Doing Business in Peru
2019
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic overview</td>
<td>1</td>
</tr>
<tr>
<td>The role of the state</td>
<td>7</td>
</tr>
<tr>
<td>Promotion of private investment</td>
<td>11</td>
</tr>
<tr>
<td>Company structures for economic activities</td>
<td>25</td>
</tr>
<tr>
<td>Public procurement</td>
<td>37</td>
</tr>
<tr>
<td>Tax regime</td>
<td>47</td>
</tr>
<tr>
<td>Labor and immigration standards</td>
<td>61</td>
</tr>
<tr>
<td>Intellectual property protection</td>
<td>85</td>
</tr>
<tr>
<td>Protection of free and fair competition</td>
<td>93</td>
</tr>
<tr>
<td>International trade</td>
<td>97</td>
</tr>
<tr>
<td>Health regulations</td>
<td>115</td>
</tr>
<tr>
<td>Sectors</td>
<td>123</td>
</tr>
<tr>
<td>Main foreign companies present in Peru</td>
<td>179</td>
</tr>
<tr>
<td>Frequently asked questions</td>
<td>185</td>
</tr>
<tr>
<td>Notes</td>
<td>192</td>
</tr>
<tr>
<td>Contacts</td>
<td>193</td>
</tr>
</tbody>
</table>
Introduction

Pablo Berckholtz
Managing Director

During the last 20 years, Peru has experienced significant economic growth. At the same time, it has seen a succession of democratic regimes that have worked to develop a legal framework that opens the Peruvian economy to the world and promote both foreign and local investment. It is for this reason that even though the pace of growth has been affected by uncertain international conditions and political instability — especially during the last five years — Peru continues to stand out in the region.

In addition, Peru is party to different trade agreements. This enables the country to enter regional and international markets, thus boosting the different sectors of its economy. Peru’s participation in the Pacific Alliance is a clear indication of the country’s determination to maintain its growth, development and competitiveness, on top of moving forward with regional integration.

For any actual or potential investor, it is essential to understand Peru’s legislation, systems, guarantees and the other aspects of its local rules because the legal framework is constantly evolving. Identifying all relevant aspects is critical to make and keep the most appropriate investment.

This is why our Firm, which is committed to Peru’s development, has come out with the 2019 Doing Business
in Peru Guide — a tool where you may find useful and updated information related to the legal framework that every investor should take into account when doing business in Peru.
Economic overview
Economic overview 2019

During the decade between 2003 and 2013, Peru’s economy development was steady and exceptional: its real GDP rose at an annual average rate of 6.6 %, the highest average rate in Latin America and one of the most important worldwide. However, this performance was affected in 2014 by an international crisis. Since then, Peru has only shown moderate growth not exceeding 4.0%.

Many external factors were pointed to as catalysts of this deceleration, such as the Eurozone weakness, the China hard landing, the slump in raw materials’ prices and the South America downturn, which translated in lesser actual exports and foreign capital flow. But it was also triggered by internal factors, such as the poor growth of private and public investments and the low growth of domestic consumption.

The national government had already gone halfway through its mandate without having been able to regain entrepreneurial trust and speed up the capital injection process. The administration was affected by the corruption crisis in Peru related to Brazilian construction companies and spreading over other countries — Lavajato — and the political instability with opponents holding a majority in Congress, which led to the resignation of President Pedro Pablo Kuczynsky and the assumption of command of Vice President Martin Vizcarra.

However, Peru has maintained an above-average performance in Latin America and the Caribbean. According to the World Bank, Peru is expected to become the region’s fifth most dynamic economy in the next three to five years, after Panama, the Dominican Republic, Paraguay and Honduras, among 27 countries.

The Peruvian economy ended 2018 with GDP growth of 3.9% and the World Bank expects the economy to grow 3.8% in 2019. Prospects for Latin America and the Caribbean are also promising, which is expected to grow...
1,7% while the global economy is expected to gain 2,9%, albeit with a potential risk of slowing down.

This performance is backed by certain conditions in the international scene:

- The Eurozone is now consolidated, compared to a decade ago. Its currency remains stable and is expected to grow 1,6%, despite the BREXIT impact.

- China has become the defender of globalization and is expected to show an upturn of 6,2%, which would maintain the demand for commodities.

- Prices of raw materials, representing around 60% of Peru’s total exports, will remain at favorable levels in 2019; even with the lower prices of some metals, the mining investment will maintain its incentive.

- South America is still emerging from stagnation and some of its countries have switched to more free-trade-oriented governments. Brazil, the largest economy in the region, would be growing steadily after a two-year recession period that lasted until 2016, at 2,2% in 2019, according to the World Bank.

- United States is expected to maintain healthy growth around 2,0%, but with the risk of facing a larger protectionism policy promoted by President Donald Trump.

The conditions at the domestic level will be somewhat more challenging:

- Public investment, which had been increasing since late 2017, will slow down in 2019 due to the low execution capacity that would be the responsibility of regional decentralized governments, the renewal of all theses governments at the first half of 2019 and the completion of the works for 2019 Pan-American Games, mainly.
• Private investment will grow and help offset the reduced public investment.

• Private consumption will continue growing while employment in the country improves. The problem is in the formal labor market, where the same dynamism is not observed.

• There is an interesting portfolio of copper projects and other metals, some of which may start in the short term. Three mining megaprojects are in process: Quellaveco, Mina Justa and the extension of Toromocho. Copper and zinc prices have risen by around 30% since late 2016.

Peru maintains solid economic fundamentals, among them: the level of Net International Reserves (NIR) of USD 61 billion (at the end of 2018) represents 27% of GDP and is equivalent to seven times the external debt, and Country Risk closed 2018 with the second lowest Emerging Market Bond Global Index (EMBIG) in the region, at 163 basic points, just 3 basis points behind Chile, reflecting good macroeconomic management and resulting in a good financial reputation. Peru maintains its investment grade ratings in each of the five sovereign risk rating agencies — Standard & Poor’s, Moody’s, Fitch, DBRS and NICE — and it is expected to remain stable in these, which translates into continuous growth and lower costs for business financing.

By 2018 year-end, the Peruvian currency — the sol (PEN) — was quoted at PEN 3.37 per US dollar, with a 4.0% depreciation against the prior year and after two consecutive years of appreciation. It is expected to remain stable in 2019.

Inflation in 2019 was 2.2%, within the target range of 1%-3%. This rate is higher than 1.4% of 2017, which was the lowest in eight years, but it is lower than 3.2% in 2016. For the year 2019, an inflation rate of 2.3% is projected.
This year, private and public investments are expected to grow 6.5% and 2.8%, respectively, which will contribute for the second consecutive year to recovery from the accumulated downward trend of the previous four years.

Besides, private consumption, which represents 70% of the total demand of the economy, is expected to grow 3.9%, thanks to increased utilization in labor-intensive activities, such as services, trade and manufacturing, as these sectors concentrate 67.8% of employment of an economically active population.

Construction is expected to expand the most, at 6.9%, followed by mining and hydrocarbons with 5.1%. Fishing is expected to decrease -6.7%, while trade and manufacturing are not expected to grow significantly (i.e., 3.4% and 3.8%, respectively).

