well as the supplementary rights and accessories thereto.

Additionally, it should be noted that in order to maintain the validity of the fishing permit, it is necessary to comply with the following conditions: (i) to not increase the authorized storage capacity established in the fishing permit; (ii) to comply with the annual minimum fishing effort, which is equivalent to the storage capacity of the fishing vessel; (iii) to comply with applicable fishing rights payments; and (iv) to hold a valid certificate of registration of the vessel issued by the General Direction of Captaincies and the Coast Guard.

Special attention should be given to anchovy regulation and the feedstock for the production of fishmeal and fish oil. In addition, it should be noted that Peru is the world's largest producer of fishmeal.

In 2008, a Fishing Quota System for anchovy was implemented in Peru, in replacement of the denominated Olympic System regime. This fishing regime was approved by Legislative Decree No. 1084, Law of Maximum Catch per Vessel, and several supreme decrees have been approved to regulate it over the years.

Under this new system, each national vessel was assigned a maximum percentage of the catch (individual quota), which grants an aliquot of the total catch quota determined for each fishing season and for each zone.

On the other hand, authorization to extract tuna resources is granted as a result of a tender or an administrative procedure that depends on the characteristics of the tuna vessels. Peruvian authorities execute public biddings to distribute the quotas assigned to Peru by the Inter American Tropical Tuna Commission (IATTC) to promote its extraction by national flag vessels and its processing in plants located in Peru. Peru, as a member of the IATTC, has a global share — expressed in cubic meters of storage capacity — to be distributed among the vessels that make up its national fleet. Currently, there is a Peruvian flag fleet performing tuna exploitation activities in Peruvian and international waters, together with foreign flag vessels.

Hydrobiological resources processing activities

In general, processing hydrobiological resources in Peru can be divided into processing aimed at the manufacture of products for indirect human consumption, such as fishmeal and fish oil, and processing aimed at the manufacture of products for direct human consumption, where we can find a diverse group of products, most notably those canned and frozen.

For the development of both processing activities, the plant must obtain a license from the Ministry of Production. To qualify for this, it is necessary to obtain an environmental certification issued by the same entity. The government has been strongly promoting the development of processing activities for direct human consumption, such as canned and frozen products, for which an operation license shall be obtained from the Ministry of Production, provided that the requirements set forth by applicable law are met. On the other hand, processing activities for indirect human consumption (fishmeal and fish oil production) are restricted. To date, the Ministry of Production no longer grants new operation licenses for indirect human consumption. Generally, this access is obtained by purchasing a plant with a valid license, for which different contractual arrangements may be made.

Notwithstanding the above, the Ministry of Production is empowered to grant new licenses for the installation and operation of residual flour plants. Such plants process waste from the plants that process products for direct human consumption. For this reason, they are incidental to such plants and their operation is subject to special rules.

Marketing and services activities

In Peru, the marketing of fishery products (with the exception of exports of seeds and wild aquaculture products) does not require any permit, license or authorization. However, for the provision of quality control and certification services for commercial fish products, it is necessary to obtain authorization from INDECOPI.

Aquaculture activities: Aquaculture consists of cultivating aquatic species, usually throughout all stages of maturation of the species, from their birth until they are ready for trading or processing. The Peruvian government has developed a cadaster that identifies, aquaculture rights, available areas, evaluated hydrobiologic resources and fishing areas, among others.

By virtue of its particular characteristics, which are substantially different from those of the fishing activities, aquaculture activities are governed primarily by the Aquaculture General Law, approved by Legislative Decree No. 1195, which declared aquaculture sustainable development to be of "national interest," and its regulation, approved by Supreme Decree No. 003-2016-PRODUCE.

As in fishing, the Ministry of Production is the administrative authority responsible for issuing special rules, granting administrative rights, and overseeing and penalizing aquaculture activities (except for environmental issues of the activities related to large-scale aquaculture, which is under the purview of OEFA). For aquaculture activities to be developed within public domain waterbodies such as seas, rivers and lagoons, the Ministry of Production grants a temporal concession (up to 30 years, which may be renewed for the same term). Such concessions are granted through: (i) national or international public contest; or (ii) direct granting. Additionally, the following activities should be developed by obtaining temporary authorization (up to 30 years, renewable for the same period) issued by the Ministry of Production: (i) aquaculture activities to be developed within private waterbodies, as artificial ponds specially equipped within private properties; or (ii) research, technological development and innovation activities in connection with aquaculture. These rights granted by the Ministry of Production may be transferred to third parties.

In order to promote aquaculture activities, the General Aquaculture Law provides the implementation of the public registry for aquaculture concessions and authorizations, which is currently operating. Also, in

order to promote investments, the law grants to holders of aquaculture concessions or authorizations the right to mortgage such aquaculture rights and to grant security interests over the aquatic resources cultivated by such holders.

In addition, the Peruvian government also promotes the development of aquaculture activities by implementing policies that ensure rapid access to aquaculture rights, such as the Single Filing Address for Aquaculture (Ventanilla Única de Acuicultura).

Finally, the Peruvian government has implemented the Single Filing Address for the Production Sector (Ventanilla Única del Sector Producción) to simplify the administrative procedures and services related to fishing activities, thereby reducing costs and saving time.

Taxation benefits - General Aquaculture Law

From 2020, according to the Legislative Decree No. 31110, the taxpayers under the General Aquaculture Law are beneficiaries of tax benefits described in the comparative chart below:

ITEM*	GENERAL LABOR REGIME	AQUACULTURE REGIME						
Income tax rate (3rd bracket)	29.5%	<p>For natural or legal persons whose net income does not exceed 1,700 UIT in the taxable year:</p> <table border="1" data-bbox="585 1161 958 1414"> <thead> <tr> <th data-bbox="585 1161 773 1235">Year</th> <th data-bbox="773 1161 958 1235">Rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="585 1235 773 1307">2021-2030</td> <td data-bbox="773 1235 958 1307">15%</td> </tr> <tr> <td data-bbox="585 1307 773 1414">2031 and forward</td> <td data-bbox="773 1307 958 1414">General regime rate</td> </tr> </tbody> </table>	Year	Rate	2021-2030	15%	2031 and forward	General regime rate
Year	Rate							
2021-2030	15%							
2031 and forward	General regime rate							

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Year	Rate											
2021-2022	15%											
2023-2024	20%											
2024-2027	25%											
2028 and forward	General regime rate											
Depreciation rate	As provided for by law (usually 10% per year)	20% per year for infrastructure on water supply channels.										
Deduction with sale vouchers and payment slips	Expenses duly supported by sales vouchers and payment slips issued by contributors from the New Unique Regime may be deducted up to the limit of 6% of the expenses (the limit cannot exceed 200 tax units).	Expenses duly supported by sales vouchers and payment slips issued by contributors from the New Unique Regime may be deducted up to the limit of 10% of the expenses (the limit cannot exceed 200 tax units).										

Mining

News

In 2021, the main mining regulation was passed by means of Law 31347, which modifies the Mining Closure Law, and introduces a new regimen that rules the guarantees for the closure of mines. The concession holder, besides having the obligation to guarantee the costs of the rehabilitation measures for the final closure and post-closure stages, are now required to grant guarantees during the productive stage of the mining project in order to cover the costs of the progressive closure of the main components. The current regime establishes that the aforementioned guarantees will be released only after the OEFA verifies the compliance with all progressive, final and post-closure measures.

In addition, this law establishes the joint and several liability of those directors and majority shareholders who are in the management of a company that abandons a mining unit, provided that: (i) responsibility of these persons is determined with respect to the abandonment or breach of the corresponding Closure Plan; and (ii) real environmental damage has been generated. In this case, those directors and shareholders will be jointly and severally liable with the company for the corresponding administrative and civil sanctions and, in addition, will be disqualified for five years from — directly or indirectly — acquiring new mining rights or obtaining authorizations for mining activities. This rule is extremely important because it allows the lifting of the corporate veil in the cases described therein, thus eliminating the separation of liability between the mining company and its shareholders.

