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Doing Business in Peru 2023



Doing Business in Peru

2023

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Introduction



Juan Carlos de los Heros
Managing Partner

Peru has great growth potential, despite the difficult economic, social and political situation it has been facing. We are confident that the economy will grow by 2023 and we hope that the current government will be able to initiate a process to solve the serious social and political problems we are suffering. To this end, it is essential to boost public investment and promote or facilitate private investment.

In this context, our Firm has updated the Legal Guide to Doing Business in Peru 2023 to provide investors with useful information on the legal and regulatory framework they need to know in order to do business in the country. The Guide focuses on the relevant aspects of legislation, the legal system, safeguards and other important nuances of local regulations for investors to conduct and maintain successful activities in Peru.



ECONOMIC OVERVIEW

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Overview

In the last year, Peruvian economy has gone through different turning points caused mainly by international inflation and the political and social crisis. The scenario generated an increase in prices of products of the basic family basket and a decrease in the projection of economic growth in 2022.

According to the National Institute of Statistics and Informatics (INEI), the Peruvian economy has grown less than 2.9% by the end of last year, registering an inflation of more than 8%, supported by the 15.21% increase in the price of food and beverages; 11.30% in transport and communications; 9.49% in restaurants and hotels; 4.23% in accommodation, water, electricity, gas and other fuels; and 6.66% in various other goods and services.

However, despite the economic situation, positive figures were recorded in the following economic values:

- **Gross domestic product (GDP)** – Over the past 10 years, GDP has grown at an average annual rate of 3.1%.
- **Net international reserves (NIR)** – In the last 10 years, NIR showed a sustained positive evolution. Thus, in 2022, NIR reached USD 71.8 billion.
- **Exports** – In the last 10 years, exports grew at an average annual rate of 3.1%, registering USD 59.5 billion in 2022.
- **Imports** – Imports in Peru registered an average annual growth of 2.7% in the last 10 years, registering USD 51.7 million in 2022.

Source: National Institute of Statistics and Informatics (2023)

The scenario is still one of uncertainty. The dismissal of Pedro Castillo for his attempt to dissolve the Congress generated a wave of protests in different regions of the country, demanding the resignation of

current President Dina Boluarte, new elections and the convocation of a constituent assembly for the elaboration of a new Constitution.

Since the beginning of the political conflict, there have been roadblocks, stoppages, damage to public and private properties, and closure of airports and tourist sites due to clashes between the police and protesters. Thus, according to the Ombudsman's Office, the country has suffered 58 deaths and more than 1,798 injuries as of 1 February 2023, while economic losses amount to PEN 3 billion according to the National Society of Industries (SNI).

Economic policy

The Central Reserve Bank of Peru's (BCRP) policies focused on achieving fiscal balance, containing inflation and maintaining the value of the sol, an economic model shielded in the Constitution. Stability in the Ministry of Economy and Finance (MEF) has allowed the economy in Peru to have a sustained growth despite the political instability that is experienced in the country.

- **Activity of the BCRP.** The autonomy of the BCRP, provided by the Political Constitution of 1993, and the sound administration of monetary policy are fundamental parts of Peru's economic equilibrium. The continuity of the bank's director, Julio Velarde, promoted a sense of confidence in the Peruvian economy in the markets. Thus, despite the changes in the government, the BCRP has been able to counteract inflation and accumulate more than USD 74 million in international reserves, one of the highest in Latin America as a percentage of GDP that the bank can mobilize if necessary and avoid the devaluation of the sol. In addition, this financial fund makes Peru one of the countries with the lowest public debt in the region.
- **Function of the Political Constitution.** The current Magna Carta laid the foundations of the Peruvian economic model to reduce poverty levels in the country and promote investment. Thus, for

example, Article 62 prevents signed contracts from being modified by subsequent laws, providing protection to foreign companies investing in Peru and guaranteeing the unchanged continuity of their operations.

- **Role of the MEF.** Since the administration of former president Pedro Castillo, the MEF has presented a low turnover compared to other ministries, maintaining continuity in the strategies of economic reactivation and investment promotion. The current incumbent, Alex Contreras, maintains a policy of reducing uncertainty and stabilizing international rating agencies, based on the strength of the government's financial statements and the expectation that Peruvian institutions and policies in general will contain fiscal erosion and economic strength, despite the pressure of the political and social environment.

Peru's foreign trade

According to the latest report of the Research Center for Global Economics and Business (CIEN) of the Exporters Association (Adex), Peru has more than 7,600 exporting companies, of which approximately 94% are MSMEs from different sectors and regions of the country, and among which companies of the agribusiness sector (2,087), clothing (1,901), metalworking (1,791) and various items (1,665) stand out.

On the other hand, in 2022, the most exported traditional products were those associated with **mining** such as copper (29.5%), gold (15.5%), zinc (4.2%) and molybdenum (1.6%), and with **agro-industry** such as fishmeal (2.9%) and coffee (1.9%) In contrast, the largest non-traditional exports were blueberries (2.2%), grapes (1.6%) and avocados (1.6%).

The main exporting countries can be seen on the following map:



*Información a noviembre.
Fuente: Superintendencia Nacional de Aduanas y de Administración Tributaria.

In the global economy, Peruvian companies face multiple challenges due to external market conditions and internal factors. Therefore, to promote its internationalization, the Ministry of Foreign Trade and Tourism (MINCETUR) presented the National Strategic Export Plan (PENX 2025) that recognizes that Peru should base its productivity and competitiveness strategies on existing relative advantages, ongoing public plans and policies, and an interaction with public-private actors.

Incoterms

Effective from 1 January 2020, the International Chamber of Commerce's Incoterms rules govern the main changes in customs and how companies go about their international sales transactions. There is an orientation regarding the purchase and sale contracts, as follows:

- At what time and place the transfer of risks on the goods takes place, from the seller to the buyer

- The place of delivery of the goods
- Who hires and pays for transportation and insurance expenses
- What documentation each of the parties has to process

Political situation

On 7 December 2022, former president Pedro Castillo was dismissed by the Congress of the Republic after attempting a failed state self-coup, reforming the national justice system and establishing an exceptional emergency government. Castillo's decision was probably designed to avoid being dismissed by lawmakers who were debating his impeachment and vacancy in the face of complaints filed by the Attorney General's Office for crimes of corruption, aggravated collusion, bribery and influence peddling.

After not receiving the support of the armed forces, Castillo tried to flee the country through a request for political asylum to the Mexican embassy. However, the request was unsuccessful, and he was arrested an hour after delivering the address to the nation announcing the measures that ended up removing him from office. The former president is currently in pretrial detention.

By constitutional order, the then vice president of the Republic, Dina Boluarte, took over as head of state, becoming the first female president of Peru. However, after Boluarte's inauguration, a series of protests broke out in different regions of the country demanding Castillo's release, the closure of Congress, general elections and the convocation of a constituent assembly.

At the international level, there are six countries that reject and do not recognize the presidency of Dina Boluarte: Mexico, Bolivia, Colombia, Chile, Honduras and Argentina. Given this, the Ministry of Foreign Affairs sent a memorandum to diplomatic missions abroad in which they asked for an adequate work on the institutional image of Peru, as well as to clearly communicate the political and social situation that

the country is going through to reverse the fallacious narrative that has been imposed as a result of disinformation.

Due to the conflict, the reaction on the part of the Executive Branch was to announce general elections for April 2024 instead of April 2026 as initially scheduled. However, due to the continuity of the protests, a bill was presented to bring the elections forward to October 2023. Despite the legislative initiatives presented and the constant demands of the demonstrations, the Plenary of the Congress rejected on 2 February the opinion regarding the constitutional reform for the advancement of general elections and the referendum for convening a constituent assembly. If President Boluarte resigns or Congress vacates her due to the social crisis, the board of directors would remain; according to the constitutional succession process, the new head of state would be the current president of Congress, José Williams. This scenario would force a general election in 2023, with the same political parties and the rules in force at the moment.

On the other hand, it is clear that part of the protesting population does not know the constitutional mechanisms and processes, explaining why they describe President Boluarte as a usurper. Whether the interim president would be the current president of the Congress or a member of Congress of a similar tendency, it is unclear whether this sector of the population will continue to protest, given the levels of disapproval of the parliament.

Violence between citizens and authorities will continue if dialog and the achievement of complex reforms are not achieved, as well as a consensus between the executive and legislative branches to carry out political initiatives that guarantee attention to the demands of the population without altering the constitutional order. The future of President Boluarte is conditioned to the management of the conflicts that are being experienced today and that require immediate responses.

Country rating and outlook 2023

Amid the governance and economic strength of the country, Moody's (a risk rating agency) changed on 31 January Peru's risk rating outlook (Baa1) from stable to negative, both in local and foreign currency in the long term. This change was due to the social conflicts that have intensified threats and instability. Likewise, the agency reported that the Baa1 rating reflects Moody's position that sovereign solvency remains anchored by the strength of the government's financial statements and the expectation that Peruvian institutions and policies in general will contain fiscal erosion and promote economic strength, despite the pressure of the political and social environment.

Faced with this, Alex Contreras, the minister of economy and finance, reaffirmed that Peru has a strong and solid economy despite the millions of losses caused by the demonstrations in the country. He said that his office will continue coordinating with the other rating agencies to comment on the recovery plan and exit route to improve the political situation, so that in the coming months any source generating uncertainty is eliminated and the outlook from stable to negative is reversed.

Finally, the country's economic growth projection was 2.2% at the beginning of January. The strengthening of governance indicators, in particular those related to political institutions, corruption and the informal economy, is expected to improve sovereign solvency.



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

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What is new for investors?

According to the National Plan for Sustainable Infrastructure for Competitiveness 2022-2025, during this period, the government will execute 26 PPPs worth USD 19.5 billion in investments and nine projects in assets worth USD 3.6 billion in investments. These projects are mainly focused on the health, transportation and water and sanitation sectors.¹

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 will 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.

¹<https://spj.minjus.gob.pe/Graficos/Peru/2022/Octubre/24/DS-242-2022-EF.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 should 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 above-mentioned 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. In September 2022, Supreme Decree No. 240-2018-EF was modified by Supreme Decree 211-2022-EF to strengthen the Ministry of Economy's role in the evaluation and adjudication of PPPs.