As already mentioned, Peru has been growing steadily and its performance has been better than the majority of Latin American countries, maintaining solid economic fundamentals, with monetary and fiscal tools to overcome any setback that may arise. Peru should not stop growing in any scenario. However, it should take advantage of opportunities, for it is essential that the Peruvian government of President Vizcarra succeeds in maintaining political stability and approves the required reforms to accelerate growth in the coming years.
The role of the state

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As from 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. In addition, it must also fight any practice that limits it and penalize the abuse of dominant positions or monopolies. No law or agreement may authorize or establish monopolies.
Promotion of private investment
Promotion of private investment

General guarantees for investment ................................................................. 14
Guarantees for foreign investment ................................................................. 14
Privatizations and concessions .................................................................. 15
Legal stability agreements ............................................................................. 18
Public Works Tax Deduction Law ................................................................. 19
Compliance and anti-bribery ...................................................................... 21
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 are governed by the law of supply and demand, indicating that the only prices that are administratively regulated are tariffs for public services, which are established by law and approved by Congress.

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

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

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

In addition, there is a legal stability regime for the rights as an investor and in fiscal and labor matters.

Guarantees for foreign investment

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

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

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

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

It should be noted that, regarding Hydrocarbon projects, its Organic Law considers the exploration and exploitation of hydrocarbons to be of public necessity and national interest; therefore, these activities are exempt from the abovementioned restriction.

**Privatizations and concessions**

In 1991, the Peruvian government established 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, since 2008, Peru has had a legal regime for public private partnerships (PPP or Asociaciones Público Privadas (APP)), which promotes
private investment in projects of infrastructure and public services 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 approved by Supreme Decree No. 240-2018-EF. It provides a unified regulatory framework for the promotion of private investment at the three levels of government, contributing to the growth of the national economy, with the closing of gaps in infrastructure or public services as well as the generation of employment. Likewise, the purpose of this legal framework is to regulate the institutional framework and processes for the development of investment projects under PPP modalities and projects in assets.

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

PPPs can be implemented through concession, operation and maintenance contracts and management, as well as any other modality permitted by current regulations. They may also originate from state or private initiative and may include, among other things, general public infrastructure projects such as road networks, multimodal networks, railways, airports, ports, logistics platforms, urban recreation and cultural infrastructure, penitentiary, irrigation, health or education infrastructure, as well as public services such as sanitation, telecommunications, energy and lighting, hydrocarbons, and other services of social interest related to education, health and the environment, such as waste treatment and processing. Likewise, PPP projects can be executed for the provision of services linked to public infrastructure and/or public services that the state needs to
provide such as tolling and rate collection systems, centers for better citizen service, applied research and/or technological innovation, among others.

PPPs may or may not require co-financing from the state, depending on whether or not 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.

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

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

On the contrary, if there were any third parties interested in the execution of the project, it shall be submitted to a bidding process and, 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 remarkable concessions that have been granted under this legal framework as PPPs are the concession for the construction and
operation of the Transmantaro national electrical interconnection line, the
concession for the telecommunications PCS Band, National Dorsal Fiber
Optic Network, Lima International Airport Jorge Chavez, Interoceanic
Highway, Longitudinal de la Sierra Road Project - Section 2, and the
Concessions for the Callao and Paita Ports, the Lima Metro Line 2 and
regional airports, among others.

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

**Legal stability agreements**

This type of agreement, signed between PROINVERSION on behalf of the
Peruvian State, and 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 analogous

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

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

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 in which 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, a new investment mechanism for Public Works Tax Deduction Law was created. Its purpose is the execution of public investment projects at the 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 up to an amount of 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, among others.
This mechanism can be accessed by regional and local governments as well as by public universities that receive resources from the canon, royalties, customs revenues and participations. Furthermore, since 2015, government entities that deal with health, education, tourism, public order and safety, agriculture and irrigation, sanitation, culture, environment, sport, fishing, urban enabling, rural electrification, social development, social protection, transportation, communications and justice issues can access this mechanism.

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

The main benefits of the projects that are executed through the Public Works Tax Deduction modality are the following: the company will be able to collaborate in the execution of an investment project while reducing its payment of income tax; the company would not only have a positive impact on the population but also an incentive to fulfil its commitment to social responsibility and improve the corporate image that it projects to the public, helping the state execute projects through a modality that facilitates the projects’ completion, preventing cumbersome and slow procedures.

Finally, once the selection process is carried out to choose the private company that will finance and/or execute the work, an agreement must be signed for the beginning of the investment phase of the project. At the end of the project, the public entity will request the Ministry of Economics and Finances to issue a Public Investment Certificate, which is the representative document of money that lists the amount invested by the companies in the execution of the project.
The main projects that have been executed through this modality are as follows: interconnecting road construction in the Arequipa region; improvement of the highway Ilabaya - Cambaya - Camilaca in Tacna region; installation and improvement of the potable water, sewage and storage systems in Moquegua region; expansion and improvement of the capacity of the San Martín de Porres Support Hospital of Macusani in Puno region, among others.

Thus, according to data provided by PROINVERSION, approximately 159 projects have been executed through this modality and approximately 30 are being undertaken.

**Compliance and anti-bribery**

Corruption of national and foreign public officials is criminalized under the Peruvian Criminal Code. This law prohibits acts of bribery, involving both the public official who receives the bribe (passive bribery) as well as the private citizen who offers the bribe (active bribery). Penalties for active and passive bribery include imprisonment (of up to eight years, depending on the type of bribery), prohibition from being elected or appointed to a public office, and monetary fines. Traditionally, only individuals (and not legal entities) could be held criminally liable for bribery. However, due to recent corruption scandals, the Peruvian government has issued specific measures to tackle this problem.

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

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

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

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

- Designation of a person in charge of the prevention function
- Measures for the identification, evaluation and mitigation of risks to prevent the crimes.
- Implementation of internal complaint proceedings
- Dissemination of information and periodic training on the prevention model
- Continuous evaluation and monitoring of the prevention model

Evaluation of the suitability of the implementation and functioning of the prevention model will be performed by the Superintendence of Capital Markets (**Superintendencia del Mercado de Valores de Perú** or SMV) upon the request of the public prosecutor. If the report of the SMV determines that the prevention model is adequate, the public prosecutor will order the
conclusion of the investigation and/or proceeding by a duly reasoned resolution.

Finally, Peru has adopted Technical Standard ISO 37001 on anti-bribery management systems, which guides the implementation of compliance programs.
Company structures for economic activities
Company structures for economic activities

Types of company ................................................................. 28
Corporations ........................................................................ 29
Closely held corporations ..................................................... 30
Public corporations .............................................................. 30
Limited liability companies .................................................. 31
Branches of foreign corporations .......................................... 31
Closed simplified joint stock corporation (SACS) .................. 32
Companies’ reorganization proceedings .............................. 32
Power structures ................................................................. 33
Associative agreements ....................................................... 34
Joint ventures ..................................................................... 34
Types of company

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

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

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

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

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

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

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, it offers limited liability, and it is structured to allow the separation of management from ownership. A minimum of two shareholders (individuals or legal entities) is required to incorporate a company. The share capital shall be divided into transferable titles known as shares. The transfer of shares is free, unless the shareholders agree otherwise.