General framework

The development of mining activities in Peru is subject to the provisions of the Refunded Text of the General Mining Law ("**Mining Law**") approved by Supreme Decree No. 014-92-EM and its regulations.

In accordance with the Mining Law, mining activities (excluding exploration, prospecting, commercialization and storage outside the area of mining operations) must be solely carried out under the concession system. The concession grants its holder the exclusive and excluding right to carry out a specific mining activity within a specific geographical area.

The Mining Law identifies four types of concessions: (i) mining concessions (for exploration and exploitation) granted by the Institute of Geology, Mining and Metallurgy Institute of the Ministry of Energy and Mines (INGEMMET - www.ingemmet.gob.pe); (ii) processing concessions (for ore-processing tasks such as metallurgy, refinery and mechanical preparation) granted by the General Mining Bureau of the Ministry of Energy and Mines (DGM - www.minem.gob.pe); (iii) general service concessions (for executing ancillary services) granted by the DGM; and (iv) mining transportation concessions (for transporting ore through non-conventional systems) also granted by the DGM.

It is important to note that Peru has a mining cadaster system, based on satellite "World Geodetic System 1984 (WGS84)" geographic coordinates information, which provides information in connection with mining rights (current, pending or extinct), areas available for new applications for mining concessions and geological information, among others.

Concessions must be recorded in the Public Registry of Mining Rights of the Registry of Real State, which forms part of the National Public Registry System, and thus, an entry for each concession is made. Any act, transfer, burden, encumbrance or agreement related to the concession must be recorded in said entry so that the act can be enforced against the state and third parties.

The Mining Law establishes that the mining concession constitutes a different, separate and independent right from the surface land where it is located. In other words, the mining concession title does not grant rights to the surface land, which means that the concession holder

must obtain a right to use the corresponding surface land from the landowner in order to start mining activities.

Additionally, it should be noted that the granting of a mining concession does not enable its holder to carry out mining activities within the area of such concession. Thus, it is necessary that the holder of a mining concession obtain a Start-up Authorization for Exploration or Exploitation Activities (Autorización de Inicio de Actividades de Exploración o Explotación), for which it is necessary to have the previous approval of the relevant environmental management instrument and the Mine Plan (Plan de Minado), and obtain authorization for the use of surface lands, among others.

Mining concessions are granted for an indefinite term. Nevertheless, holders of mining concessions or mining claims (mining concessions being processed) must meet several obligations, including the annual payment of a good standing fee (USD 3 per hectare, both for mining concessions and mining claims). Failure to pay the aforementioned good standing fee in a timely manner for two consecutive years will lead to the definitive cancellation of the mining concession or of the mining claim.

Likewise, holders of mining concessions are also required to put their mining concessions into production. Consequently, as from 2018, they must meet an annual production target established by the Mining Law, as detailed below:

- (a) 1 Peruvian tax unit (equivalent to PEN 4,600 for 2022) per year and per hectare applicable to metallic mining concessions
- (b) 10% of 1 Peruvian tax unit per year and per hectare applicable to non-metallic mining concessions

Holders of all mining concessions that, after 10 years as from obtaining the title of the concerned mining concession, do not achieve the aforementioned minimum production, will have to pay the following mining penalties:

- (a) If the minimum annual production target is not met until the end of the 10th year counted from the year following the granting of its mining concession title, holders shall pay a mining penalty equal to 2% of the corresponding annual production target.
- (b) If the annual production target is not met until the end of the 15th year counted as from the year following the granting of its mining concession title, holders shall pay a mining penalty equal to 5% of the corresponding annual production target.
- (c) If the annual production target is not met until the end of the 20th year counted as from the year following the granting of its mining concession title, holders shall pay a mining penalty equal to 10% of the corresponding annual production target.

Holders of the mining concessions may avoid paying the aforementioned mining penalties by demonstrating that during the previous year, the holder has invested no less than 10 times the amount of the corresponding mining penalty for each mining concession.

If the failure to reach the annual minimum target continues for 30 years, the mining concession shall be cancelled without exception, as provided in detail below:

Mining concessions granted until 31 December 2008 will be cancelled if the annual production target is not met until the end of the 30th year counted from 1 January 2009.

Mining concessions granted from 1 January 2009 will be cancelled if the annual production target is not met until the end of the 30th year counted as from the year following the granting of its mining concession title.

Real estate

The Sustainable Urban Development Law (Law No. 31313 - "**Ley de Desarrollo Urbano Sostenible**"). For the first time, Peru has a law

that develops the principles and establishes the norms related to conditioning and urban development. Before its approval, a national law was passed but limited to the granting of urban licenses. The Housing sector also approved regulations and technical standards for buildings, to which municipal regulations were added through Ordinances. This regulation generated dispersion and often confusion regarding the applicable rules to urban development and building. The courts, as well as the administrative tribunals, played a fundamental role in establishing the preponderance of national norms.

Moreover, Law No. 31313 introduces a series of urban planning instruments that, with the approval of the respective Regulations, aim to promote the creation of low-income housing and public spaces. Likewise, it will allow municipalities to carry out conservation works at the owner's expense in cases where they have not carried out conservation works on their property located in an urban regeneration area, declared uninhabitable or declared part of the Cultural Heritage of the Nation. In addition, it establishes the legal basis for the implementation of urban financing instruments, such as the transfer of additional building rights and the compensation of building potential. This will allow greater dynamism in the real estate market. Moreover, this law creates a participation in the increase in the value of the land, which the municipalities will receive when the value of the land increases as a result of public or urban actions.

Legal framework

The main legal framework regarding real estate in Peru is the Peruvian Civil Code of 1984. From a regulatory standpoint, there are other laws that should be taken into consideration. For example, Law No. 27157 establishes the rules for building regularization, building declaration and regime of common and exclusive property (regulating common areas in a same building), or Law No. 29090, which regulates the requirements and legal procedures to obtain an urban refitting license, as well as the respective reception of works and conformity of works, before the corresponding municipality.

The Peruvian Constitution also regulates some real estate aspects, such as expropriation and restrictions on foreign persons in acquiring real estate. Article 70° of the Peruvian Constitution (complemented by Legislative Decree No. 1192) states that an expropriation can be done in case it is required for reasons of national security or public need, declared by a law, and that compensation must be paid to the owner. Likewise, according to Article 71° of the Peruvian Constitution, foreigners are treated the same as Peruvians with regard to property ownership, except that foreigners cannot directly or indirectly acquire or possess title to mines, land, forests, water, fuel or energy sources within 50 kilometers of the borders (except in cases of public need declared by a supreme decree).

System of land registration

A system of land registration exists in Peru. The National Superintendence of Public Registries (SUNARP) is the centralized public entity in charge of registration of real estate. SUNARP maintains a system of land title registration where ownership can be verified. It is presumed that everyone know public registry content.

All relevant real estate matters of the land, such as rights of use granted to third parties, guarantees and liens, and limitations to ownership are also registered. In relation to lease agreements, a registered lease agreement shall survive and is binding upon the new owner if such agreement was previously registered in the public records.

Nevertheless, by general rule (with the exception of mortgages), real estate rights are not required to be registered to be valid because according to Peruvian legislation, the registry only declares rights and does not create them. However, third parties in good faith are not bound by unregistered interests to real estate property.

Although there is system of land registration in Peru, and SUNARP can issue a document called Certificate of Land Registry (Certificado Registral Inmobiliario), which contains ownership and existing liens,

guarantees and limitations to ownership at a given time (i.e., day, hour and second), and thus may vary, a title search and due diligence is always recommended to avoid any contingency in transactions involving real estate. It is also recommended that the existence of possible acts pending registration be reviewed. In addition, it is advisable to review the titles (acts) that generated the act registered in the registry.

Acquisition process of real property

The first step in an acquisition transaction is conducting due diligence on the real estate, which usually includes title ownership and zoning review and a review of any burdens and liens on the property. The purchase and sale agreement should contain all necessary commercial terms for the transaction, including a description of the land, purchase price, deposit (if any), the closing date and any other special terms. These agreements also typically contain conditions for the benefit of the buyer as well as representations and warranties by the seller.