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. In addition, risks and resources are distributed, preferably privately, 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 cofinancing 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 there is no

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 must 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 following: the concession for the construction and operation of the Transmantaro national electrical interconnection line; the concession for the telecommunications project 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 following: 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 construction of the Port Terminal of Salaverry in the province of Trujillo and exploration 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.

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 hydrocarbon 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. 081-2022-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.

In March 2022, Law No. 29230 was modified through Legislative Decree No. 1534 expanding the public entities that can access this mechanism and its scope. These modifications became effective in September 2022 with the approval of its new regulation through Supreme Decree No. 210-2022-EF. According to the new legal framework, this mechanism can be accessed by all 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.

Furthermore, since September 2022, government entities can execute through this mechanism minor works that do not require a technical file, as well as specific interventions in functioning assets, and projects that exclusively involve operation and/or maintenance activities for a period of five years extendable by agreement between the parties.

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 fulfill 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 MEF 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 494 projects have been executed through this modality.²

² <https://www.investinperu.pe/es/oxi/estadisticas-de-oxi/proyectos-concluidos-y-adjudicados>



COMPANY STRUCTURES FOR ECONOMIC ACTIVITIES

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Corporate laws of interest

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 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 in 2022 concerning corporate regulation that all companies must take into consideration 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 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.

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 must 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 that 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 above-mentioned 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 will 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 must 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 should 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 Superintendencia del Mercado de Valores.

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 the following: (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 should be appropriately apostilled instead.

Closed simplified joint stock corporation

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 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 to transfer these to a subsidiary company)

- Spin-off (the segregation of assets and liabilities, and/or business lines, 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.

Data protection

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, the Habeas Data process was regulated by Law No. 26301 (later replaced by Law No. 28237 – Constitutional Procedural Code) in 1994. 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.

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.



PUBLIC PROCUREMENT

Public procurement

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Public procurement

The purchase by the government 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 Decree No. 377-2019-EF and Supreme Decree No. 168-2020-EF (RLCE). This legal framework applies to all government entities, including state-owned companies subject to its scope of application, including exceptions.

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.

To request registration before the Registry, the company must have a representative who has faculties registered with Peru’s Registry

Office. They must also have sufficient capacity to tender 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 500,000 (works) and USD 111,000 (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 120,000. 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 111,000, and lower than USD 500,000 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, secret or military secret hiring, and duly justified personal services.

Electronic reverse auction

This is a selection procedure to acquire goods or services and construction consulting, previously standardized by the competent authority (Peru's Purchasing Center or PERUCOMPRAS), where the competition is based solely on the lowest price offered by bidders.

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 must 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. 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 must 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 will 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 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 60,000, 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 366,000. 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 should be mandatorily resolved, pursuant to the LCE, through conciliation³ and/or institutional arbitration, as agreed by the parties.

For contracts for the execution of works amounting to approximately more than USD 5.5 million, 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 will be binding on the parties.

Guarantees

Offering a guarantee to be a bidder is not necessary.

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 will 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 must be paid back on a monthly basis and the guarantee must be valid until full payment has been made.

³ In the Peruvian legal system, conciliation is a mandatory step before filing for arbitration.

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 a financial institution overseen by the Superintendency of Banking and Insurance of Peru, or a foreign bank included in the list of the BCRP.

* In procurement regimes other than the LCE, entities carry out selection procedures with different rules.



TAX REGIME

Tax regime

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What is coming in the following years

The Peruvian tax regime has introduced a new tax applicable to online gaming and sports betting that are conducted through digital platforms. Indeed, on August 2022, Law 31557 was enacted introducing a 12% tax over the difference between the net monthly revenues and the digital platform's maintenance expenses.

For this purpose, net monthly revenues would be determined by deducting the refunds and prizes awarded during the month.

The effective date of the new tax depends on the date when the regulations are published.

On December 2022, the pre-regulation was published to receive feedback from the public and operators.

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, Japan and with the member countries of the Andean Community (i.e., Bolivia, Colombia and Ecuador).

Single taxpayer's registration or tax ID

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.

For the fiscal year 2023, entities with more than 300 tax units (approx. USD 390,000) in net income in the previous tax year must file the ultimate beneficial owner's (UBO) in May 2023.

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.

Since 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 (approx. USD 3.04 million, insurance and banking companies, and other specific exceptions).

Expenses arising from transactions directly or indirectly carried out with residents in tax havens are not 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 carryforward period was extended. This exceptional extension only applied to tax losses generated during fiscal year 2020 and to taxpayers that chose the tax loss carryforward 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 will 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 will 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 exempted from income tax until 31 December 2023, 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. However, for the fiscal year 2023, this exemption is only applicable for individuals and only up to 100 tax units (approx. USD 130,000). Any excess over this threshold is taxable in Peru.

Capital gains derived from the transfer of securities in general are also exempt from income tax until 31 December 2023, 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. Also, in this case, for the fiscal year 2023, the exemption is only applicable for individuals and only up to 100 tax units (approx. USD 130,000). Any excess over this threshold is taxable in Peru.

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 will be 6.25%. Companies incorporated in Peru will 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).⁴

The indirect sale of shares of a Peruvian company described above will 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 should 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 should 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 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, a 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) will be made at market value.

⁴ Specific valuation methods will apply 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.

Since 2023, new rules regarding the market value of shares issued by Peruvian companies where they are directly transferred were incorporated.

Listed Peruvian shares will be the stock exchange price.

If the company shares are not traded in a stock exchange, the discounted cash flow (DCF) method will apply. A DCF valuation will be required if the entity under analysis anticipates future cash flows or has certain items, such as licenses, authorizations or intangibles, that make future cash flows a possibility. The DCF method will not apply in the following cases: (i) the transferor owns less than 5% of the Peruvian entity's shares; or (ii) the net income of the Peruvian entity accrued in the previous tax year does not exceed 1,700 Peruvian tax units (approx. USD 2 million).

The equity value: This method applies if there is no predictable expectation of future cash flows. Specific rules apply for determining the equity value for certain scenarios.

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 will 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, will 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 will 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.

New depreciation rates apply as from 1 January 2023. In the case of buildings, the maximum depreciation rate is 33.33% if the construction has started as from 1 January 2023 and at least 80% of the construction is completed by 31 December 2024. The 33.33% rate will not apply if the assets have been totally or partially built before 1 January 2023. For electric vehicles, the maximum annual rate is 50%, if the vehicles were acquired in 2023 and 2024.

Companies incorporated in Peru are 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 should 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 2%, except for certain economic sectors — such as mining, oil and gas — in which tax stability extends to other taxes.

By means of Law No. 31110, new tax benefits were made available for the agriculture sector. This new law entered into 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 onward: 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 above-mentioned 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 advance 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 exportation, 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 hydrocarbon 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
- 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).

Peruvian banking system for tax purposes

The financial transactions tax (FTT) (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.”

Legislative Decree 1529 also requires that the following payments equal to or more than 1 tax unit (approx. USD 1,302) must be made using the Peruvian banking system:

- Transfers of real estate rights or property
- Transfers of vehicles (ships, aircraft or land vehicles)
- A cash contribution for the incorporation of a company, as well as any capital increase or capital reduction of a company

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 must result in expenses, costs or credits not being deductible for the assessment of taxable income for income tax purposes.

If the payment is made to a third party, the taxpayer must communicate the appointment of such third party to the Peruvian tax authority before making the payment.

Financial transactions tax

FTT 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 FTT.

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.

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

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 advance 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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Teleworking

In January 2023, Law No. 31572 (Telework Law) was published. This law replaces the regulation of remote work, approved on a temporary basis in the framework of COVID-19.

The main characteristics are the following:

- (i) It is voluntary, except in the case of special situations that merit it to be performed in a mandatory manner.
- (ii) It can be performed within the national territory or outside it.
- (iii) It can be temporary or permanent.
- (iv) It can be for the whole working day or partially.
- (v) It is established in favor of the vulnerable population.
- (vi) The employer must train employees in the use of computer applications, information security and health and safety in teleworking.
- (vii) The employer must pay a compensation for the costs of teleworking assumed by the employee, unless the parties agree otherwise.

On 22 December 2022, the draft of the Regulation of the Telework Law was published for the public to comment. However, it has not been approved to date.

COVID-19 preventive measures in the workplace

It is still mandatory that employers that will restart activities at their premises 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) Encourage vaccination in the workplace. However, this is not mandatory.
- (iv) Guarantee ventilated work environments. If natural ventilation is not available, mechanical ventilation should be implemented.
- (v) 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.
- (vi) Have health personnel in accordance with the number of workers in the company.
- (vii) Take the employees' temperature upon entering the workplace to identify people with temperatures over 37.5 C°.
- (viii) Home isolation for COVID-19 cases is for a maximum of 10 days, counted from the start of symptoms or from the molecular test (asymptomatic cases). Once this period has elapsed, the employee may be discharged by the treating physician. The occupational physician determines whether it is appropriate to return to work.
- (ix) The use of face masks is not mandatory in the workplace, except for public transportation vehicles and medical personnel.

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 the amount of time 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. The following 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. It is possible to work on Sundays and have a rest day 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.

If an employee works on a legal holiday without taking a substitute day off, the employer should 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). The prenatal leave may be deferred, partially or totally, and accumulated with the post-natal period, at the decision of the pregnant employee. Such decision must be communicated to the employer no less than two months before the probable date of birth.

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 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 is 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 should pay directly to its employees, as an extraordinary bonus, a figure amounting to 9% of the contribution to the Social Security for Health (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. 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 (that percentage is currently 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. In the case of the agriculture industry, 5% is distributed between 2021 and 2023, 7.5% between 2024 and 2026 and 10% from 2027 onward.

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 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 a minimum of seven meters and 50 square centimeters, 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, sink, 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 for Health

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 should 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% should be allocated to such entity, and the remaining 2.25% should be remitted to the EPS.

In no case may this credit exceed the following amounts:

- (i) The assigned by the employer to finance health coverage in the corresponding month
- (ii) 10% of the tax unit multiplied by the number of employees who received EPS coverage

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 should 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 should be paid upon receipt of the assistance. In addition, 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 should 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 must 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 34,650 in 2023) is made from the employee's income. Notwithstanding this, domiciled employees may be deducted an additional amount (up to 3 UIT (PEN 14,850)) 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 24,750); at 14% of net income for amounts higher than 5 tax units to 20 tax units (PEN 99,000); at 17% of net income for amounts higher than 20 tax units to 35 tax units (PEN 173,250); at 20% of net income for amounts higher than 35 tax units to 45 tax units (PEN 222,750); 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 between the employee and employer
- (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 should 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 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 the following: (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, among others.