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

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

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

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

Certain limitations apply to the transfer of shares, such as right of first refusal (unless otherwise agreed), and even in some cases, 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 seven hundred and fifty (750) shareholders.
- Over thirty-five percent (35%) of the company's share capital is owned by one hundred seventy-five (175) or more shareholders, except those shareholders whose individual holding is less than two per thousand (0.2%) or exceeds five percent (5%) of the company’s share capital.
- The company incorporates as such.
- All the voting shareholders unanimously approve the adaptation to said system.
A public corporation must list all its shares on the stock exchange. Moreover, it is subject to regulation by the SMV.

**Limited liability companies**

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

**Branches of foreign corporations**

Establishing a branch in Peru is similar to incorporating. It requires formalizing through the execution of a public deed in Peru, which must at least contain a certificate of good standing for the parent company; a copy of the bylaws of the parent company; a corporate resolution indicating the following: 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; 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 these documents and the Ministry of Foreign Affairs in Lima, Peru, 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, these documents shall be appropriately apostilled instead.
Closed simplified joint stock corporation (SACS)

With Legislative Decree No. 1409, a new corporate regime called Closed Simplified Joint Stock Corporation (Sociedad por Acciones Cerrada Simplificada or SACS) was created. According to this decree, 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 closely held corporation (sociedad anónima cerrada), 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, so, 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 portal of SID-SUNARP. However, the subsequent acts to the incorporation will be processed according to the general rules of the Public Registries and the General Corporation Law.

Companies’ reorganization proceedings

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

- Mergers (where two or more companies combine in order to create a new independent company or one company absorbs the entire
business of the other company and this target company ceases to exist)

- Simple reorganization (the segregation of assets and liabilities, and/or business lines in order to transfer these to a subsidiary company)

- Spin-off (the segregation of assets and liabilities, and/or business lines in order to transfer these to another company or to incorporate a new company, or a complete split of the company being spun off in two or more new companies)

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

**Power structures**

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

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

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

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

**Associative agreements**

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

Associative contracts may be: Association in participation (*contratos de asociación en participación*) and 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 the purpose of obtaining an economic profit.

**Joint ventures**

Even though joint ventures are not contemplated in the 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 of time.

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

Public procurement ................................................................. 40
Participation of foreign companies ............................................ 40
Procedures included in the LCE and the RLCE ......................... 41
Public tender ............................................................................. 41
Public bid .................................................................................. 41
Simplified award ...................................................................... 42
Direct hiring (waivers) .............................................................. 42
Reverse auction ........................................................................ 42
Stages in the selection procedure ............................................. 42
Dispute resolution during the selection procedure .................... 44
Dispute resolution related to contract performance ................... 44
Guarantees ............................................................................... 45
Public auction .......................................................................... 45
Integrated project contest ......................................................... 46
Public procurement

The purchase of goods, services and works financed with public funds by the government is regulated by the Public Procurement Law, as approved by Law 30225, amended by Legislative Decrees No. 1341 and 1444 (Ley de Contratación Estatal or “LCE,”) and its regulations as approved by Supreme Decree No. 350-2015-EF, as amended by Supreme Decree Nos. 056-2017-EF and 344-2018-EF (hereinafter, “RLCE”). This legal framework applies to all government entities, including state-owned companies.

Public-private partnerships 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 with Peru’s government 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 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 (hereinafter, “Registry”), before the Public Procurement Supervisory Body (Organismo Supervisor de las Contrataciones del Estado or OSCE).

In order to request registration before the Registry, the company must have a legal representative who has powers of attorney, registered with Peru’s Registry Office. They shall also have sufficient capacity to tender and enter into agreements.
The OSCE is a government entity in charge of fostering, supervising and controlling acquisitions made by contracting government bodies and ensuring compliance with the LCE and the RLCE.

The processing of the Registry’s request takes four business days for goods and services, and 30 business days for works operators and consultants. Works operators and consultants need to certify their expertise before the Registry.

Registration with the Registry is permanent; however, the company must periodically update the Registry’s information as regards potential changes to the company’s structure.

**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 is a selection process that intends to hire external contractors to accomplish the execution of works or acquire goods, for amounts over USD 500,000.00 (works) and USD 120,000.00 (goods), approximately. An invitation to tender is public and is made through an electronic platform (SEACE). The tender is filed in an envelope at a public event.

The bidder must have the necessary expertise on the bid’s subject matter (execution of similar works/manufacturing or commercialization of similar goods).

**Public bid**

This is a selection process to hire services, for amounts higher than USD 120,000.00 approximately. The call for bids is public and is made through SEACE. The bid is filed in two (2) envelopes at a public event.
Between the call for bids and the filing of bids, there is a minimum term of 22 business days.

**Simplified award**

The simplified award process applies to the hiring of goods and services, for amounts lower than USD 120,000.00, and works for amounts lower than USD 500,000.00 approximately.

The call for bids is public and it is made by means of the SEACE, but the selection process takes only eight business days, between the call for bids and the filing of bids.

**Direct hiring (waivers)**

This is a procurement procedure by means of which the government chooses, directly and without any competitive procedures, the provider it will hire. 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.

**Reverse auction**

This is a selection procedure with which to acquire goods or services previously standardized by the competent authority (PERUCOMPRAS - Peru’s Purchasing Center), where the competition is based solely on the lowest price offered by bidders. It is carried out through an electronic platform (SEACE).

**Stages in the selection procedure**

- The procurement specifications may be freely accessed through the electronic platform (SEACE).
- Providers intending to participate in the selection procedure must register as “participants” by electronic means and free of charge.
• After registration, providers will be able to submit questions and raise objections to the contents of the procedure specifications.

• The entity that called for the selection procedure, through the selection committee, then answers the questions and objections raised against the specifications.

• In public bids and tenders, the OSCE may be required to issue a decision on the objections to the specifications, in which case the OSCE will draft the final rules applicable to the process (final specifications).

• Providers shall submit their bids to the entity that called for the selection procedure.

• Providers may submit their bids, acting individually or in consortium with other companies or persons, whether domestic or foreign. In order to act in consortium, it is necessary to submit an affidavit bearing the signatures of all representatives certified before a notary public (promise to form a consortium).

• The selection committee shall verify if the bid meets the eligibility criteria and assign a rating to the bidders, based on the best price offered, the level of improvement offered and/or the offer of staff with better qualifications (in services).

• The successful bidder shall be the one that obtains the highest rating and meets the mandatory requirements, and shall execute the agreement with the entity.

• 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 term to file the appeal is eight business days (in public bids and tenders) or five business days (in simplified awards).

- In order to file the appeal, it is necessary to post a bond equal to 3% of the reference value (price tendered).

- The appeal shall be decided by an administrative tribunal, other than the entity that called for the selection procedure, if the reference value is higher than USD 60,000.00, approximately.

  If the reference value is lower than USD 60,000.00, the director of the entity that called for the selection procedure shall decide the appeal.

- The decision that resolves the appeal puts an end to the dispute about the process result, and the contract shall be entered into with the relevant bidder, unless the judiciary orders, by means of a precautionary measure, that its effects be suspended.

Dispute resolution related to contract performance

Any disputes between the parties regarding contract performance, construction and/or termination shall be mandatorily resolved, pursuant to the LCE, through conciliation\(^1\) and/or institutional arbitration, as agreed by the parties.

Disputes involving contracts for the execution of works with an amount higher than USD 7,000,000.00 shall be resolved by a dispute resolution board, the decision of which shall be binding on the parties.

\(^1\) In the Peruvian legal system, conciliation is a mandatory step before filing for arbitration.
Guarantees

It is not necessary to offer a guarantee to be a bidder.