As a general rule, the title is transferred as soon as the seller is obliged to sell the property (e.g., when the purchase agreement is executed). However, parties can agree on a "reserve of property," which is a provision through which seller maintains the title until part or the whole price is paid (depending on the specific agreement).

The Peruvian Civil Code requires the seller to compensate the buyer in case the latter is deprived of the use and possession of the real estate by virtue of a judicial decision confirming that a third party obtained a right to the real estate before the sale.

Lease agreements

Leases in Peru are regulated by the Peruvian Civil Code, Nevertheless, in such regulation, there are both mandatory rules (rules of forced compliance) and supplementary rules (applicable only if the parties do not agree otherwise). For example, a mandatory

provision is the maximum term of every lease, which is 10 years; and a supplementary rule is, for instance, that the tenant is forbidden to sublet the lease property to third parties, although parties can disagree.

In that sense, the content and scope of the leases are mostly freely agreed on by the parties. However, parties have to respect the mandatory provisions prescribed by law since provisions of the lease that contravene these rules are invalid.

A lease is only one of the different structures for giving the use of a certain property to a third person. Thereby, besides a lease agreement, other arrangements may be used, such as financial leasing, atypical use concessions or the establishment of rights in rem established by law (e.g., usufruct, surface right, easement).

A landlord can generally terminate the lease when the tenant breaches the terms of the lease, which usually includes, among others, non-payment of the agreed rent, allowing the use of the property and assigning or subletting the property without the consent of the landlord. Similarly, the tenant may also terminate the agreement in case of default by the landlord, such as in cases where the landlord is unable to provide the tenant uninterrupted peaceful possession of the property or the leased property was delivered with damages that preclude its use. Moreover, the parties may agree that either or both could have the right to unilaterally terminate the contract without cause and without the duty to indemnify the other party, having only to submit a notice to the other party with some term in advance.

Also, termination can occur if the leased property is substantially damaged or destroyed by causes not attributable to either party (e.g., acts of God). If the leased property is damaged or destroyed, but due to causes attributable to one of the parties, then the lease is terminated and such party may be liable and have to repair the damage caused to the other party.

A registered lease agreement is binding upon the new owner if such agreement was previously registered in the public registry, and in case it is not registered, if the new owner committed to honor the lease agreement.

Planning and environmental issue

There are zoning regulations for each district in Peru. These rules are driven by, among others, certain environmental, cultural and social aspects, and seek to determine where certain structures may be built. If a new project is not zoned correctly, it is necessary to go through a local governmental process to request the rezoning of the area.

The regulation of land zoning rests in the provincial municipalities. In that sense, those entities are the ones that approve the use of lands within their jurisdiction.

In the same way, the district municipalities are responsible, within the limits of the zoning approved by the provincial municipalities, for approving building, demolition and operation permits. For example, the construction of new projects requires building permits before the commencement of construction.

Obtaining a building permit also requires that the building project meet the technical requirements established in the National Building Regulation.

On the other hand, environmental regulation for building or structure (including the construction phase) and land use is dictated by the national government through the Ministry of Environment, the Ministry of Housing and the Ministry of Production (i.e., for shopping centers). Also, municipalities have some regulatory powers in environmental issues such as emissions and solid waste.

Environmental Impact Assessment Act

Pursuant to Law No. 27446 and its regulations, any individual or legal entity that intends to develop an investment project that may result in environmental impacts must obtain an environmental certification.

Some real estate projects, such as the following, are subject to environmental certification requirements: shopping centers (depending on the area and average density of inhabitants per hectare); certain types of land development, multifamily or residential (depending of the density zoning); parking buildings of certain size; high-density infrastructures (schools, universities, prisons, arenas and stadiums, civic centers, museums, sports fields, etc.).

Real estate licenses

Investors that want to develop real estate projects need to obtain certain licenses. For instance, if the land is undeveloped yet (non-urban lands), a license to develop is required before even applying for the building permit. In such cases, the possibility of developing depends on whether the land has been approved as developable by the provincial municipality. Conversion is achieved by developing accessibility routes and enabling water distribution, drainage systems, electricity and other infrastructure facilities.

Once the land is developed, construction projects become possible. However, new construction requires a building permit before the commencement of construction. If anything is to be demolished, it is also necessary to have a demolition license. Additionally, in some types of projects, an environmental certification is a requirement to obtain the building permit.

Occupying real estate does not need a license. However, if the building is intended to be commercial (offices, malls, shops, factories, etc.), an operating license is required.

To obtain an operation license, it is necessary to obtain a certificate that validates the security of the building or facility (Certificado ITSE). The inspection is made according to the risk of the activity and not the area of the facility or building. When the property has a low or medium risk, the approval of the certificate is automatic (the inspections is made after).

Telecommunications

The telecommunications market seeks to expand, and therefore, in the recent years, the state has been promoting investing and deployment of telecom infrastructure of optic fiber nationwide. For this purpose, the Ministry of Transportation and Communications would conduct a public bid for operating the National Fiber Optic Dorsal Network.

Aiming at continuing to modernize telecom services, in the last year, the Ministry of Transportation and Communications has continued with the process of reorganization of the spectrum bands to promote the use 5G technologies.

Since the mid-1990s, private companies under a free competition regime have provided all public telecommunications services (landline, mobile, long-distance carrier, cable TV) in Peru.

Telecommunications markets are open and there are no restrictions on foreign participation (other than radio broadcasting services), or on the number of operators in any service or market. Exceptions to this open policy are the restrictions based on the allocation of the limited radio spectrum.

Market conditions and public telecommunications services are regulated by the Open Policy Guidelines for the Telecommunications Market and the General Telecommunications Law and its Regulations. The Supervisory Body for Private Investment in Telecommunications (OSIPTEL) (www.osiptel.gob.pe) is the regulatory agency responsible for monitoring market conditions, while the Ministry of Transportation

and Communications (MTC) (www.mtc.gob.pe) is the entity that grants concessions for public telecommunications services and authorizes the use of the radio spectrum.

In order to provide carriers of final services (for example, landline and mobile phone services), operators must obtain a concession from the government and sign a contract. The Peruvian framework contains a unique concession regulation stating that by signing one concession contract, a company is allowed to provide carrier or final services. The characteristics of each of the services to be provided by the concessionaire are included in the correspondent registry as part of the concession contract.

To provide value-added services, companies must be registered with the MTC. Internet provision is considered a value-added service.

The commercialization of public telecommunications services is allowed. Companies that want to perform this activity must request its registration in the Registry of Traders of Traffic and/or Telecommunication Services with the MTC. Satellite service providers must also be registered with the MTC in order to provide satellite capacity services to local concessionaires.

In order to promote competition in public mobile services provision, the government has issued rules governing the provision of mobile services by mobile virtual network operators (MVNOs), and the conditions in which MVNOs can use the networks of mobile operators in exchange for a tariff. Concessionaires of public mobile services that want to provide services as MVNOs must request their registration in the respective registry of the MTC. To obtain a concession in order to provide services as MVNOs, companies must apply for a special procedure.

Interconnection is mandatory for the concessionaires, in accordance with the regulations on the subject. Interconnection includes access to essential facilities. If the parties do not agree on the terms of

interconnection, the regulator can issue a mandate establishing these. Markets in which there is no competition are subject to rate regulation.

In order to promote the provision of telecommunications services in poorly served areas and to facilitate the entry of new operators and the expansion of existing networks, several rules have been adopted. They include the law governing the sharing of infrastructure (antennas, ducts, and poles) for the provision of public telecommunications services; a regulation to obtain forced easements, allowing operators to extend their telecommunications networks in places where they serve; regulation of special services with interoperability; standards for infrastructure expansion in telecommunications (regulating the use of areas and property in the public domain by telecommunications operators for the deployment, improvement or maintenance of existing infrastructure, or infrastructure yet to be installed, and ensuring that the rates or rights charged to obtain the required permits and/or authorizations correspond to the actual costs incurred for their granting); a regulation on provision of services of MVNOs; and provisions allowing and facilitating access by operators of telecommunications services to infrastructure belonging to owners of other public services (thus, for example, any road to be built must include, in its infrastructure, ducts and chambers technically suitable for the installation of fiber optic cables).