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 are exclusively dedicated to provide this type of services and must be registered in the National Registry of Companies and Entities that Perform Labor Intermediation Activities – RENEEL.

These companies must provide bail to the client company 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 should 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. However, it is not possible to outsource activities that are part of the core business.

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 should receive instructions and sanctions from, and be supervised only by, the outsourcing company.)

The requirements mentioned above should be jointly complied with, because noncompliance with of 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 must 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 and for up to one year after the end of the displacement, but only with respect to those that have been established only by law. 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 No. 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 end of the State of Health Emergency ordered by the government in response to the COVID-19 pandemic (until 25 February 2023), 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 the following: (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 (“**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 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 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 multiclass 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 should always be placed on what may be most favorable to the author.

Copyright in Peru is governed mainly by the following: 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

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Merger control

With the entry into force (in June 2021) of Law No. 31112 and its regulations, approved by Supreme Decree No. 039-2021-PCM, a general merger control regime applicable to all economic sectors and markets was established. This legal framework 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.

Furthermore, there are limitations to business concentrations for the energy sector, either vertically and/or horizontally, requiring the authorization of the antitrust authority (the Commission for the Defense of Free Competition of INDECOPI). For these cases, the requirements and thresholds established in Law No. 31112, the law that establishes the prior control of business concentration operations, are applicable.

Protection of free and fair competition

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.



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. There are 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 behaviour. The voluntary disclosure of infringements, the category of the operator, and incentive regimes were eliminated.⁵

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 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

⁵ However, guidelines have been issued for the application of facts and circumstances (aggravating and mitigating circumstances) in certain customs infringements to mitigate customs fines and administrative penalties.

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 should 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. The government should also ensure an equivalent treatment between similar domestic and foreign products. This will apply to final goods, raw materials and inputs of any kind, and 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 and SUNAT. It has complied with all the conditions and requirements according to the General Customs Law, the OEA Certification Law and related customs procedures, and it 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 related with sanitary and phytosanitary matters is actually in force (DIGESA and SENASA), for importers and/or exporters of restricted goods. To have access to these flexibilities under OEA 2.0, operators must fulfill additional requirements of the regular OEA program.

Customs procedures

Customs clearance is governed by the General Customs Law⁶ and its regulations.⁷ 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 provided amendments on obligations, new requirements for authorizations, audits for operators through categories, changes on terms and a new system of customs sanctions.

Likewise, in 2019, the Regulation of the General Customs Law was modified, providing for several modifications, including 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 authorities request goods declarations to be submitted under the following customs clearance processes:

- **Advance clearance:**⁸ This allows the importer to import goods that are released within a period of no more than 48 hours from their arrival. This procedure requires the electronic transmission of transportation documents and the prior presentation of a financial guarantee to the customs administration that 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 continuing the customs clearance process,

⁶ Legislative Decree No. 1053, and its amendments (Legislative Decree No. 1235) and Legislative Decree No. 1433

⁷ Supreme Decree No. 010-2009-EF and its amendments. The last amendment was under by Supreme Decree No. 367-2019-EF.

⁸ 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.

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. This is 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 importation 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.

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 not significant for the country's economy, may be processed under any of the following:

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

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

- **Simplified export declaration:** In this process, clearance for the final exportation of goods that in quantity, quality, species, use, origin or value, have no commercial purpose, or if they do, but are not significant for the country's economy, is facilitated. This clearance is processed under a simplified declaration. The maximum value 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 any non-tariff requirements. It also identifies the applicable rule of origin under the free trade agreements signed by Peru to determine whether or not the goods qualify 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 following:

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 Favored 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 that are classified as fines and administrative sanctions, as follows: (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 a 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 (i.e., authorization, 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 conducted 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. The following are among the main modifications: (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 have been noticed in the commercial invoice presented as support for the declared value, among others.

Conditions for importing and exporting

Owners, consignees and consignors must obtain a valid single taxpayers' registration number (RUC) before they can carry out trade operations, such as importing and exporting. Peruvian natural persons can import and export goods using a national identity document, and foreign nationals can do the same using a foreign identity card, passport or safe conduct. Simplified customs clearances are allowed according to the value 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 or air waybill 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. In exceptional

circumstances, 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 importation.

As a general rule, imports are subject to 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. Finally, VAT perception is also applied to certain importations.

On the other hand, the main documents required by the administration for the definitive exportation 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, ballot sale or any other proof of the 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, e.g., transport document duly endorsed or special power of attorney
- Any other document required for exportation 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:

- (i) **Importation for consumption regime:** This is the most common type of customs regime and involves the definitive entry of foreign goods into the 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 should be considered nationalized when clearance is granted by the customs authorities.
- (ii) **Definitive exportation regime:** This customs regime enables the exit of national or nationalized goods from the Peruvian customs territory to be used or consumed abroad. It is not subject to any taxes. Goods should be shipped within a time limit equal to or greater than 30 calendar days⁹ 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:

- (i) **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%.

⁹ 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.

- (ii) **Temporary importation for outward processing regime:** This regime allows the importation of certain goods into 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 goods that will be exported within 24 months after their entry. In addition, goods used directly in the production process, 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.
- (iii) **Reposition of merchandise in franchise tariff regime:** This regime allows for the importation — without payment of customs duties and applicable taxes on imports — of goods equivalent to nationalized goods that 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 manufacturing, they will benefit from the reposition of merchandise in the franchise tariff. 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 should 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:

- (i) **Temporary admission of goods for re-exportation in the same condition regime:** Formerly known as temporary importation, this regime allows the entry of certain goods, with the suspension of the 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 of their nature, within a period not

exceeding 18 months (for the packaging of exported goods, an additional six-month period may be requested).

- (ii) **Customs warehouse:** This customs regime allows for the storage of goods arriving at the customs territory in a customs warehouse facility for a particular 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 the 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,¹⁰ Brazil, Argentina, Uruguay and Paraguay.

Following the relief program as agreed within the Andean Community, the trade of goods between Bolivia, Colombia, Ecuador and Peru enjoys total tariff relief, constituting a free trade area.¹¹ Peru joined the program according to a relief schedule established by Decision 414 of the Andean Community.

¹⁰ On 20 September 2006, Chile formalized its entry as party to this sub-regional agreement.

¹¹ However, from January 2009, Ecuador has implemented safeguards for certain products.

On the other hand, Peru is a party to the agreement between countries in South America called MERCOSUR. This 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 countries:

- | | | |
|----------------|--------------------|---------------------------|
| 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* | |

- | | | |
|--------------------------|-----------------|----------------|
| 12. Ecuador | 27. Netherlands | 40. Venezuela* |
| 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.¹²

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)

¹² Peru has executed a trade agreement with the European Union that includes an investment chapter with member countries of the agreement.

- 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 13 December 2020)¹³
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (since 19 September 2021)

The main areas covered by the above-mentioned trade agreements are as follows: 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; and technical assistance and skills building, among other matters.

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

¹³ 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, to ensure the operability of the new agreement and the continuity of the trade relationship between both parties as a consequence of Brexit.

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



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 updated by the Ministry of Health. It was also established that all public and private pharmaceutical establishments are obligated to report all data (stocks, sales prices, imported units, and units produced) regarding the list of essential goods for the management and treatment of COVID-19 to the Peruvian Observatory of Pharmaceutical Products.

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 for 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. This is because its acquisition and distribution is a public need and it is 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 COVID-19 pandemic.

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 once for a maximum period of six months.

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

However, laboratories and drugstores established in Peru may request this conditional registration, as well as the importation and marketing of the Products. To date, the Peruvian government is only directly negotiating for the acquisition of vaccines with the laboratories, with the participation of the private sector not yet allowed.

As of March 2021, the vaccines authorized by the health authority, DIGEMID, correspond to a conditional health registration of foreign biological products and an exceptional authorization 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, there are other mechanisms that offer parallel alternatives to the conditional health registration. In this regard, the health regulations provide for exceptional health authorization for the importation, 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.

To request these exceptional authorizations for health emergencies, it is not necessary to be established as 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.

Currently, DIGEMID has been providing facilities 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, importing and using vaccines due to a public health situation are also exceptionally authorized.

With respect to surgical respirators for medical use (N95, KN95, FFP2, FFP3 or their equivalents) that could be imported without marketing approval until before the pandemic and during 2020, as of 1 January 2021, marketing approval must be obtained, as provided by DIGEMID in mid-2020.

Regulated products

In this category, we have found that health regulations are 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.

Since the end of 2019, Peru has had an established regulatory framework for the use, research, production, importation and commercialization of cannabis and its derivatives for only medicinal and therapeutic use.

Pharmaceutical products, health products and medical devices

Regarding 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 and 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 the following: 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, importation, storage, distribution, sale, promotion, dispensing, delivery and use of said products or devices under the terms and conditions of approval.

However, this marketing approval should only be granted 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 medical devices establishments), who will 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 will 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 granting of the health authorization will be subject to prior inspection to verify that the legal requirements are duly met.

Another relevant factor that may ensure the granting of a health authorization to operate as a drugstore is having a warehouse, which can be owned or outsourced (hiring 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. However, in practice, 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. The 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, the marketing approval is in force for seven years.

Generic medicines

In October 2019, the Urgency Decree declaring the Medicines, Biological Products and Medical Devices an essential part of the right to health, and providing measures to guarantee its 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 is the obligation of companies 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 Ministry of Health constantly updates the list of generic essential drugs.

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 these activities require 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 products); and (ii) natural products derived from cannabis for its use in health.

Furthermore, it was specified that cannabis derivatives for medicinal use will be sold upon verification from 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 only be prescribed by a physician.

Meanwhile, the following are specified regarding licenses:

- The license for scientific research is granted to: (i) health research universities and institutes that carry out scientific research in health; and (ii) agricultural research universities and institutes that carry out scientific research in cannabis and its derivatives for medicinal use. This license includes all activities needed to comply with the research protocol, such as the importation, storage, cultivation, harvesting, propagation, transportation and manufacture of derivatives.
- The 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 a six-month treatment at most. Likewise, patients must be registered in the corresponding registry of patients.