In order for the contract to become binding, the successful bidder shall give the institution a bond to guarantee faithful performance (a performance bond or surety bond), in an amount equal to ten percent (10%) of the contract’s original value.

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

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

The guarantees accepted by the entities will be unconditional, joint and several, irrevocable and automatic in Peru, upon demand by the relevant entity, under liability by the issuing company, which may be financial institutions overseen by the Superintendency of Banking and Insurance of Peru, or foreign banks included in the list of the Central Reserve Bank of Peru.

* In other procurement systems, other than under the LCE, entities carry out selection procedures with other rules, such as the following:

Public auction

This is a procedure for the sale of goods, whereby the buyer and the price are determined by means of a competition system where an opening bid is set, and the contract is awarded to the highest bidder.
**Integrated project contest**

This selection procedure is based on a private initiative submitted by a private person and which is declared to be in the public interest, in order to request the concession of a work or service.
Tax Regime

General standards.................................................................................................................. 50
International agreements........................................................................................................ 50
Single taxpayer’s registration or tax ID (RUC) ..................................................................... 50
Income tax................................................................................................................................. 50
Value-added tax......................................................................................................................... 57
Selective consumption tax - ISC (excise tax)......................................................................... 58
Financial Transactions Tax........................................................................................................ 58
Temporary tax on net assets (ITAN) .......................................................................................... 59
Most relevant municipal taxes................................................................................................... 60
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 signed double tax treaties currently in force with Brazil, Canada, Chile, Korea, Mexico, Portugal, Switzerland, and with the member countries of the Andean Community (i.e., Bolivia, Colombia, and Ecuador).

Single taxpayer’s registration or tax ID (RUC)

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

However, though 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 that such person may be registered as the legal representative of the company in the Single Registry of Taxpayers.

Income tax

Companies incorporated in Peru are subject to income tax, both from domestic- and foreign-sourced income. The fiscal year ends on December 31. There are no exceptions. The tax return is normally filed by March 31 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.

All expenses, except for some special cases (such as interest on loans) arising from transactions directly or indirectly carried out with residents in tax havens are 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, 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.

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

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

Capital gains derived from the sale of shares listed and sold on the Lima Stock Exchange are exempt from income tax until December 31, 2019, provided that: (i) 10% or more of the total shares issued by the respective company (or securities representing such shares) had not been transferred
in the previous 12 months; and (ii) such shares qualify as having “stock market presence,” as defined in the relevant law establishing such provisions.

Capital gains derived from the transfer of securities in general are also exempt from income tax until December 31, 2019, provided that: (i) the transfers take place through the Lima Stock Exchange; and (ii) the securities qualify as having stock presence, under applicable law. Common shares, investment shares, American Depositary Receipts (ADR) and Global Depositary Receipts (GDR) must additionally fulfill the condition of not transferring more than 10% of the securities issued by the company in a period of 12 months.

Capital gain derived by Peruvian tax resident individuals from the sale of securities issued by a foreign company is subject to 8%, 14%, 17%, 20%, and 30% progressive income tax rates. However, if the securities issued by the foreign company are registered in the Peruvian Public Registry of Securities and the sale is made: (i) through a centralized negotiation mechanism of the country; or (ii) foreign trading mechanisms subject to an integration agreement (currently, there are agreements with Chile, Colombia and Mexico), the applicable income tax rate shall be 6.25%. Companies incorporated in Peru shall be subject to the regular 29.5% income tax rate on the aforementioned capital gain.

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

An indirect sale occurs when the stock of a foreign company that owns stock in a company incorporated in Peru (directly or through one or more companies) is transferred, provided that in any of the 12 months before the sale, the market value of the stock of the aforementioned Peruvian company is equivalent to 50% or more of the market value of the stock of the foreign company.
The indirect sale of shares of a Peruvian company described above shall be triggered after a minimum 10% of the stock of the foreign company is transferred, within a 12-month period. Otherwise — if the aforementioned threshold is not met — the indirect sale provisions do not apply.

An indirect sale of shares shall also occur when the total value of the shares issued by the Peruvian company, subject to the indirect transfer within any 12-month period, exceeds 40,000 tax units. The aforementioned value shall be determined by applying: (i) the equivalency percentage (proportion) of the market value of the shares of the Peruvian company represented in the market value of the shares of the foreign company (shareholder of the Peruvian company); to (ii) the price agreed by all related parties on the transfer of the shares of the aforementioned foreign company.

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

As in any other transaction, for tax purposes, a sale of shares, either direct or indirect, shall be made at market value. The market value of listed shares shall be the stock exchange price. If the company does not trade on the stock exchange, the market value is the value of the transaction, which shall not be less than the net asset value of the shares transferred. The net asset value shall be calculated using the latest balance sheet of the issuing company, issued prior to the date of the sale and no older than 12 months.

The capital gain derived from the indirect sale of shares issued by a Peruvian company shall be subject to a 30% income tax rate or 5% if that sale is carried through the Lima Stock Exchange.
The capital gain subject to Peruvian income tax, described in previous paragraphs, shall be calculated by deducting the cost basis from the assets transferred. For such purposes, the non-Peruvian tax residents must file a “cost certification” before the Peruvian tax authorities, which requires the fulfillment of certain legal and formal requirements. This requirement does not apply if the transfer takes place through the Lima Stock Exchange.

Interest earned by a company on its bank deposits are subject to a 29.5% income tax rate (this income tax rate shall be gradually reduced, as described above). Such interest earned by individuals shall be income tax exempted until December 31, 2018.

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.

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

Royalties paid to non-Peruvian tax residents are subject to a final 30% income tax rate, to be withheld by the local taxpayer. Interests paid to non-Peruvian tax residents are subject to a 4.99% withholding income tax rate, provided certain debt and interest-related requirements are met. Otherwise, the withholding income tax rate on interest shall be 30%. Interest paid to a foreign related company is also subject to the 30% withholding income tax rate.
Payments made abroad for technical assistance services are subject to a 15% withholding rate, provided certain requirements are met. Otherwise, said payments are subject to the regular 30% withholding rate.

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

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

It is worth noting that Law No. 27360 declared investment and development in agriculture a priority, and tax benefits were made available for certain activities. Both individuals and companies that develop crops and/or breeding activities, except for the forestry industry, fall within the scope of this regime (benefits do apply to reforestation and agroforestry).

Also included within the scope of this regime are individuals and companies that carry out agro-industrial activities (production, processing and preservation of meat and meat products, processing and preservation of fruits and vegetables, and sugar processing), provided that they use agricultural products mainly outside the province of Lima and the constitutional province of Callao. Business activities related to wheat, snuff, oilseeds, oils and beer are not covered by this law.

Taxpayers covered in the preceding paragraphs are subject to a reduced 15% income tax. Also, eligible individuals and companies may apply a 20% annual depreciation rate to hydraulic infrastructure and irrigation works.
invested in during the period in which the aforementioned regimen is in force. These tax benefits will be in force until December 31, 2021.

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. Also, potential beneficiaries must be engaged in the following economic activities: livestock, agriculture, aquaculture, fishing, tourism, forest extraction, manufacturing activities related to the processing, transformation and trading of primary products derived from the abovementioned activities, as well as forest transformation or trade.