A special regimen that harmonizes the requirements that must be requested by local governments in order to allow concessionaires and passive infrastructure providers install telecommunication infrastructure is in force. Currently, these norms established an automatic approval procedure of installation applications.

A network neutrality regulation is applicable to companies that participate directly or indirectly in the provision of internet access service and to telecommunications operators in general. The regulation allows/prohibits the implementation of network management measures that have the potentiality to block, interfere,

discriminate, restrict or degrade any type of traffic, protocol, service or application, regardless of its origin, nature, destination or property.

Tourism

News

On 16 March 2020, President Martín Vizcarra Cornejo ordered mandatory social immobilization throughout the country and the closure of borders as a mechanism to deal with the spread of COVID-19. Because of this measure, the performance of all economic activities was paralyzed, and tourism was one of the most affected sectors. In fact, there were no international tourist arrivals in Peru in April, May and June 2020.

After that, the panorama was still not entirely clear, since the restrictions and measures were not permanent, depending on the minister on duty and the evolution of COVID-19. This meant that, during some months in 2021, the tourism sector generally suffered a decline, especially those months in which vaccination had not yet started in Peru.

With the arrival of vaccines against COVID-19, the outlook for the tourism sector has improved. Over time the restrictions were partially lifted, which directly impacted the sector in a positive way, as reflected in the results of December 2021 — with 88,712 tourist arrivals, an increase of 156.4% compared to December 2020, and a record flow since the start of the pandemic in March 2020.

Notwithstanding this, the numbers for 2021 were not encouraging. Peru received 444,331 international tourists, which meant a drop of 50.4% compared to 2020 and a decrease of 89.8% compared to 2019, representing a negative flow of 3.9 million. As can be seen, there is still much to recover.

At the national level, in 2021, the general movement of passengers (arrivals and departures) reached 19.5 million (+54.9% year-on-year

variation). Domestic flights totaled 16.1 million (82.9% share) and international flights represented 17.1%.

Although this has been a direct consequence of the pandemic and the measures taken by the government, some causes that directly influenced were the closure of borders with various countries, both for passenger transport on land and for air passenger transport, as well as due to the restriction of the entry capacity to different tourist destinations in the country and the curfew imposed at the national level in the Peruvian territory (which is not in force anymore) As an example, the Historic Sanctuary of Machu Picchu received 461,000 visitors in 2021, which represented an increase of 71.1% compared to 2020, but a decrease of 70.9% compared to what was registered in 2019. Visits to the Santa Catalina Monastery and the Kuélap Archaeological Complex totaled 64,160 and 59,613, respectively, and the Sacsayhuamán Complex received 325,000 visitors, while the Moray Complex increased its visits by 94.6%.

The Peruvian state did not collaborate significantly in the recovery of the tourism sector in terms of budget. During the period from January to March, the Ministry of Foreign Trade and Tourism (MINCETUR) spent S/35 million, which reflected a negative variation of 31.7% compared to what was executed in the period January-March 2020. Likewise, in the first quarter, MINCETUR executed 75.6% less than what was executed in the fourth quarter of 2020.

Regarding the measures adopted by the government, among the most relevant that were taken to reactivate tourism in the year 2021, were those destined to the exoneration of the COVID-19 test for travelers entering the country with complete vaccination and those intended to selectively increase the capacity in restaurants, recreation centers and tourist destinations. Likewise, the Peruvian state granted subsidies for the entire tourism value chain, specifically for tour guides.

Within the legal regulations issued to provide facilities to businesses in the tourism sector, is the Emergency Decree No. 091-2021, which establishes, among its many scopes, the relaxation of the conditions of

access to loans from the Fund of Business Support of the Tourism Sector ("**FAE Tourism**").

The FAE Tourism is a program created by the state that seeks to guarantee financing for small companies of the tourism sector (Mypes) so that they can overcome the financial and economic problems generated by the state of emergency adopted in the face of the COVID-19 pandemic created by Emergency Decree No. 076-2020. FAE Tourism has a fund of S/ 200 million, granted through financial entities that were winners of the auctions carried out by COFIDE and is aimed at lodging establishments, interprovincial land passenger transport, tourist transport, travel agencies and tourism, restaurants, leisure activities, organization of conferences, conventions and events, tourist guidance, and production and marketing of handicrafts.

Thus, by virtue of Emergency Decree No. 091-2021, beneficial measures are established, such as the possibility that the first payment of the loan requested by micro and small tourism and craft companies be made within a period of 24 months. credits can be canceled up to 60 months. Also, the destination of the credit was extended, which will no longer be only for working capital, but for the acquisition of fixed assets, that is, useful goods for the company.

Ministerial Resolution No. 219-2021-MINCETUR was also published, approving the Procedure for Follow-up, Monitoring, Accountability and Evaluation of Results of the Strategy to Reactivate and Promote Tourism through the program "Guiding Tourism to Reactivation," which aims to establish the conditions for the granting of competitive subsidies in favor of tourist guides with the purpose of reactivating and promoting the tourist guide activity.

On the other hand, within the framework of the process of reactivation of tourist activity in Peru, the delivery of stamps called "Safe Travels" has continued being provided to providers of tourist services that comply with all the biosafety requirements and guarantee the services with all the sanitary provisions to face COVID-19 and from which

providers such as lodgings, artisan galleries, restaurants, travel agencies and official tourist guides are benefiting.

In addition to the provisions issued during 2021 as a result of the health emergency, in the first months of the year various campaigns and recognitions were launched that were intended to promote tourism in Peru.

By 2022, the Minister of Foreign Trade and Tourism stated that a series of initiatives are being worked on that will allow the reactivation of tourist activity in the various regions of the country, with the promotion of internal tourism being a priority for the Executive.

Likewise, the recent lifting of the curfew throughout the country represents a benefit for the tourism sector, since restaurants will finally be able to recover the sales issued during night hours, which represented up to 60% of monthly income. Notwithstanding this, it is necessary to eliminate the reduction in capacity in various establishments of the Biosafety Protocol approved by the Ministry of Health.

Finally, it is important to mention that Peru will be present at the 42nd edition of the International Tourism Fair - FITUR 2022 in order to position itself as a safe and ready destination for international travelers.

Sanitary protocols

Within the framework of the economic reactivation, the government established preventive measures to avoid the spread of COVID-19 in the various facilities where tourism and related activities are provided.

Among the approved protocols is the Sectorial Health Protocol against COVID-19 for categorized hotels, which seeks to protect the health of employees, clients and suppliers; in addition to strengthening surveillance, containment and response systems against the risk of spreading COVID-19.

Among the outstanding aspects contained in the Sectorial Health Protocol against COVID-19 for categorized hotels are as follows:

- The responsibilities and mandatory preventive health measures that the hotel staff must comply with are established.
- Sanitary processes for interaction with customers in areas such as reception, common areas, and food service that is only for guests are established.
- Cleaning and disinfection procedures for each area of the hotel (security, reception, lobby, elevators, stairs, corridors, housekeeping, laundry, warehouses and areas used by administrative staff) are established.
- Hotels that resume their services must implement their plan for surveillance, prevention and control of COVID-19 at work, according to the guidelines of the Ministry of Health.
- A reference framework that facilitates inspection is established.

Legal regime

Tourism in Peru until 2019 grew steadily due to the diversity of the tourist spots that Peru offers and the activities that can still be developed. Culture, archeology and nature are complemented by gastronomy and crafts to form a comprehensive tourist attraction.

The General Tourism Law (Law No. 29408) and its regulations, approved by Supreme Decree No. 003-2010-MINCETUR and modified by Supreme Decree No. 006-2021-MINCETUR, establish the basic principles for the development of tourism activity in the country, for the purposes of promoting, encouraging and regulating the sustainable development of tourism. However, because of the COVID-19 pandemic, Peruvian tourism has been severely affected by the closure of borders for passengers, national immobilization and the closure of tourist venues and related activities. It is estimated that 70% of the sector is closed or in undeclared insolvency.