- The license for 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 the 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 entity commercializing the pharmaceutical preparation containing a concentration of cannabidiol (CBD) at 48.752 milligrams/milliliters and tetrahydrocannabinol (THC) at 0.449 milligrams/milliliters, in a volume of 10 milliliters. 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 the following: 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.

With regard to food and beverages, a marketing approval is only required for industrially processed food and beverages that are marketed within the country. For these purposes, “industrially processed food or beverages” refers to end-products intended for human consumption obtained by physically, chemically or biologically transforming raw materials of plant, animal or mineral origin, and includes food additives.

In this regard, no marketing approval is required for food and beverages in their natural state (either 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 manufacturer. For these purposes, a “set of products” means products manufactured by the same manufacturer, having the same quality composition of the basic ingredients that categorizes 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.

With regard to 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 communicated in writing at least seven business days before the said change takes place or is effected. No information is to be included regarding the type of change. As this is a general rule, it may include 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 state 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. However, in practice, 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.



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Agriculture and agro-industry

2021 developments — New Agriculture Promotion Law

On 6 December 2020, the Peruvian government enacted Law No. 31110 (Law on the Agrarian Labor Regimen and Incentives for the Agriculture and Irrigation, Agro-Exporter and Agro-Industrial Sectors), effectively repealing Law No. 27360 (Law that approves the Promotion Regulations for the Agriculture Sector).

There has not been a controversial change of regulations such as this one for a very long time. The enactment of Law No. 31110 raised excessive expectations and pressure on the part of the population, which rapidly became a media spectacle. Social protests, political interests and the absence of a technical debate have been the defining elements of this legal reform.

Despite the foregoing, Law No. 31110 has failed to reflect the complex reality and diversity of the Agro-Exporter and Agro-Industrial Sectors, as well as failing to satisfy the interest of the business associations and the sector's employees. It is expected that complementary provisions to the law, resulting from a technical debate and through the participation of all relevant parties, will be approved soon.

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 being of national interest and common well-being. For this purpose, the state ensures free access to land ownership, as well as any rights with which to benefit from land ownership.¹⁴

¹⁴ Except for property ownership restrictions for foreigners within the 50 kilometer territory of the Peruvian borders.

Likewise, investments in agro-industrial activities are not subject to legal or administrative requirements, restricting the free establishment, operation, setup and marketing of products derived from them. Agricultural product prices are determined by free market conditions.

New Agriculture Promotion Law

According to Law No. 31110, the beneficiaries of this regime are the individuals or companies that do the following: (i) develop/breed; and (ii) conduct agro-industrial activities, as long as they mainly use agricultural products outside the province of Lima and the Constitutional Province of Callao. 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 benefits granted to the beneficiaries 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%	<p>For natural or legal persons whose net income does not exceed 1,700 UIT in the taxable year:</p> <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

		2031 and forward	General regime rate										
		<p>For natural or legal persons whose net income exceeds 1,700 UIT in the taxable 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	Only expenses duly supported with invoices may be deducted.	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).											

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

<p>Early VAT recovery</p>	<p>An investment agreement must be executed with the state for amounts of no less than USD 5 million.</p>	<p>Special Regime for Early Recovery of the General Sales Tax approved by Legislative Decree 973 and its amendments.</p> <p>This regime enables the recovery of the VAT applicable to the local importation and/or acquisition of new capital goods, new intermediate goods, services and construction agreements executed during the pre-operative stage.</p>										
<p>Prepayments</p>	<p>The taxpayer entity pays to SUNAT, as prepayment, the amount resulting from applying the greater amount between the following to the monthly net incomes: (i) dividing Income Tax calculated in the previous fiscal year between the net incomes of</p>	<p>The taxpayers required to make prepayments under the general regime must make the following payments:</p> <table border="1" data-bbox="580 938 967 1428"> <thead> <tr> <th data-bbox="580 938 773 1114">Taxpayers under the following agricultural income tax rates</th> <th data-bbox="773 938 967 1114">Applicable rates to the prepayments</th> </tr> </thead> <tbody> <tr> <td data-bbox="580 1114 773 1182">15%</td> <td data-bbox="773 1114 967 1182">0.8%</td> </tr> <tr> <td data-bbox="580 1182 773 1251">20%</td> <td data-bbox="773 1182 967 1251">1.0%</td> </tr> <tr> <td data-bbox="580 1251 773 1319">25%</td> <td data-bbox="773 1251 967 1319">1.3%</td> </tr> <tr> <td data-bbox="580 1319 773 1428">Rate of the general regime</td> <td data-bbox="773 1319 967 1428">1.5%</td> </tr> </tbody> </table>	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%
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

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 will pay to SUNAT, as a monthly payment on account, the amount resulting from applying 1.5%

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

	to net incomes earned in that month.	
Recruitment	Indefinite-term contracts and, as an exception, fixed-term contracts, as provided by law	<p>Indefinite- or definite-term contracts. The term of definite-term contracts will depend on the activity that is to be carried out (season).</p> <p>The hiring of an agricultural employee for small terms that, within a period of one year, exceeds two months, gives them the right to be hired preferably every time the employer hires employees in the same cultivation line.</p> <p>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 preferential right to be hired by the employer in the following seasons.</p> <p>If an agricultural employee works for several employers under seasonal or similar contracts, covering a full year in related companies, they are entitled to the preferential right to be hired by the</p>

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

		<p>same companies in the following seasons.</p> <p>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.</p>
Minimum wage (RMV)	PEN 930 per month or PEN 31 per day, provided that an average of more than four hours is worked per day	<p>The basic remuneration cannot be less than the minimum wage (PEN 930).</p> <p>The daily compensation (RD) is equal to the sum of the basic compensation, plus bonuses, plus CTS, divided by 30.</p>
Independence Day holidays and Christmas bonuses	A monthly remuneration in July and in December, as applicable	<p>Included in the minimum wage</p> <p>The employee can choose to receive the bonuses in regular instalments, without them being prorated in the daily remuneration.</p>
Severance pay (CTS)	Semi-annual deposits in May and November of each year, in a	<p>Included in the minimum wage</p> <p>The employee can choose to receive the CTS in regular</p>

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

	bank or financial institution designated by the workers, consisting of 9.72% of their remuneration — including bonuses — earned in each semester	instalments, without them being prorated in the daily remuneration.
Vacation	30 calendar days paid per year of service or applicable fraction	<p>Proportional to what corresponds to the thirty-day vacation per year of services, depending on the type of contract</p> <p>Vacations that are earned but not taken are calculated on the basis of the days worked and correspond to 8.33% of the basic salary.</p> <p>This amount must be paid at the end of the employment relationship or at the end of a season or intermittence.</p>
Family allowance	This is applicable to workers whose remuneration is not adjusted by	This is applicable to workers whose remuneration is not adjusted by collective bargaining. It entails the right to 10% of the minimum wage (at present PEN 93) if the worker

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

	collective bargaining. It entails the right to 10% of the minimum wage (at present PEN 93) if the worker has one or more children under 18 years.	has one or more children under 18 years.
Compensation for wrongful dismissal	One-and-a-half monthly remunerations for each complete year of service, with a limit of 12 remunerations.	Equivalent to 45 daily remunerations for each complete year of service, with a limit of 360 daily remunerations
Employer's contribution to EsSalud	9% of the monthly remuneration for each worker	Employers with less than 100 workers, or with sales of less than 1,700 UIT: <ul style="list-style-type: none"> • From 2021 to 2027: 6% of the basic remuneration • From 2028 onward: 9% of the basic remuneration

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

		Employers with 100 or more workers, or with sales greater than 1,700 UIT: <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 onward: 9% of the basic remuneration
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Any other item not included in this chart will be adjusted for the agricultural system in the same manner as it is adjusted in the general system.

The labor and social security system of the agricultural sector does not apply to administrative staff performing duties in the provinces of Lima and El Callao.

Banking, insurance and finance

Banking and insurance

Certain amendments have been introduced into the banking regulation, particularly in Law No. 26702 (General Law of the Financial System and the Insurance System and Organic Law of the Banking and Insurance Superintendence) (“**General Law**”), among which the following stand out: (i) the creation of the concept of “Credit Company” (Empresa de Crédito) as a company of the financial system, whose activities are focused on granting financing with its own capital resources (thus “replacing” the Small and Micro Enterprise

Development Entity (EDPYME)¹⁵); (ii) the possibility for companies of the financial system that do not capture funds from the public to open, transfer and close branches, agencies and special offices without authorization from the Superintendence of Banking, Insurance and Pension Fund Administrators; and, (iii) the possibility for companies of the financial system to digitally carry out all the operations they are authorized to perform.

The rules applicable to companies in the financial system and insurance system are found the General Law. The General Law establishes the regulatory and supervisory framework that companies operating in the financial and insurance systems are subject to, as well as companies carrying out activities related or complementary to their corporate purpose.

General regime

Foreign investments in companies and their subsidiaries in the financial and insurance system that are authorized to operate in Peru are treated as domestic capital subjects, where appropriate, with regard to 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 system.

¹⁵ EDPYMEs have until 30 April 2023 to carry out the necessary corporate and registry actions to change their legal name to credit companies.

In Peru, approval from the SBS is required to carry out activities involving the collection of money from the public. Likewise, companies that want to carry out the 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 a branch of a foreign bank.

Representatives are designated by foreign financial companies to promote business with companies of a similar nature operating in Peru 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, except those rates related to consumer loans, low-cost consumer loans and loans for small and micro-

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.

enterprises.¹⁷ In addition, interest rates, commissions and expenses for crowdfunding operations, financing through mutual funds, trusts, investment funds whose securities have been placed by a public offer, and public offers of securities are freely determined. Similarly, companies of the insurance system freely determine the terms and conditions of insurance policies, and 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 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 the settlement of disputes arising between them to a foreign court or arbitration, whether locally or internationally.

With regard to the 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

¹⁷ In accordance with Instruction No. 0008-2021-BCRP, maximum rates of conventional compensatory and moratorium interest applicable to the operations of the companies of the financial system in their portfolios of consumer loans, low amount consumer loans (equal to or less than 2 tax units - UIT) and loans for small and micro companies were set.

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, commissions, bonuses and any other additional amounts paid to foreign beneficiaries beyond the interest agreed on will be considered interest.