The activities listed in the preceding paragraph are subject to either income tax exemptions or reduced 5% or 10% rates, depending on their geographic location and economic activities. Taxpayers in the Amazon region that mainly develop agricultural activities and/or transformation or processing of products that qualify as native products and/or alternative in such field will be tax exempted.

In addition, monthly advanced payments of income tax may be determined by applying either of the rates 0.4% or 0.7% 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 January 1, 2049.
Value-added tax

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

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

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

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

Companies that have not initiated productive activities and that import or purchase capital goods for the production of goods and services for export, or which are subject to VAT, are eligible for the general or special early VAT recovery regime, depending on the requirements met by the participating company. This regime consists of filing before the Peruvian tax authorities a request for a refund of the tax credit derived from the VAT paid on the purchase of goods, services, and imports described above during the company’s pre-operative phase.

At the same time, provided that certain requirements are met, a definitive recovery of VAT regime has been approved for the VAT paid by companies of the mining or hydrocarbons sectors during their exploration phase. This benefit will be in force until December 31, 2019.
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 January 1, 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 December 31, 2019.

**Selective consumption tax - ISC (excise tax)**

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

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

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

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

**Financial Transactions Tax**

The Financial Transactions Tax (*impuesto a la transacciones financieras* or ITF) is a temporary tax levied on certain financial transactions provided in the law creating this tax. This law provides that all obligations in excess of
PEN 3,500 or USD 1,000 must be paid using the so-called “means of payment.”

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

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

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

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

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

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

**Temporary tax on net assets (ITAN)**

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.

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

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

**Most relevant municipal taxes**

**Property tax:** This tax is levied on the ownership of property by a natural
or legal person in a given district. 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 tax
must be paid by the buyer.

**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
Labor and Immigration Standards

Employment contracts

Working hours

Paid leaves

Mandatory employee benefits

Equal Pay Act

Social Security and taxes

Termination of the employment relationship

Outsourcing
Employment contracts

General characteristics of contracts

The agreement with which 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 is 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-working-day week. If the working 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 services 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 will apply to contracts signed starting November 11, 2016.

The Peruvian legal system has established nine modalities of fixed-term employment contracts, divided into three groups:

a. Temporary 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 a 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. Its 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, originated 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.

b. Accidental contracts:
   
i. 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.
   
   ii. 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 grounds set forth by law or the performance of tasks entrusted to them. According to law, its duration depends on the term of suspension of the replaced employee.
   
   iii. Emergency: This is a contract executed in case personnel is needed due to events caused by irresistible force, and which are inevitable, unforeseeable and irresistible (force majeure). According to law, its duration is that necessary to cover the emergency.

c. Specific work or specific service contracts:
   
i. Certain work or specific service: This refers to a contract for the performance of transitory and specific works or services. According to law, the duration of this type of contract is for the entire time needed to complete the work or Service
   
   ii. 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 the 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, either short-term or discontinued activities.

iii. 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 consider fixed-term employees as indefinite-term personnel (fixed-term contract’s distortion).

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 January 1 and December 31 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 work day or a 48-hour work week at the maximum.

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

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

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

**Paid leaves**

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

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

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

National holidays

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

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

Sick leave

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

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

Maternity leave

Law No. 30367, on November 25, 2015, has extended the maternity leave period. Currently, maternity leave is at 98 days (49 days of prenatal leave and 49 days of postnatal leave). Additionally, in cases of multiple childbirth
or if the child has a disability, postnatal leave will be extended for another 30 calendar days.

**Paternity leave**

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

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

**Adoption leave**

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

If the petitioners are spouses, the leave will be taken by the woman.

**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 thirty 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

It is worth noting that an employer is not only required to accomplish all the obligations related to the payment of the employee’s remuneration, but that they are also obliged to grant all mandatory rights and benefits decreed by Peruvian labor regulations.

These rights and benefits are as follows:

Minimum wage

The new minimum wage since March 22, 2018 is PEN 930.00. This minimum wage may be adjusted periodically by the government.

Legal bonuses

There are two mandatory bonuses within the year, which are equivalent to one monthly remunerations each one. Provided that 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 employers shall pay directly to its employees, as an extraordinary bonus, a figure amounting to 9% of the contribution to the Social Security Service (ESSALUD). If the employee is covered by a private healthcare provider, this extraordinary bonus must be equivalent to 6.75% of the bonus.

**Compensation for length of services (CTS)**

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

The deposits are made to an account called “CTS account” in the bank chosen by the employee every May and November. 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 the 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 services rendered. 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 services. The year of services required by law is calculated considering the beginning date of the labor relationship.
The 30-day vacation period must be enjoyed without any interruption. However, employees may agree with their employer to break down, accumulate or reduce this period. As of September 13, 2018, the annual vacation may be used according to the following rules:

- At least 15 of the 30 days of vacations must be taken in periods no shorter than seven days.
- The remaining days (up to 15) can be taken in periods shorter than 7 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 93.00), 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% to 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 rate of profit sharing is 10% for fishing, telecommunications and industrial companies; 8% for mining, trading activities and restaurants; and 5% for other activities.

Profit sharing is paid according to these percentages, which are calculated based on annual income before taxes. However, the company is entitled to offset the net profits with accumulated losses from previous fiscal years, without including the deduction of the employees' profit shares. Please note that the deduction that came from applying the statutory profit sharing rate is considered an expense for tax purposes, and therefore, it may be deducted for income tax purposes.

**Life insurance**

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

**Establishment of a lactation room and its use**

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

The lactation room must include, at a minimum, an area of 10 square meters, and should be in a private comfortable environment that must be accessible to mothers with disabilities. It must also have a refrigerator, water dispenser and cleaning utensils, among others.
In addition, employers have the obligation to regulate the use of the lactation room in the Working Rules or in a similar document, and to inform the Ministry of Women and Vulnerable Populations about the establishment of this room within a 10-day period.

**Equal Pay Act**

On December 27, 2017, the Equal Pay Act (Law No. 30709) was passed. This act 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 this salary policy.

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

**Social Security and taxes**

**Social Security in Health (ESSALUD)**

Pursuant to Law No. 26790, all employees and their dependents are statutory affiliates of the department of Social Security in Health (ESSALUD).

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

**Private healthcare providers**

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

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

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

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

**Retirement contribution**

Employees may choose between the public or private pension system.

Monthly contributions to the private pension system are equivalent to 10% of the employee’s remuneration. Additionally, there is a premium for disability insurance, survival insurance and burial expenses (1.35% of the remuneration) (between 0.18% and 1.69% of the remuneration) and for the commission of the Pension Fund Administration (*Administradora del Fondo de Pensiones* or *AFP*). All these items are deducted by the employer from the employee’s salary and paid to the administrator of the pension.
The monthly contribution to the National Pension System is equivalent to 13% of the employee’s remuneration. The employer shall deduct the contribution and pay it to the National Tax Authority (Superintendencia Nacional de Aduanas y Administración Tributaria (SUNAT)), which collects this contribution.

**Income tax**

The employer must withhold and pay on a monthly basis to the Tax Authority 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 29,400.00 in 2019 - is made from the employee’s income. Notwithstanding this, domiciled employees may be deducted an additional amount (up to 3UIT (PEN 12,600.00)) due to the following concepts: lease payments; mortgage loan’s interests used by the employee to acquire their first house; receipt for fees of doctors or dentists; payments made for professional services; and contributions to social security made on behalf of domestic workers.