In order to face this crisis that the tourism sector is going through, the government has issued a series of regulations that allow financing to the Mympes that are dedicated to this activity so that they can resume their activities. However, the future is still uncertain since, although the number of the vaccinated population is increasing and the disease is having an accurate prognosis, everything depends on the measures taken by the government, which does not have uniform criteria of opinion and whose measures are varied. Therefore, it is necessary for the government to announce economic measures that help alleviate or mitigate the situation, which, to date, it has not done.

The National Direction of Tourism aims to promote and coordinate the development and implementation of tourism projects carried out by local or regional governments or other public administrations. It recognizes the intention of the state to contribute to the process of national identity and integration, by promoting the development of the infrastructure and quality of tourism services, with the Ministry of Foreign Trade and Tourism (MINCETUR) as the national governing body, and it creates a tourism advisory committee composed of representatives of entities related to tourism (www.mincetur.gob.pe).

Pursuant to Supreme Decree No. 003-2007-MINCETUR, the Commission for the Promotion of Peruvian Exports and Tourism (PROMPERU) is now the entity that integrates the former Commission for the Promotion of Exports (PROMPEX) and the former Commission for the Promotion of Peru (PROMPERU), previously responsible for the promotion of tourism (<http://www.promperu.gob.pe>).

This institution is responsible for developing activities to promote exports and tourism, always at the service of exporting companies and tour operators, and is also responsible for promoting the image of Peru and its tourism.

On the other hand, the Ministry of Culture is the corresponding entity that protects, administers and promotes the cultural patrimony of the nation, as well as the contemporary cultural creation and the ethnic and cultural plurality (www.cultura.gob.pe); while the National Service of

Natural Areas Protected by the State (SERNANP) (www.sernanp.gob.pe) is in charge of protecting the historical and archaeological monuments, parks and nature reserves. The latter was created by Legislative Decree No. 1013 and replaced the former National Institute of Natural Resources (INRENA).

Also, companies that qualify as providers of tourism services fall within the scope of Law 29408, among which are travel and tourism agencies, lodging establishments, tourist guides, tourist transport services, casinos, restaurants and the like.

It is worth noting that Supreme Decree No. 022-91-ICTI-TUR declared of national interest the protection of all domestic or foreign tourists who individually or in an organized manner, stay or travel within the national territory.

It also promotes social and internal tourism by providing special rates to students, teachers and retirees, as well as by facilitating any kind of procedure in criminal and administrative matters.

Pursuant to these rules, the MINCETUR may propose, at its own initiative or at the request of a party, the declaration of tourist reserve zones regarding the places that are areas with evident tourism potential and merit special protection by the state. The qualification of the tourist reserve zone does not restrict the development of other economic activities, and allows taking advantage of the regulated use of the area for tourism, subject to compliance with the provisions contained within the MINCETUR Tourism Development Plan.

Meanwhile, the competent regional authorities in the Regional Bureau of Foreign Trade and Tourism of the regional governments, and the municipality of Lima, through its competent authority, are the entities responsible for monitoring compliance with the Regulation of Travel and Tourism Agencies (Supreme Decree No. 005-2020-MINCETUR) and for granting authorizations in accordance with the rule. This rule seeks to increase the formalization of companies to provide greater security to tourists and establishes that tourism companies must necessarily

register in the National Directory of Qualified Tourism Service Providers. With this new regulation, a badge will be implemented for those companies that are formalized and comply with the regulations so that tourists can easily identify them and have a more responsible use of tourist services. Likewise, this rule establishes the requirements and procedures for authorizing the provision of services by travel and tourism agencies; defines the concept of travel and tourism agencies; sets the conditions to be met for the provision of services; establishes the classification of agencies as retailer, wholesaler or tour operator; and specifies the obligation to submit a sworn statement detailing the meeting of minimum requirements.

The travel and tourism agencies are responsible for promoting national and international tourism, the hiring of tour guides and the chartering of transportation for tourist services, among others.

The National Chamber of Tourism of Peru (CANATUR), which brings together institutions, organizations, companies and individuals who perform activities related to tourism in Peru, contributes to the economic and social development of the country as a sustainable tourism destination by promoting internal and inbound tourism, responding to consultations and issuing opinions. It also organizes conferences, seminars and other events where various topics related to Peru's economic activity are analyzed (www.canatur.org).

Also relevant is Supreme Decree No. 001-2015-MINCETUR, or the Lodging Establishments Regulations, which the competent authorities in the Regional Bureaus of Foreign Trade and Tourism of the regional governments, and the municipality of Lima, through its competent authority, have been also tasked with enforcing. These authorities are empowered to grant the classification and categorization of establishments, monitor compliance with the requirements, and perform supervisory visits at will, among others.

These regulations provide in detail the minimum requirements to be met in order for the establishments to be classified and categorized as hotels, apart-hotels, hostels or refuges.

On 17 December 2018, the project of modifying the Lodging Establishments Regulations was published in the Institutional Portal of MINCETUR. During the term of 30 calendar days, the National Direction of Tourism will be in charge of receiving, processing, evaluating and consolidating the different proposals and opinions that are sent regarding such project in order to consider them for the elaboration of the final version of such norm.

The main changes that this project contemplates consist of regulating the qualification of the lodging establishments according to specifically pre-established criteria. On the other hand, it additionally covers issues related to the equipment and infrastructure requirements, among others.

The purpose of this project is to establish the administrative provisions governing accommodation and qualification establishments. This project will consider the particular conditions of location, market segmentation and personalized service provided, among other criteria. In that sense, the project stipulates minimum conditions, equipment and service conditions that lodging establishments should have.

On the other hand, this project considers new categories of lodging establishments such as the "boutique hotel," a qualification that corresponds to a lodging establishment with exclusively themed design and decoration; additionally, that the establishment is located in a building with high architectural value will also be considered. Boutique hotels should also offer personalized service and a minimum of six rooms. Legislative Decree No. 1329, published on 6 January 2017, created the project "Fondo Turismo Emprende," which promotes the creation, development and reinforcement of private undertakings related to the tourism activities. In this sense, financial aid and/or funding of the undertakings will be provided, in order to promote tourism diversification in Peru.

MINCETUR stated that this fund seeks to promote the development of tourism activity in Peru as a means to contribute to the economic growth and social development of the country.

By Decree of Urgency No. 076-2020, the financing of Turismo Empeña was approved, granting subsidies to the Mypes linked to the tourism sector for the development of innovation projects, technological adaptation, health, and the reactivation and reconversion of activities in the tourism sector.

Furthermore, Legislative Decree No. 1284 created the project "Fondo de Inversión Agua Segura," which pursues the improvement of sanitation services with the purpose of achieving sustainability of such services. Funding and investments in sanitation services will facilitate the extending of these services to places that did not have access to these services before. This rule — in between other activities — is of utmost importance for the tourism sector, since the lack of sanitation in any area will prevent the development of projects.

In turn, the National Building Regulations, approved by Supreme Decree No. 011-2006-VIVIENDA, include all the technical rules and lay down requirements for the construction and maintenance of buildings, regulating building construction for tourism purposes.

In addition, Law No. 28529 (Law on Tour Guides), as amended by Law No. 29408 (General Tourism Law), regulates the activity of tour guides, which is exercised by graduates of tourism courses and by tour guides who hold degrees awarded on behalf of the nation and are registered in the appropriate register. Likewise, on 15 May 2020, the Regulation of Travel and Tourism Agencies (Supreme Decree No. 005-2020-MINCETUR) was published.

Also important are the provisions of the Regulations of Lodging Establishments Qualifiers (Ministerial Resolution No. 151-2001-ITINCI/DM, 07/30/2001). This rule defines the functions and procedures for the assessment and designation of lodging establishment qualifiers, which have the role of issuing technical reports in connection with requests by lodging establishments for classified or categorized establishments status.

Supreme Decree No. 011-2019-MINCETUR approved a new regulation for restaurants, which aims to promote tourism activities and tourism development in Peru by adapting the rules of the previous regulations to administrative simplification measures. As in previous regulations, the competent authorities in the Regional Bureaus of Trade and Tourism of the regional governments, and the municipality of Lima through its competent authority, are responsible for monitoring compliance with the regulations in question, awarding the respective category to restaurants, as well as for performing relevant supervisory visits, among others. In addition, these regulations list the requirements, conditions, and general and specific characteristics necessary to be categorized as restaurants, with one to five stars, depending, on the service they provide.