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

Fintech

Although Peru does not have a law that generally regulates fintech activity (as is the case, for example, in Mexico), this has not prevented this activity from growing consistently in Peru in recent years. Since Peru is a country with low rates of financial inclusion and low penetration of the insurance sector, fintech activity has great growth potential. During the last few years, this activity has grown as a consequence of the outbreak of COVID-19, which generated a greater use of virtual channels for financial transactions and, as a result, changes in the way people access and use financial services.

According to the Financial Inclusion Indicators Report of the SBS, as of June 2022, there has been a significant increase in the use of virtual channels since December 2019 (e.g., mobile banking, telephone banking, internet payments, etc.). During this period, transactions made through virtual banking almost tripled, from 43.8 million in December 2019 to 159 million in June 2022.

All of the above is evidence that the user of financial services has strongly adopted the use of virtual channels, a circumstance that, added to the low rates of financial inclusion, generates opportunities for growth in fintech activity, which apply new technologies to financial, insurance and investment activities, with the ability to reach sectors of the population that have so far been underserved by traditional financial services.

General regime

Fintech activities are generally not subject to regulation and there are no major obstacles for a fintech company to enter the Peruvian market. In fact, the regulatory and business environment in Peru could be considered quite favorable for fintech companies.

In this regard, it is important to point out that the regulation is only applicable to those fintech companies that intend to carry out activities that the General Law or the Securities Market Law reserve exclusively for entities authorized by the SBS and the Superintendencia del Mercado de Valores (SMV), respectively. This is without prejudice to the fact that the SBS may allow the temporary performance of any operation or activity through novel models, being able to grant exceptions to the regulation applicable to natural or legal persons performing such activities.

In this sense, depending on the activity that a fintech company performs (e.g., factoring, financial leasing, crowdfunding, insurance, etc.), it may be subject to regulation by the SBS or the SMV. In the particular case of factoring and leasing activities, this regulation will apply whenever the fintech company exceeds the thresholds established by the SBS.

Likewise, certain activities (such as financing in which there is no financial intermediation or currency exchange), although not regulated, require the company performing these activities to register with the SBS to comply with the applicable regulations on the prevention of money laundering and financing of terrorism, in accordance with the relevant regulations.

Finally, fintech companies that process personal data or carry out the cross-border flow of personal data must observe (as any other company) the provisions contained in the PDPL and its regulations.

New developments in the regulatory framework for fintech companies

During 2021 and 2022, several regulations were published that have an impact on the activities carried out by fintech companies, including the following: (i) the Regulations for the activity of Participative Financial Financing and its Management Companies (Superintendent's Resolution No. 045-2021-SMV/02); (ii) the Regulation for the Temporary Performance of Activities in Novel Models (SBS Resolution No. 2429-2021); and (iii) the Regulation for the Interoperability of Payment Services Provided by Payment Providers, Agreements and Systems (Circular No. 0024-2022-BCRP). The main novelties brought by these new regulations are summarized below:

- Through the publication of the Regulation of the Financial Participatory Financing activity and its Management Companies on 20 May 2021, the regulation of the so-called financial crowdfunding in Peru was completed, by regulating the provisions established in 2020 under Title IV of Emergency Decree No. 013-2020.

This regulation establishes the procedure through which the SMV authorizes the organization and operation of financial crowdfunding platform management companies, establishes the prudential requirements of such entities, delimits the scope of their services and operation, establishes their obligations and responsibilities, and sets the maximum limits of funding per project and investment per investor, among others.

As of 31 December 2022, the SMV has granted operating authorization to two management companies: (i) Afluente Peru Sociedad Administradora de Plataforma de Financiamiento Participativo Financiero S.A.C. and (ii) Inversiones.IO Peru Sociedad Administradora de Financiamiento Participativo

Financiero S.A.C. Both companies provide their services under the loan modality.

- The Regulation for the temporary performance of activities in novel models published on 20 August 2021, which came into force on 1 February 2022, allows the SBS to exercise the faculties granted to it in 2020 by Emergency Decree No. 013-2020, which permitted the SBS to grant temporary exceptions to regulations applicable to individuals or legal entities that intend to operate through novel models, under the supervision of such entity (regulatory sandbox).

This regulation is applicable, among others, to the companies indicated in articles 16 and 17 of the General Law (e.g. banking companies, financial companies, savings banks, specialized companies or companies of complementary and related services), and even to those entities included in said articles that, although not yet obtaining an operating authorization, already have an organizational authorization. Its main purpose is to allow these companies to request temporary authorization from the SBS to carry out pilot tests of activities considered novel models for which they do not have authorization, and in relation to which the SBS may relax regulatory requirements, if necessary. It should be emphasized that the regulation foresees the possibility that, as a result of the pilot tests, amendments to current regulations may be proposed to facilitate the implementation of the respective new models, thus favoring innovation.

- The Interoperability Regulation for Payment Services Provided by Payment Providers, Agreements and Systems, published on 7 October 2022, is part of an effort by the BCRP to promote competitiveness and improve user experience regarding the use of a digital means of payment. Thus, this regulation establishes the obligation of the entities that manage the following payment services to achieve the interoperability of their services: (i) digital wallets, (ii) immediate payment functionalities embedded in mobile

banking applications and (iii) immediate transfer services in mobile banking applications; without prejudice that the BCRP may extend its application to other payment services. To this end, the BCRP has established that the implementation of interoperability will be carried out progressively and in phases, notwithstanding the fact that the newly incorporated entities must comply with this regulation from the beginning.

Likewise, this regulation establishes the obligation of the entities registered in the Central Bank's Registry of QR Code Payment Service Providers to include the necessary information and mechanisms in their products or services to guarantee the interoperability of the QR Code Payment Service.

Electricity and hydrocarbons

Electricity

In 2022, the Ministry of Energy and Mines published a bill to amend Law No. 28832 (Law to Ensure the Efficient Development of Power Generation).

One of the objectives of this bill is to promote the use of renewable energy resources to diversify the energy matrix. Therefore, there has been a proposal to allow the execution of power purchase agreements (PPAs) for capacity, energy or both.¹⁸

Another important modification focuses on the complementary services market. In this sense, the Ministry of Energy and Mines has proposed modifying the current definition of complementary services, so that they can be provided with technologies other than generation units, such as storage systems.

¹⁸ As explained below, since the regulation recognizes low (or any) firm capacity to non-conventional RER technologies (wind and solar), these technologies cannot compete with other generators in the PPA market.

On the other hand, the Ministry of Energy and Mines has proposed establishing new bidding modalities for distribution companies. In general terms, these companies will be allowed to purchase blocks of energy and establish their capacity and/or energy requirements.

Promotion of energy storage systems

In Peru, complementary services are provided through generation units, preventing other technologies from providing these services. However, OSINERGMIN has prepared a bill to regulate the provision of Complementary Services through storage systems.

General regime

The approval of the Electricity Concessions Law (“**Decree Law No. 25844**”) in November 1992 put an end to the restrictions on private investments 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 kilowatts), transmission (when this affects state property or easements) and distribution (above 500 kilowatts), concessions are required. In the case of thermal generation (with an installed capacity that is greater than 500 kilowatts), 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 resources (biomass, wind, solar, geothermal, tidal and hydraulic — in the latter case, when the installed capacity does not exceed 20 MW) (RERs). Thus, it stipulates that the electricity generated from these resources will have priority in the daily dispatch, for which it will 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 above-mentioned regulation and to foster investment in these technologies, since 2009 to date, four auctions for RERs 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.

To date, to execute PPAs, the generators must have firm capacity and energy. Since the regulation recognizes non-conventional RER technologies as having low firm capacity, these technologies cannot compete with other power generators in the PPA market.

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 the Law to Ensure the Efficient Development of Electric Power Generation, of four sub-committees: one for generators, one for distributors, one for transmitters and one for 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.

Decree Law No. 25844 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 kilowatts have the status of “regulated clients.” On the other hand, users whose maximum annual demand in each supply point is at least 2,500 kilowatts have the status of “free clients.” Finally, users whose maximum annual demand in each supply point is at least 200 kilowatts and up to 2,500 kilowatts are entitled to choose between being regulated clients or free clients.

Likewise, regulated clients whose maximum monthly demand exceeds 2,500 kilowatts must maintain this 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, 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 the anticipation of no 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 known as the 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.

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 this 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 electricity plant. For this purpose, the global annual depreciation rate will be no higher than 20%. This 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 returns the VAT paid on acquisitions needed for the development of the project to the company 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 must not be less than USD 5 million.

Hydrocarbons

Although to date the necessary political consensus for the modification of Law No. 26221 (Organic Hydrocarbons Law) has not been achieved, 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 an economic impact for 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 to ensure the continuity of the Peruvian oil and gas supply chain, which was 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 can 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 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 that are 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 agreements. For example, a contractor can import its supplies that are exclusively required for exploration activities, exempted from any tax.

The holders of license agreements have free access to 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 this term, for the purposes of each agreement. In this sense, the 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 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 this surcharge.

There is a special benefit for investments in hydrocarbons that 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. This benefit was extended until 31 December 2022.

Contractors that carry out activities in more than one contract or block, or that 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 via pipelines and natural gas distribution by grid are considered public utilities. Therefore, the granting of a concession is required to carry out these 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 has 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 noteworthy:

- 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, promoting 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, which declares, as being 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, a provision has been made to promote the mass 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 as being 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 an 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 a 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 Labor Organization, the Law on the Right to Prior Consultation with 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, the purpose of which is to collect data on the queries and needs of local people so the project can include them to achieve a positive impact. These processes will 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

The Unique Procedure of the Environmental Certification Process (PUPCA), to be carried out by National Environmental Certification Service for Sustainable Investments (established through Supreme Decree No. 004-2022-MINAM) (SENACE), entered into force in 2022. It aims to improve the process of evaluating ten of the main environmental procedures, including the following: the approval and modification of Detailed Environmental Impact Studies (EIA-d); the Supporting Technical Reports; the classification of Investment Projects; the Approval of the Terms of Reference and Citizen

Participation Plans, through the standardization of stages and requirements; and the establishment of deadlines and requirements.

The PUPCA is expected to reduce sector-based regulation dispersion, (applicable to the environmental evaluation process and in citizen participation), provide SENACE's performance with more predictability and transparency and strengthen the use of platforms such as the Single-Window for Environmental Certification (EVA), to achieve an agile environmental certification and evaluation system in favor of investors.