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 21,000.00), at 14% of net income for amounts higher than 5 tax units to 20 tax units (PEN 84,000.00), at 17% of net income for amounts higher than 20 tax units to 35 tax units (PEN 147,000.00); at 20% of net income for amounts higher than 35 tax units to 45 tax units (PEN 189,050.00) and is capped at 30% of net income in excess of 45 tax units.

Taking into consideration that 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 to be 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 domiciled) will be effective as of the next fiscal year (January 1) 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 resolutory condition and the expiration of fixed-term employment agreements

(iv) Mutual agreement

(v) Employee’s permanent and absolute disability

(vi) Retirement

(vii) Dismissal under circumstances provided by law

(viii) Termination by objective cause

**Dismissal**

Employees who work four or more hours daily are protected against unfair dismissal.
The reasons that justify the dismissal of an employee are explicitly contained in the refunded text of the Labor Productivity and Competitiveness Act, approved by Supreme Decree No. 003-97-TR, which has classified the dismissal cases related to the ability of the employee and their conduct.

**Termination by objective causes**

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

(i) Act of God or force majeure

(ii) Economic, technological, structural or analogous reasons

(iii) Dissolution and liquidation of the company, and bankruptcy

(iv) Patrimonial restructuring, under the pertinent law

To make effective this type of termination, 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 corresponding severance pay must be paid by the employer within the next 48 hours of the employee’s termination.

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

**Foreign employees in Peru**

When hiring foreign personnel, it is necessary to execute a written employment contract according to certain formalities and limitations (i.e., its term shall not exceed three years, which could be extended for similar periods).

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

The Ministry of Labor must approve these contracts. In order to request the approval of a foreign employee’s contract, the following documents must be submitted to the Ministry of Labor: (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.
That is to say, it will no longer be necessary to submit to the Ministry of Labor documents such as the certificates of previous employment or professional titles, that, generally, have to be translated and legalized or apostilled. However, it is advisable to have a copy of these documents in case of a future inspection.

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

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

Foreign employees may only begin their services once the contract has been automatically approved by the Ministry of Labor, 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 staff.
(ii) Supplementary services: services that are not part of the client’s main activity and whose absence does not affect the activity of the company, such as courier, surveillance, security, reparations and cleaning

(iii) Highly specialized services: complex and specialized services that are not part of the client’s main activity, such as specialized sanitation and maintenance

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

**Outsourcing**

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

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

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

(i) Bear the services provided at their own account and risk.

(ii) Have in hand their own financial, technical or material resources.
(iii) Become responsible for the result of their activities.

(iv) Place their employees under their exclusive subordination. (This means that the employees shall receive instructions, sanctions and be supervised only by the outsourcing company.)

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

The following are additional characteristic elements of outsourcing activities:

(i) The outsourcing company must have more than one client.

(ii) It shall have its own equipment and capital investment.

(iii) The compensation to be paid to the outsourcing company will be calculated based on the services rendered by the company.

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

In addition, it is worth considering that pursuant to outsourcing regulations, the main company is jointly liable for the payment of the outsourced employees’ remunerations, labor benefits and social security contributions accrued during the term of outsourcing. Rights and benefits as a consequence of collective bargaining, 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.
Intellectual property protection
In Peru, protection of intellectual property can be divided into the protection of industrial property and the protection of copyright.

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

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

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

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

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

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

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

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

A utility model is any new form, configuration or arrangement of components of any device, tool, instrument, mechanism or other object, or any part thereof, which allows a better or different operation, use or manufacture of the object incorporating the utility model or that provides the object usefulness, advantage or technical effect that it did not have before. The utility model has a term of 10 years, from the date the application is filed. Once the term has expired, the utility model enters the public domain. The utility model can also be licensed.
Industrial designs cover any arrangement of lines or combination of colors, or any two- or three-dimensional external shape, which is incorporated into an industrial product or handicraft to give it a special appearance but does not change the target or purpose of the product and serve as type or pattern for its manufacture. Industrial design protection has a term of 10 years from the date the application is filed. After the term expires, the industrial design enters the public domain. The industrial design may be transferred or licensed.

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

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

If a registered mark has not been used in Peru or in any Andean Community member country by the owner or a licensee for three consecutive years, the mark may be canceled by any person having a legitimate interest in the mark.

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.

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

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

Copyright in Peru is governed mainly by: the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; Decision 351 of the Andean Community: Common Regime on Copyright and Related Rights, Law on Copyright (Legislative Decree No. 822) as amended by Legislative Decree No. 1076 and Legislative Decree No. 1391; Legislative Decree No. 1092 (approving Border Measures for the Protection of Copyright and Related Rights and Trademark Rights); and Law No. 29316 (which modifies, incorporates and regulates various provisions to implement the trade promotion agreement signed between Peru and the United States of America); as well as Supreme Decree No. 053-2017 (which approves the Regulation of the National Record of Copyrights and related rights). As in the case of industrial property rights, INDECOPI is the authority in charge of maintaining records and amendments to copyright and of monitoring the proper use of these rights.
The following are protected under copyright law: (i) literary works expressed in writing through books, magazines, pamphlets or other writings; (ii) literary works expressed orally such as lectures, speeches, and sermons or didactic explanations; (iii) musical compositions with or without words; (iv) dramatic, musical, choreographic, pantomime and performing arts works in general; (v) audiovisual works; (vi) works of plastic arts (including paintings, sketches, works of engraving and works of lithography); (vii) architectural works; (viii) photographic works and works expressed by a process analogous to photography; (ix) illustrations, maps, drawings, plans, sketches and plastic works relative to geography, topography, architecture or science; (x) slogans and phrases to the extent that they have a form of literary or artistic expression with original features; (xi) computer programs; (xii) anthologies or compilations of assorted works or expressions of folklore, and databases, provided that such collections are original by reason of the selection, coordination or arrangement of their contents; (xiii) newspaper articles, whether or not on current events, reports, editorials and commentaries; and (xiv) any other product of the intellect in the literary or artistic domain, which is characterized by originality and is susceptible to being disclosed or reproduced by any means or process, known or yet to be known.

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

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

Economic rights to works may be transferred by mandate or legal presumption, by transfer inter vivos or mortis causa, by any means permitted by law.
Based on the violation of copyright, the copyright holder may initiate an administrative proceeding before the 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 any unauthorized circumvention of said measures used by copyright holders to protect their works is penalized, either administratively or criminally, by law. Besides, the manufacturing, importation, distribution or commercialization of products or components thereof to elude the aforementioned technological measures is also sanctioned by law. 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
As a general rule, business mergers are not subject to authorization by the free competition authority, which in Peru is the Commission for the Defense of Free Competition of INDECOPI.

However, the prior approval of that authority is required for mergers involving companies engaged in the generation, transmission and distribution of electricity. In such cases, the free competition authority examines the merger operation and, if it considers that the merger may reduce, harm or prevent competition, it may subject it to conditions or prohibit the merger.