By Supreme Decree No. 025011-20042019-MINCETUR, the Regulation for the categorization and qualification of restaurants in restaurants was approved, which aims to promote tourism activities and tourism development in Peru by adopting the rules of the previous regulations to administrative simplification measures.

Also, Supreme Decree No. 017-2009-MTC approved the National Regulations for Transportation Administration to regulate ground transportation service in general, including the terrestrial tourist transportation service to promote its development within the framework of free competition, meet the travel needs of the users in terms of safety and quality, and protect the environment and the health of the community as a whole. These regulations extend to companies providing tourism services that develop ground transportation activities, and to travel and tourism agencies that transport users in vehicles they themselves own.

On 20 December 2007, Law No. 29164, the Law on the Promotion of Sustainable Development of Tourism Services in Real Estate belonging to the National Cultural Heritage, was promulgated. The purpose of the law is to establish conditions that favor and promote the development of private investment for the recovery, restoration, conservation,

enhancement and sustainable development of real estate belonging to the National Cultural Heritage, through concessions for the provision of tourism services in the areas that for this purpose may be determined by the Ministry of Culture.

This rule establishes conditions that will ensure that real estate heritage is not damaged and that the granting tourism services concessions are made within the framework of the constitution and existing rules that ensure their protection. Tourism services for which concessions are feasible are lodgings and restaurants with a minimum rating of four stars, and complementarily, the sale of handicrafts and souvenirs. This rule limits the initiatives to real estate that are suitable for this investment and will generate high-impact tourism.

The National Institute of Culture, in coordination with MINCETUR, is responsible for publishing the list of real estate suitable for the development of this type of project, as prescribed by law. Through the publication of Law 29092, Law No. 29164 was amended and its scope defined, giving regional governments the ability to deliver a list of archaeological sites that are not to be affected by the law, upon agreement of the council.

There are certain tax benefits in relation to tourism that are designed to encourage inbound tourism by exempting the accommodation and food services purchased locally by non-domiciled individuals from VAT. These food services must be rendered in the very establishment providing the lodging services.

The following provisions are in force: (i) the provision of lodging services, including food, to non-domiciled individuals is considered an export (Legislative Decree No. 919); (ii) regulations have been issued for the implementation of tax benefits for lodging establishments that provide services to non-domiciled individuals (Supreme Decree No. 122-2001-EF); (iii) rules have been issued relating to the special registration of lodging establishments (Resolution 082-2001-SUNAT); and (iv) Law No. 29646 was enacted, which amended Article 33° of the

consolidated text of the Law of Value Added Tax and Excise Tax, section 4 of which refers to the provision of lodging services.

The Executive Branch enacted new tax measures designed to encourage and facilitate investment in the long run, and generate a more equitable tax framework.

The anticipated recovery of VAT is a regime by which the financial cost of investment is decreased, allowing for the refund of VAT paid on purchases of goods and services. Its main objective is to not increase financing costs for projects that require large amounts of investment (a minimum of USD 5 million) and have long-lasting pre-operational stages (minimum of two years). To date, the regime was applicable to only some economic activities and was found scattered in various legal provisions (mainly mining, hydrocarbons, gas, etc.).

The tax measures make the Special Regime of Advanced Recovery of VAT applicable to all economic activities involving significant investments and extensive pre-operational periods, including sectors that were already undergoing the anticipated recovery of VAT regime (mining, hydrocarbons and gas). In addition, it organizes and unifies its legal treatment in a single regulatory body, gathering the regulation of sector rules, and then standardizing their conditions and scope.

There are various agreements and conventions concluded between the Peruvian state and other states that are intended to facilitate and promote cooperation in tourism. Among the countries that have signed agreements for cooperation in tourism are: China, Costa Rica, Dominican Republic, El Salvador, Guatemala, Hungary, Italy, Mexico, Panama, Portugal, Romania and Thailand. Signed as well was an Agreement for the Promotion of South American Tourism by members of the Latin American Integration Association (ALADI), including Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Uruguay and Venezuela.

The member countries of the Andean Community (Bolivia, Peru, Colombia and Ecuador) have legislation that allows their nationals to

be admitted to and enter any of those countries, as tourists, by the mere presentation of one of the national identification documents currently valid in the issuing country and without the requirement of a consular visa.

Furthermore, there are agreements that allow the free movement of persons (as tourists) between Peru and Brazil, and Peru and Chile.

It is also noteworthy that Peru is a member of the Asia-Pacific Economic Cooperation (APEC), composed of 21 different economies. These are Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taipei China, Thailand, US and Vietnam. APEC mainly aims to achieve the liberalization and facilitation of trade and investment for developed economies, and in 2020 for developing economies. It works to create a safe environment for the efficient movement of goods, services and people in the region.

Eight years after Peru hosted APEC for the first time, it again played host, to facilitate — in between other goals — the implementation of the 2030 Agenda for Sustainable Development.

Moreover, APEC aims to reach the objective with regard to trade facilitation and investment by using the APEC Strategies for the Strengthening Development of Quality for 2020, in order to better focus on the importance of pursuing the quality development that was established in the Development Strategy of APEC in 2010, which took place in Yokohama, Japan.

Peru is also part of the Pacific Alliance, composed of four economies: Chile, Mexico, Colombia and Peru. The Pacific Alliance is a mechanism of political, economic and integration articulation that seeks to promote growth and greater competitiveness of the four economies through the free circulation of goods, services, capital and people.

Within the technical groups that integrate this alliance is "tourism," which tends to strengthen and develop cooperation relations based on the design of initiatives that seek to increase tourist flows in the Pacific Alliance.

It is important to highlight the significance that the recognition of Machu Picchu as one of the new Seven Wonders of the World has had and continues to have, given that it brought and will undoubtedly continue to attract a large number of tourists to the country. Although this tourist center was closed due to COVID-19, on 1 November 2020, after months of not receiving visitors, the sanctuary reopened its doors with a ceremony that showed the various cultural expressions of the country.

It is important to mention that, during the ceremony, the Safe Travels seal was delivered to the destination "Machu Picchu," which involves strict compliance with biosafety protocols, from the arrival of visitors to the Aguas Calientes train station, as well as in restaurants, lodgings and transportation, to the entrance to the Llaqta de Machu Picchu and inside the historic sanctuary.

Regionally, the Project for Reorganization and Rehabilitation of the Vilcanota Valley will promote sustainable development initiatives in that area, which has about 100,000 inhabitants, through the support of cultural preservation, tourism development, urban infrastructure, environmental protection, and local social and economic development. The project is being implemented jointly with UNESCO, the National Geographic Society, the World Monuments Fund, NGOs and bilateral donors.

A particular purpose of the project is to assist the government of Peru in its efforts to improve the management of tourism in the Historic Sanctuary of Machu Picchu (SHMP) and preserve the status of Machu Picchu as a world heritage site.

Meanwhile, on 2 March 2017, the Peruvian government inaugurated the Cable Car System in Kuélap, an important pre-inca archaeological

site located in the province of Luya, Amazonas, built by the Chachapoyas archaeological culture.

This is the first cable car system in Peru that promotes tourism in Amazonas. Through these cable cars, tourists have a means of transportation that facilitate the viewing of the Fortress of Kuelap, which will contribute to the consolidation of the northeastern tourist circuit of Peru. To this end, the Ministry of Foreign Trade and Tourism (MINCETUR) invested, through the executing entity Plan Copesco Nacional, approximately PEN 711 million in its construction.

On 24 January 2020, through Emergency Decree No. 021-2020, the Peruvian government authorized the economic transfer of MINCETUR to the Ministry of Culture to carry out research and tourism recovery works in the Fortress of Kuelap. In this sense, MINCETUR indicated that PEN 8.5 million was to be allocated for the recovery of the tourist attraction and its adjacent areas, for which the Inter-institutional Cooperation Agreement was signed between the Ministry of Culture and the Ministry of Foreign Trade and Tourism for the implementation of Recovery of Tourist Resources - Kuelap Restoration.