Another relevant topic is the issuance of the Rules of Procedure for Archeological Interventions (approved by Supreme Decree No. 011-2022-MC), which regulate technical and administrative aspects related to the execution of archeological interventions nationwide, the attainment of the Certificate of an Area Free From Archeological Remains (CIRA), the management of movable cultural heritage recovered in archeological interventions, the exportation of archeological samples for scientific investigation purposes and carrying out National Archeology Congress.

The referred to regulation is relevant because its dispositions, modalities and formalities are mandatory for all individuals or legal entities — public or private — that conduct the following:

- Execute nationwide archeological interventions in their various forms
- Request the emission of CIRAS and proof of archaeological cadastral records
- Manage movable and immovable cultural materials
- Export archaeological samples for scientific research purposes recovered in the field of archaeological interventions throughout the national territory. This applies even to those that were in charge of the Ministry of Culture itself.

Legal framework

Environmental legislation is essentially made up of the following laws and regulations: (i) Political Constitution of Peru of 1993; (ii) Law No. 28611, the General Environmental Law; (iii) Law No. 27446, the Law of the National Environmental Impact Assessment System and its regulations, approved by Supreme Decree No. 019-2009-MINAM; (iv) Law No. 29325, the Law of the National System of Environmental Evaluation and Control; and (v) various sectoral environmental regulations.

Environmental institutionality

The environmental institutional model in Peru has changed over the years. The country has gone from having a sectoral environmental system, under which the various government sectors were competent for certifying the environmental impact assessment of the investment projects under their responsibility, as well as supervising their compliance, to having a “concentrated” model, under which environmental management is centralized in the Ministry of the Environment and its affiliated agencies.

The Ministry of the Environment is responsible for preserving the natural environment and ensuring the sustainable and rational use of natural resources, biodiversity and protected natural areas. The Ministry of the Environment has a series of specialized technical organizations attached to it, among which it is worth highlighting the OEFA and SENACE, due to their impact on the environment, development of economic activities and implementation of investment projects.

The OEFA is in charge of auditing, supervising, controlling and sanctioning environmental activities. To date, the sectors under its jurisdiction are as follows: mining (medium and large mining), energy (hydrocarbons and electricity), fishing (industrial fish processing and large-scale aquaculture); agriculture (production and transformation of agricultural, forestry and livestock products and irrigation),

manufacturing industry (beer, paper, tannery, metal smelting, biofuel, beverage production, sugar, etc.); internal trade; and solid waste infrastructure.

SENACE is the entity in charge of reviewing and approving the EIA-d of investment projects. To date, SENACE performs its functions in the mining, energy (hydrocarbons and electricity), transportation, solid waste infrastructure and agriculture sectors.

It should be noted that, by virtue of the concentrated model that currently governs the country's environmental management, it is expected that both the environmental certification functions, as well as those of inspection and sanction, of all sectors will be fully transferred to SENACE and OEFA, respectively, gradually and progressively.

Environmental supervision and enforcement

To discourage the commission of illegal conduct, the maximum amount of fines that the OEFA can apply for serious breaches of environmental regulations or for actions that generate severe environmental damage is 30,000 UIT, that is, up to PEN 148,500,000 (approximately USD 38 million). However, the maximum fines that this entity can impose on a company will be the equivalent of 10% of the gross income obtained by said company the year prior to the commission of the infraction.

To determine the type of sanction, as well as the amount of the applicable fines, OEFA has approved a series of Classifications of Environmental Infractions and a Table of Sanctions, which vary by sector, as well as a Methodology for the Calculation of Fines. The objective is to establish the corresponding formulas to calculate the applicable fines.

Additionally, it is worth highlighting that OEFA is an entity that can dictate complementary administrative measures, such as corrective, preventive and precautionary measures, to prevent, reverse or control the effects of the commission of infringing conduct on the

environment. Thus, in the face of a serious situation, OEFA can dictate measures such as the suspension of activities, the closure of the component involved in the infringement or the total closure of the facilities, among others.

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 decision taken by the pertinent authority that states that a project is environmentally feasible.

The activities subject to an environmental certificate are described in the List of Investment Projects subject to the National Environmental Impact Assessment System (SEIA), included in Exhibit II of the above-mentioned regulations, as amended occasionally. 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 can be seen, each of the above-mentioned categories corresponds to a different environmental management tool, depending on the magnitude of the impacts on the environment. Environmental studies must be prepared by an environmental consultant registered with SENACE.

As mentioned, to date, SENACE is the entity in charge of approving the EIA-D (Category III), while the EIA-SD and DIA (Category I and II) are still under the jurisdiction of the corresponding sectors.

Finally, it is worth mentioning that, on 21 May 2015, by Law No. 30327 (Law for the Promotion of Investments for Economic Growth and Sustainable Development), the Global Environmental Certification procedure was created. This procedure is only in charge of SENACE and applicable to the EIA-D, and has the purpose of gradually incorporating different enabling titles (in a single procedure) related to the project and that are required by special provisions (such as the authorization for the use of water and/or wastewater discharges, authorization for deforestation, sanitary authorization for septic tank, among others) for the start of activities.

Climate change

Hot topics

Through Supreme Decree No. 003-2022-MINAM of 25 January 2022, the Peruvian State declared the climate emergency to be of national interest, to urgently execute measures to implement national climate actions in accordance with the provisions of the Nationally Determined Contributions for the year 2030. These measures are related to issues such as climate governance, climate change education, climate financing, climate justice, among others.

General framework

At the end of 2019, the Peruvian State approved the Regulation of the Framework Law on Climate Change, which is a milestone in the construction of a regulatory framework and allows for the reduction of the effects of climate change in the country. These standards have been approved by the Peruvian government in accordance with the United Nations Framework Convention against Climate Change and the Paris Agreement. For context, in April 2018, Law No. 30754 (Framework Law on Climate Change) was approved, establishing the general principles, approaches and provisions to coordinate, articulate, design, execute, report, monitor, evaluate and disseminate the public policies for the comprehensive, participatory and transparent management of climate change adaptation and mitigation measures.

The Regulation of the Framework Law on Climate Change was approved on 31 December 2019 by Supreme Decree No. 013-2019-MINAM. The law seeks to establish a series of 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 forth by the regulation will be met through the implementation of climate change adaptation and mitigation measures, the creation of computer systems that help to account for carbon dioxide emissions, the reduction of said emissions, the transfers that may exist between countries, and promoting the participation of the private sector in the execution of sustainable and low carbon projects.

The objectives set by the regulation will be met through the implementation of climate change adaptation and mitigation measures, the creation of systems that contribute to account carbon dioxide emissions, the reduction of carbon dioxide emissions and the

promotion of private sector participation in the execution of sustainable and low-carbon projects. However, to date, no concrete measures or goals have been established, nor have there been any deadlines for their fulfillment.

Fishing

Hot topic

The Ministry of Production has recently enacted the 2030 Aquaculture National Policy. This policy's aim is for companies to double their total sales by 2030, which would lead Peru to increase its presence in the fishing sector in Latin America and the Caribbean by more than 50%, to consequently turn the country into the fifth aquaculture producer in the region. This policy aims for Peruvian aquaculture to achieve its maximum sustainable growth potential, through the implementation of technologically sophisticated and integrated value chains that would enable the improvement of competitiveness of the aquaculture sector.

General framework

Fishing activities have to be conducted in accordance with the provisions of the General Fishing Law (Law Decree No. 25977) ("**Fishing Law**") and its regulations.

The hydrobiological resources found in the territorial waters of Peru are considered national patrimony. Therefore, their exploitation should be performed in accordance with the principle of sustainable use of natural resources. Pursuant to the Peruvian Constitution, Peru's maritime domain includes the sea adjacent to its coasts, the seabed and the subsoil water, extending out to a distance of 200 nautical miles. Thus, the Fishing Law and its regulations are applicable to activities carried out within these jurisdictional waters.

Fisheries management regulations were approved in accordance with the characteristics of each species, geographic area and/or destination of the hydrobiological resources. The most relevant are,

among other things, the Fisheries Management Regulations for Anchovy and White Anchovy Resources for Direct Human Consumption; the Fisheries Management Regulations for the Hake Resources; 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 (<https://www.gob.pe/produce>) is the authority that supervises fishing activities. Its main functions are the following: issuing fisheries management measures; granting permits for the development of fishing activities; and supervise, and if appropriate, penalize infringements, with the exception of environmental issues related to industrial fishing processing and large-scale aquaculture, which are under the jurisdiction of OEFA. The Ministry of Production is in charge of regularly approving management measures to determine 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, the ministry is also entitled to grant fishing permits for the operation of vessels, licenses for the operation of processing plants and the authorization or concession to carry out aquaculture activities.

The Fishing Law and its regulations provides five types of fishing activities, as detailed below:

Specialized research and training activities

To promote scientific research on fisheries, the Ministry of Production grants authorizations 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.

Extraction activities

In general, extraction activities are classified as commercial and non-commercial. Non-commercial activities comprise research, aquatic hunting and subsistence. Commercial activities comprise the artisanal and industrial fisheries.

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 sets forth the vessel name, the registration number, the storage capacity, the species it is entitled to 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 ownership transfer of fishing vessels in Peru involves the transfer of the fishing license and all respective supplementary rights and accessories.

To maintain the validity of the fishing permit, it is necessary to comply with the following conditions: (i) not increasing the authorized storage capacity established in the fishing permit; (ii) achieving the annual minimum fishing effort, which is equivalent to the storage capacity of the fishing vessel; (iii) fulfilling the applicable fishing rights payments; and (iv) holding a valid certificate of registration of the vessel issued by the Directorate General of Captaincies and the Coast Guard.

Considering that Peru is the world's largest producer of fishmeal, special attention is given to anchovy regulation and the feedstock for the production of fish oil and fishmeal.

In 2008, through Legislative Decree No. 1084 (Law of Maximum Catch per Vessel), a Fishing Quota System for anchovy was implemented in Peru, replacing the so-called "Olympic System". Under the Fishing Quota 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.

Regarding tuna resources, authorization to extract this species 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 Peruvian flag vessels and the processing in industrial plants located in Peru. As member of the IATTC, Peru has a global share — expressed in cubic meters of storage capacity — distributed among the vessels that compose the national fleet. Currently, there is a Peruvian flag fleet performing tuna exploitation activities in Peruvian and international waters, together with foreign flag vessels.