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

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

Trade openness ................................................................. 100
Authorized Economic Operator or OEA ......................... 101
Customs clearance’s features .......................................... 102
Tariff classification .......................................................... 104
Customs and administrative sanctions ............................. 105
Customs valuation ........................................................... 106
Conditions for import and export ................................... 106
Customs regimes ............................................................... 108
Multilateral agreements on trade and integration .............. 110
Trade openness

By means of Legislative Decree No. 668, in force since October 1991, the Peruvian government approved a regime to guarantee freedom of domestic and foreign trade. This regime mainly accomplished the following:

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

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

On the other hand, the Peruvian government shall ensure that the technical regulations and standards are not prepared, adapted and applied with a view or with the effect of creating unnecessary obstacles to trade of any kind, and shall ensure an equivalent treatment between similar domestic and foreign products. This will apply to final goods, raw materials and inputs of any kind, inclusively domestic and foreign trade services.
Finally, it is important to mention that the Ministry of Foreign Trade and Tourism defines, directs, executes, coordinates and supervises foreign trade policies, which, in certain cases, require coordination with other ministries.

**Authorized Economic Operator or OEA**

The OEA is an international trade operator certified by the customs authority (National Superintendency of Tax Administration or **SUNAT**), which has complied with all the conditions and requirements according to the General Customs Law, the OEA Certification Law and related Customs Procedures, and will enjoy benefits before SUNAT.

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

The accomplishment of the requirements begin 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

OEA certification grant benefits to the operators, which are described in Annex 1 of the OEA Procedure, approved by Resolution No. 35-2016-SUNAT.
Customs clearance’s features

Customs clearance is governed by the General Customs Law\(^2\) and its regulations.\(^3\) In addition, SUNAT is responsible for controlling the entry or exit and transportation of goods inside Peruvian borders.

It is important to mention that in 2015, Legislative Decree No. 1235, modified the General Customs Law, with the purpose of facilitating international trade. The government modified the terms of customs clearance, and created new operators before SUNAT.

The goods declaration is requested by customs clearance agents or other persons legally authorized by the Customs authority. The declarations are processed under the following customs clearance process:

**Advance clearance\(^4\):** This allows the importer to import goods released within a period not greater than 48 hours as from their arrival. This procedure requires the electronic arrival of the transportation and the prior presentation of a financial guarantee to the customs administration, which could be global (12 months of validity) or specific (three months of validity for one operation) so as to obtain the release or disposal of the goods without prejudice to continuing the customs clearance process, and then pay customs duties and taxes on imports.

**Delayed clearance:** After the arrival of the imported goods into Peruvian territory, the importer has a deadline of fifteen (15) calendar days as from the date of the end of unloading to dispatch the goods under a customs procedure.

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\(^2\) Legislative Decree No. 1053, and its amendments (Legislative Decree No. 1235).

\(^3\) Supreme Decree No. 010-2009-EF and its amendments. The last amendment was under Supreme Decree No. 163.2016-EF.

\(^4\) Legislative Decree No. 1433, which amends the General Customs Law - Legislative Decree No. 1053, established the mandatory application of advance clearance as of December 31, 2019.
Urgent clearance: This refers to the customs clearance of some goods considered as relief consignments or emergency goods, such as medications, among others. The dispatch can be started 15 days before the arrival of the transportation or seven days after the arrival of the transportation at the destination, according to the term established in its regulation.

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

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

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

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

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

The import or export clearance of goods that have no commercial value, or that do have commercial value that is however not significant for the country’s economy, may be processed under any of the following:

Simplified import declaration: In this process, clearance for import of goods that in quantity, quality, species, use, origin or value, have no commercial purpose, or if they do, they are not significant for the country’s economy, is facilitated. Simplified declaration is performed under a simplified customs procedure.
The maximum amount of goods that an importer may submit a simplified declaration import for is USD 2,000. If it does not exceed the maximum amount, the process can be performed directly by the importer of record.

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

**Tariff classification**

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

Determining the correct tariff classification of the merchandise upon importation into Peru is a key issue. Consequently, the importer could be sanctioned for any tariff classification mistakes committed. The tariff classification of the merchandise determines the customs duty and applicable taxes upon importation, as well as whether any non-tariff requirements apply. It also identifies the applicable rule of origin under the Free Trade Agreements signed by Peru in order to qualify or not for a preferential duty treatment.

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

<table>
<thead>
<tr>
<th>DIGITS</th>
<th>DENOMINATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1° 2°</td>
<td>Chapter</td>
</tr>
<tr>
<td>1° 2°  3° 4°</td>
<td>Harmonized Tariff Sistem</td>
</tr>
<tr>
<td>1° 2°  3° 4° 5° 6°</td>
<td>Harmonized Sub Tariff Sistem</td>
</tr>
<tr>
<td>1° 2°  3° 4° 5° 6° 7° 8°</td>
<td>Sub Tariff NANDINA</td>
</tr>
<tr>
<td>1° 2°  3° 4° 5° 6° 7° 8° 9° 10°</td>
<td>Domestic Sub Tariff</td>
</tr>
</tbody>
</table>

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

**Customs and administrative sanctions**

The General Customs Law and its regulations govern customs infractions and their respective sanctions, which are classified as fines and administrative sanctions: (i) suspension; (ii) cancellation; and (iii) disablement.
The importer may use a regime that will allow them to cancel tax debt with preferences. Also, the customs legal framework establishes voluntary disclosure programs and gradual payment of the tax debt as incentives.

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

**Customs valuation**

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

First method: Transaction value of imported goods

Second method: Transaction value of identical goods

Third method: Transaction value of similar goods

Fourth method: Deductive method

Fifth method: Computed value method

Sixth method: Full-back method

**Conditions for import and export**

Importers must be registered with SUNAT in order to obtain a valid single taxpayers’ registration number (RUC) before they can import and export. Goods may be imported or exported simply by using a national identity document, in the case of Peruvian nationals, or a foreign identity card, passport or safe conduct, in the case of foreigners. It is important to note that in order to import and export without a RUC, certain conditions required by law must be met. (simplified customs clearances).
The main documents required by the administration for the importation of goods into the Peruvian territory are as follows:

(i) Customs declaration form (DAM)

(ii) Commercial invoice, or any other equivalent document

(iii) Transport document (bill of lading, air way bill depending on the mode of transport)

(iv) Insurance, if applicable

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

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

As a general rule, imports are levied with the payment of custom duties (ad valorem CIF), VAT (IGV in Peru) and municipal tax (IPM). There are other taxes as well that are applied especially to agricultural goods.

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

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

**Customs regimes**

In Peru, WTO rules on import valuation are applied.

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

(a) **Importation for consumption regime**: This is the most common type of customs regime and involves the definitive entry of foreign goods into Peruvian customs territory for the purpose of being consumed in the country. The entry of goods into Peru is made after paying customs duties and applicable taxes, if any, and complying with any formalities and other customs obligations, if applicable. Foreign goods shall be considered nationalized when clearance is granted by the customs authority.

(b) **Definitive exportation regime**: This customs regime enables the exit of national or nationalized goods from Peruvian customs territory to be used or consumed abroad. It is not subject to any taxes. Goods shall be shipped within a time limit equal to or greater than thirty (30) calendar days\(^5\) 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 thirty (30) calendar days from the day following the shipping date of term, in accordance with its regulations.

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\(^5\) 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.
The law also sets forth customs procedures for export promotion, such as the following:

(a) **Drawback regime**: This allows for the full or partial recovery of customs duties levied on imported inputs that have been incorporated into exported goods or that were consumed during their production. In this regime, the beneficiary can get a refund repayment of 4% of the Free On Board - FOB - value (Incoterm 2010) of exported goods, provided that some requirements are met. For example, the value of the imported inputs may not surpass 50% of the exported good’s FOB value. The recovery rate is 3%.