Currently, the National COPESCO Plan, Executing Unit of MINCETUR has completed the prevention and conservation work at the main entrance of the Fortress of Kuelap (Access 1) and has complied with handing over said area to the Ministry of Culture in order to continue with the studies and comprehensive work required in this important archaeological site.

On the other hand, in relation to the recognition of tourist destinations, the MINCETUR granted Hierarchy 4 to the Amazon River, which is the highest distinction that a tourist resource in the world can have, and that in Peru is bestowed only on Machu Picchu and the Nazca Lines. With this, MINCETUR seeks to define strategies and prioritize actions to develop the tourism potential of the Amazon River and its surroundings within the framework of the implementation of the Loreto Regional Strategic Tourism Plan (PERTUR), a plan that is the result of a process

led by the Government Loreto Regional, in cooperation with private sector and public sector entities.

Likewise, MINCETUR will invest more than PEN 12 million to improve the tourist infrastructure of the Yanayacu-Pucate river basin, the sector most visited by tourists in Pacaya Samiria. The work was scheduled for early 2021 through the National Copesco Plan.

On 13 January 2020, the Guidelines for the Development of Social Tourism in Peru, approved by Ministerial Resolution No. 005-2020-Mincetur, was published. Through the new "social tourism" concept, the government seeks to let all Peruvians enjoy the services and tourist attractions that the country has by implementing means and instruments through which participation is facilitated for children, teenagers, young people, students with disabilities, elderly people, workers, rural and native communities, and other human groups that for physical, economic, social or cultural reasons have limited access to tourism activities. These people are considered the target audience of social tourism.

Social tourism is based on four pillars that guide its development and the achievement of its objectives: it is inclusive because it favors and ensures access to tourist activities of all citizens without exception; it is participatory because it seeks both the population and the tourist to be active participants; it is accessible because it conceives tourism as an activity that must be enjoyed by all regardless of any limitations; and it is innovative because it seeks to incorporate creative, competitive and sustainable proposals throughout the tourism value chain.

Likewise, social tourism has seven lines of action that are aligned to the achievement of its objectives. The MINCETUR said that these guidelines will provide the regulatory and methodological framework for the orderly and efficient development of social tourism in Peru, and they are aimed at the three levels of government (national, regional and local).

Lines of action of social tourism:

1. Research and planning

This is oriented toward the development of action strategies for the design, implementation and development of social tourism through active research and planning of the actors involved. Studies of the real and potential demand of social tourism will be carried out, the gaps between supply and demand of social tourism will be identified and analyzed, and plans and projects will be developed.

2. Design and development of accessible products

This line of action aims to promote the design, development, adaptation and improvement of innovative, safe, accessible and high quality tourism products and services appropriate to the characteristics and needs of the target audience of Social Tourism. Circulation and sensitization.

This is oriented toward the generation of awareness and positive attitudes in the actors involved (public, private and society in general) about the policies, scope and benefits of social tourism. In this sense, circulation campaigns will be carried out to publicize the mechanisms, instruments and activities developed.

3. Capacity development

This is oriented toward the formation and specialized training of actors linked to social tourism for the design and development of tourism products with accessibility conditions and adequate attention to the target audience.

4. Facilitation of demand opportunities

This seeks to generate mechanisms, tools and spaces for the approach of the target audience to the offer of accessible, safe and quality tourism products and services, for which facilitation events will be held.

5. Institutionalization

This line of action is aimed at consolidating Social Tourism as a sector policy at the three levels of government, reinforcing the role of MINCETUR as a recognized and efficient institution that contributes to the sustainable development of tourism activity.

6. Monitoring and evaluation

This line of action is aimed at monitoring and evaluating planned activities, as well as measuring the results and impacts generated within the framework of social tourism, allowing for its continuous improvement.

For the development of social tourism, the government will resort to financing mechanisms that involve the participation of the public and private sectors, both local and international. The management and search for economic resources may be carried out through agreements, social responsibility commitments, strategic alliances and other tools.

Transportation infrastructure

Peru has a public-private partnership law and a regulatory framework that promote investment in transportation infrastructure through concessions to private operators. The operation of railways, airports and roads can be granted for up to 60 years through the concessions system. Likewise, the concession of ports may be granted for up to 30 years.

According to the last presentation of the portfolio made in November, 2021 by Proinversión, there are four transportation projects with the possibility of being awarded this year.¹⁷

Under this regime, ownership of the infrastructure remains with the state and is not transferred to private operators, which receive a right

¹⁷ https://www.investinperu.pe/RepositorioAPS/0/2/JER/PPT_PROYECTOS/2021/PPT-noviembre-15-11-Esp.pdf

to its economic exploitation (for example, the collection of tolls or in the case of co-financed projects, the payments made by the state to finance part of the investment).

In self-funded project contracts, the concessionaire is expected to assume the obligation of making specific investments and/or of paying the state.

Concession contracts must include the principles governing the rates and at the end of the concession, the operator must return the infrastructure to the state with all the improvements made. Access to transportation infrastructure considered essential facilities is mandatory under the regulations in force. An exception to this rule is new port infrastructure that can be granted in concession under a regime of exclusivity in the provision of services.

Examples of transportation infrastructure projects are the Jorge Chavez International Airport; the first and second group of regional airports; Lima Metro Line 2; the Matarani Port; the Road Network No. 5 - Ancón-Huacho-Pativilca highway; the Cusco-Machu Picchu and Huancayo -Huancavelica Railway Projects (South and Central Railway Projects, respectively); and the Paita Port, Lima Expresa, Rutas de Lima (fast lanes in Lima City).

The Ministry of Transport and Communications grants national infrastructure concessions and authorizations for the provision of public transportation services, and this activity is regulated by the Supervisory Body of Investment in Public Transport Infrastructure (**OSITRAN**) (www.ositran.gob.pe). On the other hand, projects for regional or local governments are granted by such entities.

Water resources

Water Law No. 29338 and its regulations, approved by Supreme Decree No. 001-2010-AG, aims to regulate the use and management of water resources, which includes surface and ground continental waters as well as assets related thereto. Under these regulations,

water resources are property of the nation and may not be privately owned. In addition, they constitute the regulatory framework for water use rights (permits, authorizations or water use license) and regulate the respective administrative proceedings.

The use of water resources to be obtained from a natural source is contingent upon its availability and must be carried out efficiently. Regardless of the project's productive sector, a water use right (usually a water use license) must be obtained from decentralized bodies of the National Water Authority (ANA) prior to the execution of the corresponding technical studies and in accordance with the procedure established for this purpose.

The ANA is the governing body of the National Water Resource Management System and it is authorized to enact provisions and establish procedures for the integrated and multisectorial management of water resources. The ANA has nationwide presence through decentralized entities called water management authorities (Autoridades Administrativas del Agua or AAA). Furthermore, within the structure of the ANA are local authorities that depend on the AAA, called local water managements (Autoridades Locales del Agua or ALA).



FREQUENTLY ASKED QUESTIONS

1. What guarantees does the legal framework recognize for investors, whether domestic or foreign?

- The right to have contractual terms that cannot be modified by laws or other provisions of any kind
- Free access to all productive sectors
- Right to nondiscrimination between Peruvians and foreigners, or between private and public companies
- The right to receive all the profits or dividends that they are entitled to
- Right to use a more favorable exchange rate available in the exchange market
- Subscribe legal stability agreements with the state

2. What are the specific guarantees in favor of the foreign investor?

- Right to the remittance of profits and capital using the most favorable exchange rate available in the exchange market
- Free availability of foreign exchange

3. Are there investment stability agreements?

Yes. Investors and companies receiving investment can sign legal stability agreements with the state, which will stabilize, among others, the income tax regime.

With regard to foreign investors, the stabilization also includes the right to the free availability of foreign exchange and the right to freely remit profits, dividends and capital.

This type of agreement, signed between PROINVERSION on behalf of the Peruvian state, and the investors, guarantee to the private

companies that subscribe to them the permanence of certain legal regimes, although these are subject to modification.