Processing activities

In general, processing hydrobiological resources in Peru are focused on the following: (i) products for indirect human consumption, such as fishmeal and fish oil; and (ii) products for direct human consumption, where we can find a diverse group of products, most notably those that are canned and frozen.

For the development of both processing activities, an industrial plant must obtain a license from the Ministry of Production. To qualify, 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, passing regulations intended to enhance and expedite the procedure for obtaining the required operation license. On the contrary, processing activities for indirect human consumption (fishmeal and fish oil production) are restricted. The Ministry of Production no longer grants new operation licenses for indirect human consumption. Thus, this right is commonly obtained by purchasing an industrial plant with a license valid and in force.

Notwithstanding the above, the Ministry of Production is entitled to grant new licenses for the installation and operation of residual flour industrial plants, which, under special regulations, process waste from processing plants of direct human consumption products.

Trade and services activities

In Peru, the trade of fishery products (with the exception of the exportation 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 an authorization from INDECOPÍ.

Aquaculture activities: This 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 and evaluated hydrobiological resources and fishing areas, among others.

Due to its particular characteristics, substantially different from fishing activities, aquaculture is mainly governed by the Aquaculture General Law (Legislative Decree No. 1195), which acknowledges the sustainable development of aquaculture as being of national interest.

As for fishing, the Ministry of Production is the authority responsible for passing special regulations, 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 developing aquaculture activities in public domain waterbodies, such as seas, rivers and lagoons, the Ministry of Production grants a temporary concession (up to 30 years, renewable for the same term). The concessions are granted through: (i) a national or international public tender process; or (ii) direct granting.

Additionally, the following activities can be developed by obtaining a temporary authorization (up to 30 years, renewable for the same period) from the Ministry of Production: (i) aquaculture activities to be developed within private waterbodies, such as artificial ponds specially equipped within private properties; or (ii) research, technological development and innovation activities related to aquaculture.

The above-mentioned rights granted by the Ministry of Production may be transferred to third parties.

To promote aquaculture activities, the General Aquaculture Law provides the implementation of a public registry of aquaculture concessions and authorizations, which is currently operating. Additionally, the law entitles the holders of aquaculture concessions or authorizations to mortgage their aquaculture rights and grant security interests over the farmed aquatic resources.

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). In addition, for general purposes, 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

As from January 2022, according to the Legislative Decree No. 1515, the taxpayers under the General Aquaculture Law are beneficiaries of tax benefits described in the comparative chart below:

ITEM*	GENERAL 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="602 687 960 938"> <thead> <tr> <th>Year</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>Until 2030</td> <td>15%</td> </tr> <tr> <td>2031 and forward</td> <td>General regime rate</td> </tr> </tbody> </table> <p>For natural or legal persons whose net income exceeds 1,700 tax units in the taxable year:</p> <table border="1" data-bbox="602 1114 960 1391"> <thead> <tr> <th>Year</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>2022</td> <td>15%</td> </tr> <tr> <td>2023-2024</td> <td>20%</td> </tr> <tr> <td>2024-2027</td> <td>25%</td> </tr> </tbody> </table>	Year	Rate	Until 2030	15%	2031 and forward	General regime rate	Year	Rate	2022	15%	2023-2024	20%	2024-2027	25%
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ITEM*	GENERAL REGIME	AQUACULTURE REGIME	
		2028 and forward	General regime rate
Depreciation rate	As provided for by law (usually 10% per year)	20% per year for investments in cultivation infrastructure and water supply channels. Applicable until 31 December 2025.	

Mining

Hot topic

In December 2022, the Peruvian Congress approved the extension of the term of the law that provides the early definitive recovery of VAT by entities performing mining activities in exploration phase. This regime is currently in force, until 31 December 2027.

The beneficiaries of this regime are entitled to request the definitive return of the VAT applicable to the acquisition of goods, provision or use of services and to construction contracts that are directly related to the execution of their mining exploration activities, during said concerning phase. To access this benefit, concessionaires should meet certain requirements and enter into an Exploration Investment Agreement with the Peruvian government, which provides for a minimum investment commitment of USD 500,000.

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 Geological Mining and Metallurgical Institute (INGEMMET - <https://www.gob.pe/ingemmet>); (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 - <https://www.gob.pe/minem>); (iii) general service concessions (for executing ancillary services) granted by the DGM; and (iv) mining transportation concessions (for transporting ore through non-conventional systems) granted by the DGM.

It is important to note that Peru has a mining cadaster system, based on the World Geodetic System 1984's (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 to start mining activities.

Additionally, it should be noted that the holder of a mining concession is not automatically entitled to carry out mining activities within the area of its concession. Before this, it should 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 certification 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, provided their holders comply with certain obligations, such as the payment of an annual good standing fee (USD 3 per hectare), applicable to both mining concessions and mining claims. Failure to pay the above-mentioned 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 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:

- (i) 1 Peruvian tax unit (equivalent to PEN 4,950 for 2023) per year and per hectare, applicable to metallic mining concessions
- (ii) 10% of 1 Peruvian tax unit per year and per hectare, applicable to non-metallic mining concessions

If these production targets are not met by the 10th anniversary, concessionaires will have to pay the following mining penalties in advance to keep their in concessions in force:

- (i) 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 must pay a mining penalty equal to 2% of the corresponding annual production target.
- (ii) If the annual production target is not met until the end of the **15th year** counted from the year following the granting of its mining concession title, holders must pay a mining penalty equal to 5% of the corresponding annual production target.
- (iii) If the annual production target is not met until the end of the **20th year**, counted from the year following the granting of its mining concession title, holders must pay a mining penalty equal to 10% of the corresponding annual production target.

Holders of the mining concessions may avoid paying the above-mentioned mining penalties by demonstrating that during the previous year, they have 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 will 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 from the year following the granting of its mining concession title.

Real estate

In 2021, the “Sustainable Urban Development Law” (Law No. 31313) was passed, the first law that develops the principles and establishes

the rules for urban development and urban development. As established in Law No. 31313, the executive branch was in charge of approving the regulations of the referred to law. In 2022, Supreme Decree No. 012-2022-VIVIENDA, which approved the Regulations on Land Development and Urban Planning for Sustainable Urban Development, was published. The regulations aim to develop the provisions and processes on territorial conditioning and urban planning, as well as to repeal a number of provisions of the Regulation on Territorial Conditioning and Urban Development, approved by Supreme Decree No. 022-2016 (“**RATDUS 2016**”).

Among the most relevant provisions, it is stipulated that the procedures for the “resolution of non-competitive discrepancies” (such as disputes that may arise between different levels of government in the articulation between the Plans for Territorial Conditioning and Urban Development and the acts carried out under them) will be resolved by the General Directorate of Policies and Regulation in Housing and Urbanism (Dirección General de Políticas y Regulación en Vivienda y Urbanismo). There are also relevant changes in zoning regulations. Unlike the RATDUS 2016, this new Regulation provides that the specific modification of zoning may only be made in cases of (i) investment projects declared of national character, or (ii) projects of social and community interest.

In addition, on 27 July 2022, Supreme Decree No. 014-2022 (MIDAGRI) approved the Regulations of Law No. 31145 (Law of Legal Physical Sanitation and Formalization of Rural Properties under the responsibility of the Regional Governments). Among the most relevant regulations of this law, it is worth mentioning that some procedures for the legal physical reorganization and formalization of rural properties owned by the Peruvian State will proceed either ex officio or at the request of a party.

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 the regime of common and exclusive property (regulating common areas in a same building), and Law No. 29090 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 the case where it is required for reasons of national security or public need, or 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 with the exception 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 the registration of real estate. SUNARP maintains a system of land title registration where ownership can be verified. It is presumed that everyone knows 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 should survive and is binding upon the new owner if this agreement was previously registered in the public records.

Nevertheless, as a 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.

SUNARP can issue a document called Certificate of Land Registry (Certificado Registral Inmobiliario or CRI), which contains ownership and existing liens, guarantees and limitations to ownership of the property registered in the public registry. This information may vary, so it is advisable to check if there are any acts pending registration in the corresponding registry entry. 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 a zoning review, and a review of any burdens and liens on the property.

Once due diligence is conducted, the purchase and sale agreement must be drafted, which must include 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. The Civil Code contains both mandatory rules (rules of forced compliance) and supplementary rules (only applicable 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 this 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. 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, and 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 a default by the landlord, such as in cases where the landlord is unable to provide the tenant with uninterrupted peaceful possession of the property or the leased property was delivered with damages that preclude its use. Moreover, 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.

Additionally, 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 due to causes attributable to one of the parties, then the lease will be 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 this agreement was previously registered in the public registry. If 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 this 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 meets 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). Additionally, 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 on 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 (non-urban lands), a license to develop is required before even applying for the building permit. In these 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 require 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 are made after).

Telecommunications

The telecommunications market seeks modernization, and the most significant development for this year is that the Ministry of Transportation and Communications (MTC) (www.mtc.gob.pe) initiated a process of reorganization of the spectrum bands to promote the use of latest generation technologies, such as 5G.

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 MTC is the entity that grants concessions for public telecommunications services and authorizes the use of the radio spectrum.

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 permitted. Companies that want to perform this activity must apply for 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 to provide satellite capacity services to local concessionaires.

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 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.

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 regime that harmonizes the requirements that must be requested by local governments to allow concessionaires and passive infrastructure providers to 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

At the beginning of 2022, Peru was on a permanent state of emergency as a mechanism to deal with the spread of COVID-19. This measure meant that the performance of all economic activities was affected, with tourism being one of the most affected sectors.

As a consequence of the situation, the tourism sector was declared in an emergency state with the objective to prioritize urgent measures of both a financial and economic nature that benefitted tourism entrepreneurs throughout the country, boosting public-private investment in tourism and establishing sectoral measures that mitigate the crisis that the sector was going through, such as financial rescue measures, economic support, tourism facilitation, promotion of investment in tourism and tourism promotion.

Between January and March 2022, the real value of the GDP of the accommodation and restaurant sector was PEN 3,872 million, 49.4% more than in the same period of 2021. Likewise, the tourism and hotel sector collected PEN 406 million in taxes, 67.5% more than what was collected between January and March 2021. On the other hand, the flow of international tourists grew by 689.3% compared to what was registered in the period January-March 2021. The generation of foreign currency reached a sum of USD 486 million, 261.5% more than what was registered between January and March 2021.

The flow of foreign currency for receptive tourism concepts increased by 261.5% during the first quarter of 2022. The mobilization of passengers through the country's airports increased by 125.3% and the influx of tourist attractions increased by 181.1%.

The departments with the highest influx to tourist attractions during the period January-March 2022, not including Lima, were Cusco

(+396.2%), Ica (+505.5%), San Martín (+191.1%), Lambayeque (+880.7%) and La Libertad (+603.6%).¹⁹

Air transport activity was affected by the continuous mobilization restrictions decreed by the government to prevent the spread of the virus. In the first quarter of 2022, the mobilization of 6.8 million passengers through the airports of Peru was registered; this was 125.3% higher in the same period of 2021.

In mid-2022, the tourism sector began to gradually recover thanks to the measures adopted by the government in search of boosting employment, in addition to business development in the tourism sector to achieve sustainable tourism and ensure that tourism activity becomes a catalyst for decentralization and investment, contributing to the fulfillment of national objectives. Thus, as of October 2022, Peru had received a total of 1.4 million international tourists.

Despite this and the attempts to recover the tourism sector, it continued and continues to be quite affected, without having a clear picture of the period of time it will take to recover pre-pandemic levels.

It should be noted that, in addition to the crisis generated by COVID-19, in 2022, a social and political crisis led to riots and violence in the population, causing many businesses to close due to the lack of tourists, both national and international, since Peru was considered a dangerous and violent country. This crisis was exacerbated by the coup d'état carried out on 7 December 2022 by then President Pedro Castillo Terrones. Consequently, Vice President Dina Boluarte assumed the presidency. This context brought with it widespread violence that, to date, continues to increase due to the constant destruction and vandalism against the infrastructure of the main airports in Peru as well as the closure of the highways of the main national roads, causing some countries to recommend that their

¹⁹ Information extracted from the tourism performance report in Peru - ComexPerú

citizens avoid traveling to Peru because it is considered a high-risk country.

Among the new projects to be developed in the following years is the expansion of the Jorge Chávez International Airport and its operation from 2025, which will bring as a positive consequence double the number of flights per hour, thus receiving approximately 30 million passengers a year. In addition to this, from 1 April 2023, the operations of the new control tower and the second runway of the Jorge Chávez International Airport will begin.

On the other hand, in 2022 the Peruvian government minimized the procedures for the arrival of cruise ships, providing the facilities to reactivate and promote cruise tourism in Peru.

With regard to tourist attractions, in June 2022, Proinversión Agreement No. 118-3-2022-C was published, in which the development of a cable car linking the historic center of Lima with Cerro San Cristóbal was incorporated into the private investment promotion project. Through this, a cable transport system will be implemented that allows national and foreign tourists to access the viewpoint located at the top of Cerro San Cristóbal.

This project would be complemented by the project for the improvement of public tourist services of the tourist circuit of the Rimac Monumental Zone in charge of the National COPESCO Plan, which has an estimated investment of PEN 55 million, allowing the consolidation and diversification of the current offer in Lima city.

At the World Travel Awards, Machu Picchu was the winner of the “Leading Tourist Attraction of South America 2022” and Peru was the winner of the “Leading Cultural Destination of South America 2022”

Within the legal regulations issued to provide facilities to businesses in the tourism sector is Law No. 31556, by virtue of which the General Sales Tax (IGV) was reduced to 8% until 31 December 2024 for micro and small businesses dedicated, among others, to restaurant

activities, hotels and tourist accommodation, whose income from sales or the provision of services represent at least 70% of their income.

Another regulation approved was the Law for the Promotion and Development of Community Tourism in Peru, which aims to consolidate the sustainable development of community tourism, improving the quality of life of the populations involved.

The FAE Tourism 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 PEN 200 million, granted through financial entities that were winners of the auctions carried out by the Development Finance Corporation (COFIDE) and is aimed at lodging establishments, interprovincial land passenger transportation, tourist transportation, travel agencies and tourism, restaurants, leisure activities, organization of conferences, conventions and events, tourist guidance, and production and marketing of handicrafts.

In the year 2021, by virtue of Emergency Decree No. 091-2021, beneficial measures were 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. Additionally, the destination of the credit was extended and will no longer be only for working capital, but for the acquisition of fixed assets, i.e., useful goods for the company.

In 2022, as a result of the auctions carried out by COFIDE, a total of S/ 295'060,099 has been awarded from FAE Tourism to promote the reactivation of businesses linked to the tourism.

In December 2022, Emergency Decree No. 026-2022 was published, by virtue of which it was provided that companies that have a loan under the FAE Tourism program could reschedule their payments until

30 June 2023, to alleviate the affectation of the flow of their income as a result of the protests taking place in the country.

In January 2023, Law No. 31672 was approved, by means of which Law No. 27889 was modified, a norm that creates and regulates the Tax for the Promotion and National Tourist Development that taxes the entry of natural persons into the national territory who use means of air transport of international traffic.

Legal regime

Until 2019, tourism in Peru until 2019 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.

To rectify this crisis that the tourism sector is going through, the government has issued a series of regulations that allow financing to the MYPEs that are dedicated to this activity so that they can resume their activities. However, the future is still uncertain, as although the number of the vaccinated population is increasing and the disease has 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 will 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).

Additionally, companies that qualify as providers of tourism services fall within the scope of Law No. 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 the protection of all domestic or foreign tourists who individually, or in an organized manner, stay or travel within the national territory, as being of national interest.

It also promotes social and domestic 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 that merit special protection by the state. The qualification of the tourist reserve zone does not restrict the development of other economic activities, and allows for 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 it is mandatory for tourism companies to 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).

Supreme Decree No. 001-2015-MINCETUR, or the Lodging Establishments Regulations, is also relevant, 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 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 the project, to consider them for the elaboration of the final version of the 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 this 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 an exclusively themed design and decoration. Additionally, an establishment located in a building with high architectural value will also be considered as being in this category. Boutique hotels should also offer a personalized service and a minimum of six rooms. Legislative Decree No. 1329, published on 6 January 2017, created the “Fondo Turismo Emprende” project, 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, to promote tourism diversification in Peru.

MINCETUR states 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 Emprende 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 the sustainability of such services. Funding and investments in sanitation services will facilitate the extension 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, as 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 establishment 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 other things. 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 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.

Additionally, Supreme Decree No. 017-2009-MTC approved the National Regulations for the 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 that 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 was 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 include 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 was 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 reduced, allowing for the refund of VAT paid for 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 only applicable to 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 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 as follows: China, Costa Rica, Dominican Republic, El Salvador, Guatemala, Hungary, Italy, Mexico, Panama, Portugal, Romania and Thailand. An agreement was also signed 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, South Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taipei, 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 hosted, 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, 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 the 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 granted to “Machu Picchu,” involving 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 this 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 Kuélap, which will contribute to the consolidation of the northeastern tourist circuit of Peru. To this end, MINCETUR invested, through the National COPESCO Plan, 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 Kuélap. 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 (Kuélap Restoration).

On 5 July 2022, the operations of the Kuélap cable cars, which had been suspended in April as a result of the landslides that affected the perimeter wall of the monument, resumed.

In addition, the Ministry of Culture presented the “Visit Kuélap in a different way” initiative, through which it seeks to boost tourism in the area, which was affected by the temporary closure of this important tourist attraction.

Currently, the National COPESCO Plan, the Executing Unit of MINCETUR, has completed the prevention and conservation work at the main entrance of the Fortress of Kuélap (Access 1) and has complied with handing over of the said area to the Ministry of Culture 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 regional government of Loreto, 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.

The Colca and Volcano Valleys in the Arequipa region obtained the Green Destinations Silver Awards as tourist attractions committed to the environment and sustainability from the Green Destinations & Quality Coast Award organization, being the first time that two tourist destinations in the region have obtained an international certification.

Digital tourism

The Peruvian government, along with the Development Bank of Latin America (CAF), entered into a Memorandum of Understanding to promote digital transformation throughout the tourism chain in Peru, which aims improve the competitiveness of all actors in the sector, promoting the reactivation economy, articulating its actors and providing fundamental support to the regions, unions, micro, small or medium business, communities, professionals and artisans.

Social tourism

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, people 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 stated 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.



**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
- The 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
- The 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?

- The 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.

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. Foreign personnel may be hired in a proportion of up to 20% of the total number of workers, and the total amount of remuneration of foreign personnel may not exceed 30% of the total payroll. Foreign workers are required to obtain a work visa from the immigration authority to work in Peru.

10. Is there a merger control regime?

There is no merger control regime, except in the electricity sector, for which a procedure has been regulated for the prior authorization of each transaction before the Competition Commission of INDECOPI (competition agency). Thus, mergers, acquisitions and other transactions that do not involve electricity generation, transmission and distribution of electric energy are not subject to the approval of the antitrust authority.

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 comprises Peru, Bolivia, Ecuador and Colombia. The following are state parties to the Andean Community: Chile,²⁰ Brazil, Argentina, Uruguay and Paraguay.

Following the relief program agreed in the Andean Community, the trade of goods between Bolivia, Colombia, Ecuador and Peru enjoys total tariff relief, constituting a free trade area.²¹ 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. This 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. |

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

²¹ However, from January 2009, Ecuador has implemented safeguards for certain products.

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|--------------------------|--------------------|------------------------|
| 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.²²

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)

²² Peru has executed a trade agreement with the European Union; this agreement includes an investment chapter with the member countries of the agreement.

- 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)
- Pacific Alliance Agreement (since 1 May 2016)
- Honduras (since 1 January 2017)
- Australia (since 11 February 2020)
- United Kingdom (since 31 December 2020)

The main areas covered by the above-mentioned trade agreements are, among others: 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; and technical assistance and skill building.

Negotiations with Guatemala, Brazil, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and amendments of the Pacific Alliance have been concluded, but these treaties are not in force.

The CPTPP entered into force on 30 December 2018 for six of the 11 member countries of the treaty, while Peru's ratification remains pending.

Additionally, the trade agreement between the United Kingdom of Great Britain and Northern Ireland and Peru entered into force on 31 December 2020, incorporating by reference the trade agreement with the European Union, to ensure the operation of the new agreement and the continuity of the commercial relationship between both parties even after Brexit.

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

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