4. What is the advantage of having a legal stability agreement?

This is a law-contract, which cannot be modified unilaterally by the state even if new laws on foreign investment were enacted.

5. Are there limits to foreign investment in Peru?

There is a limitation in the Peruvian Constitution, which is that foreigners cannot own or possess assets located in the areas within 50 kilometers of the Peruvian border. There may be some exceptions to this, but only with the express authorization by supreme decree.

In addition, there are limits or restrictions in certain strategic sectors, such as marine transportation, security and the manufacture of weapons for armed use.

6. Are there limits to remit profits abroad or repatriate the capital invested?

No. The foreign investor may remit profits and capital at any time.

7. Is it possible to waive the legal stability agreements?

Yes, in which case the investor will be governed by ordinary law.

8. Is there a deadline to meet the committed investment in legal stability agreements?

Yes. The general rule is that the term is two years from the signing of the agreement.

In the case of state concessions to develop public infrastructure and public services, the deadlines and requirements of the investment referred to in the respective concession contracts will be applied, and not the general two-year term.

9. Are there restrictions on hiring foreigners?

Foreign workers are subject to the same legislation as Peruvian workers.

When hiring foreign personnel, it is necessary to execute a written employment contract according to certain formalities and limitations (i.e., its term shall not exceed three years, which could be extended for similar periods).

The Labor Authority has created a virtual system of registry of foreign employment agreements. Therefore, these contracts will now be considered automatically approved once they have been so registered.

Foreign employees should not exceed 20% of the total workforce and their combined salaries should not exceed 30% of the total company payroll.

The applicable law provides for exceptions to those restrictions, such as high-level executives of a new company, high-level executives going through corporate restructuring, qualified professionals or technicians. Those restrictions do not apply to: (i) citizens whose spouse, ancestors, descendants and siblings are Peruvian; (ii) citizens whose countries of origin have entered into an international dual nationality or a labor reciprocity treaty.

Foreign employees may only begin their services once the Ministry of Labor has automatically approved the contract, and when the adequate migratory status (resident visa) has been obtained. Foreign employees may not be included in the payroll until they fulfill both requirements.

Special rules apply to Spanish citizens and to citizens from countries of the Andean Community and MERCOSUR.

10. Is there a merger control regime?

In June 2021, a new law that implements a general merger control regimen, which applies to all sectors, went into effect. This law provides that certain business transactions exceeding the established thresholds will be subject to prior approval of the Commission for the Defense of Free Competition of INDECOPI.

In the prior approval procedure, the free competition authority examines if the business concentration may reduce, harm or prevent competition, in which case, it may subject the approval to conditions or prohibit the transaction.

11. Is intellectual property protected?

Patents, marks, geographical indications (including appellations of origin), copyright and related rights, and other elements of intellectual property are protected in Peru by various treaties and international conventions on the subject, as well as by the Andean Community and national legislation. Intellectual property rights are registered in Peru at INDECOPI.

12. Has Peru executed bilateral investment agreements and/or regional/bilateral free trade agreements?

Peru is a founding member of the World Trade Organization (**WTO**). Consequently, the WTO rules on antidumping, subsidies and countervailing measures, as well as on liberalization of markets, technical barriers to trade, among others, are applicable in the country.

Similarly, Peru is currently a member of CAN, which is formed by Peru, Bolivia, Ecuador and Colombia. The following are state parties

to the Andean Community: Chile,¹⁸ Brazil, Argentina, Uruguay and Paraguay.

Following the relief program agreed in the Andean Community, trade of goods between Bolivia, Colombia, Ecuador and Peru enjoys total tariff relief, constituting a free trade area.¹⁹ Peru joined the program according to a relief schedule established by Decision 414 of the Andean Community.

On the other hand, Peru is a state party to the agreement between countries in South America called MERCOSUR. That agreement has been entered into by Argentina, Brazil, Paraguay, Uruguay, Chile, Ecuador, Colombia and Bolivia.

Peru has signed agreements with other countries in Latin America, under the rules of the Latin American Integration Association (ALADI) and has entered into trade agreements with Mercosur together with other members of the Andean Community.

In addition, Peru has executed investment protection agreements that are currently in force, either in the form of a bilateral investment agreement or through an investment protection chapter contained in a free trade agreement (FTA). The most important investment treaties executed by Peru are with the following:

- | | | |
|---------------|---------------|---------------------------|
| 1. Germany | 16. France | 30. Portugal |
| 2. Argentina | 17. Holland | 31. UK |
| 3. Australia* | 18. Honduras* | 32. Czech Republic. |
| 4. Belgium | 19. Italy | 33. Republic of
China* |

¹⁸ On 20 September 2006, Chile formalized its entry as party to this sub-regional agreement.

¹⁹ However, from January 2009, Ecuador has implemented safeguards for certain products.

- | | | |
|--------------------------|--------------------|------------------------|
| 5. Bolivia | 20. Iceland* | 34. Republic of Korea* |
| 6. Canada* | 21. Japan* | 35. Romania |
| 7. Chile * | 22. Liechtenstein* | 36. Sweden* |
| 8. Colombia | 23. Luxembourg | 37. Singapore* |
| 9. Costa Rica* | 24. Malaysia | 38. *Switzerland |
| 10. Cuba* | 25. Mexico* | 39. Thailand* |
| 11. Denmark | 26. Norway* | 40. Venezuela* |
| 12. Ecuador | 27. Netherlands | |
| 13. El Salvador | 28. Panama* | |
| 14. Spain United States* | 29. Paraguay | |
| 15. Finland | | |

The countries marked with an asterisk have an investment chapter in an FTA entered into with Peru.²⁰

Listed below are the current FTAs of Peru with our business partners:

- MERCOSUR (since 2 January 2006)
- United States of America (since 1 February 2009)
- Chile (since 1 March 2009)
- Canada (since 1 August 2009)
- Cuba (since 5 October 2000)

²⁰ Peru has executed a trade agreement with the European Union; this agreement includes an investment chapter with the member countries of the agreement.

- Singapore (since 1 August 2009)
- People's Republic of China (since 1 March 2010)
- European Free Trade Association (**EFTA**) (Norway, Liechtenstein and Switzerland since 1 July 2011; Iceland since 1 October 2011)
- South Korea (since 1 August 2011)
- Thailand (since 31 December 2011)
- Mexico (since 1 February 2012)
- Japan (since 1 March 2012)
- Panama (since 1 May 2012)
- European Union (since 1 March 2013)
- Costa Rica (since 1 June 2013)
- Venezuela (since 1 August 2013)
- Pacific Alliance Agreement (since 1 May 2016)
- Honduras (since 1 January 2017)
- Australia (since 11 February 2020)
- United Kingdom (since 31 December 2020)²¹
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership - CPTPP (since 19 September 2021)

The main areas covered by the abovementioned trade agreements are: customs affairs and trade facilitation; technical barriers to trade;

²¹ On 31 December 2020, the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Peru entered into force, incorporating by reference the Trade Agreement with the European Union, in order to ensure the operability of the new Agreement and the continuity of the trade relationship between both parties as a consequence of Brexit.

sanitary and phytosanitary measures; trade protection; services, establishments and capital movement; public procurement; intellectual property; competition; dispute resolution, horizontal and institutional affairs; trade and sustainable development; technical assistance and skill building; among other matters.

Negotiations with Guatemala, Brazil, and amendments of Pacific Alliance are finished but those treaties are not in force.

Finally, treaties with El Salvador, India, Turkey, (TISA - Trade in Services Agreement) and Doha Development Program are still under negotiation.

13. Has Peru executed double tax treaties?

Peru has double tax treaties currently in force with Brazil, Canada, Chile, Korea, Mexico, Portugal, Switzerland, and with the member countries of the Andean Community (i.e., Bolivia, Colombia and Ecuador).

In December 2020, the Peruvian Congress ratified the double tax treaty signed with Japan. As a result, the double tax treaty entered into force on 29 January 2021. Thus, it is applicable from 1 January 2022.

Notes

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