(b) **Temporary importation for outward processing regime**: This regime allows the import of certain goods to the customs territory after paying the customs duty, which is equivalent to the customs duties and other applicable taxes on imported inputs, if these are transformed or manufactured and materially incorporated into export goods that will be exported within twenty-four (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.

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

The imported goods under replenishment are freely available. However, if these have been used for the exported product’s manufacture they will benefit from the reposition of merchandise in franchise tariff. In order to apply for this customs regime, the export declaration must be submitted within one (1) year of the day following the customs clearance upon
importation that underpins the entry of goods to be replaced. The importation for the consumption of franchised goods shall be submitted within one (1) year of the day following the date of issue of the duty-free replenishment certificate.

Other important regimes are as follows:

(a) **Temporary admission of goods for re-export in the same condition regime**: Formerly known as temporary importation, this regime allows the entry of certain goods, with the suspension of payment of customs duties and applicable taxes on imports, provided they are identifiable and designed to meet a specific purpose in a specific place, to be re-exported without any modification whatsoever in their nature, within a period not exceeding 18 months (for the packaging of export goods, an additional six (6) months period may be requested).

(b) **Customs warehouse**: This customs regime allows the storage of goods arriving at Customs territory in a Customs warehouse facility for such purpose for a certain time limit (12 months) and under Customs control, free from Customs duties and other taxes applicable to importation for household use, provided that they have not been claimed for any Customs procedure or abandoned. Deposited goods may be totally or partially designated for importation, for the purpose of household use, reshipment, temporary admission for re-exportation in the same condition, or temporary admission for inward processing.

**Multilateral agreements on trade and integration**

Peru is a founding member of the World Trade Organization (WTO). Consequently, the WTO rules on antidumping, subsidies and countervailing measures, as well as on liberalization of markets, technical barriers to trade, among others, are applicable in the country.
Similarly, Peru is currently a member of CAN, which is formed by Peru, Bolivia, Ecuador and Colombia. The following are state parties to the Andean Community: Chile, Brazil, Argentina, Uruguay and Paraguay.

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

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

Peru has signed agreements with other countries in Latin America, under the rules of the Latin American Integration Association (ALADI) and has entered into trade agreements with Mercosur together with other members of the Andean Community.

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


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6 On September 20, 2006, Chile formalized its entry as party to this sub-regional agreement.
7 However, from January 2009, Ecuador has implemented safeguards for certain products.
4. Belgium 19. Italy 33. Republic of China*
5. Bolivia 20. Iceland* 34. Republic of Korea*
7. Chile * 22. Liechtenstein* 36. Sweden*
8. Colombia 23. Luxembourg 37. Singapore*
10. Cuba* 25. Mexico* 39. Thailand*
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.8

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

- MERCOSUR (since January 2, 2006)
- United States of America (since February 1, 2009)

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8 Peru has executed a trade agreement with the European Union; this agreement includes an investment chapter with the member countries of the agreement.
• Chile (since March 1, 2009)
• Canada (since August 1, 2009)
• Cuba (since October 5, 2000)
• Singapore (since August 1, 2009)
• People’s Republic of China (since March 1, 2010)
• European Free Trade Association (EFTA) (Norway, Liechtenstein and Switzerland since July 1, 2011; Iceland since October 1, 2011)
• South Korea (since August 1, 2011)
• Thailand (since December 31, 2011)
• Mexico (since February 1, 2012)
• Japan (since March 1, 2012)
• Panama (since May 1, 2012)
• European Union (since March 1, 2013)
• Costa Rica (since June 1, 2013)
• Venezuela (since August 1, 2013)
• Pacific Alliance Agreement (since May 1, 2016)
• Honduras (since January 1, 2017)

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

Meanwhile, the Doha development round is still being negotiated.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entered into force on December 30, 2018 for six of the 11 member countries of the treaty, while Peru’s ratification remains pending.
Health regulations
Health Regulations

Regulated products........................................................................................................ 118
Pharmaceutical products, health products and medical devices..................118
Industrially processed food and beverages...............................................................120
Regulated products

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

Pharmaceutical products, health products and medical devices

As regards pharmaceutical products, health products and medical devices, the governing authority is the Directorate-General for Medicines, Medical Supplies and Drugs (Dirección General de Medicamentos, Insumos y Drogas or DIGEMID), an agency independent from the Ministry of Health that is responsible for securing people’s access to safe, effective and good quality medicines. To this effect, the applicable rules to pharmaceutical products, health products and medical devices are: Act No. 29459 on Pharmaceutical Products, Medical Devices and Health Products; Supreme Decree No. 016-2011-SA, which sets forth the regulations for the Registration, Control and Health Surveillance of Pharmaceutical Products, Medical Devices and Health Products; and Supreme Decree No. 014-2011-SA, which sets forth the regulations on Pharmaceutical Establishments.

In this regard, and pursuant to applicable health regulations, for a company to be able to import and market its pharmaceutical products, health products or medical devices into the Peruvian market, it must first obtain marketing approval (known as “sanitary registration” in Peru), with which the company is authorized to manufacture, import, store, distribute, sell, promote, dispense, deliver or use said products or devices under the terms and conditions of approval.

However, this marketing approval shall be granted only if the following two conditions are met: (i) the company must be organized in Peru; and (ii) it should obtain a health authorization to operate as a pharmaceutical
establishment (main establishments are drugstores (commercialization purposes) or laboratory (manufacturing and/or commercialization purposes)). This health authorization is a prior requirement for the obtaining of a license to operate from local governments (municipalities).

For the grant of a health authorization to operate as a laboratory or drugstore, the company shall hire the services of a technical director, who shall be the professional accountable for the pharmaceutical establishment before DIGEMID; therefore, any liability attributed to said director will also affect the owner or legal representative of the establishment. Likewise, the director will ensure that the quality requirements for pharmaceutical products, health products and medical devices are duly met.

It is worth mentioning that the facilities where the pharmaceutical establishment shall operate must comply with the requirements set forth in the Good Manufacturing, Laboratory and Storage Practices, according to the nature of the facilities, and considering that the grant of said health authorization shall be subject to prior inspection to verify that said legal requirements are duly met.

Another relevant factor that may ensure the grant of a health authorization to operate as a drugstore is having a warehouse. This, however, may be outsourced; that is, it is not necessary for the company to own a warehouse, but it may instead hire the services of a warehouse that has a health authorization to operate as a drugstore.

Legal terms also play an essential role in the proceedings, inasmuch as they differ in practice from the legal provisions. The term of a health authorization to operate as a pharmaceutical establishment legally consists of 30 business days, but in practice, this term may last up to two to three months.
Meanwhile, terms for the marketing approval of products vary according to the type and category of products. However, in practice, they usually last for double the duration of the legally stated time periods.

Once a health authorization to operate as a pharmaceutical establishment is granted, as this approval is effective for an indefinite term, changes of any nature whatsoever must be previously informed and approved.

However, marketing approval for pharmaceutical products and medical devices is effective for five years, and may be renewed up to one year prior to the expiration of its effective term. For health products, the effective term of approval is seven years.

**Industrially processed food and beverages**

The scenario for industrially processed food and beverages is different from that of pharmaceutical products. In these matters, the governing authority is the Directorate-General for Environmental Health and Food Safety (Dirección General de Salud Ambiental or DIGESA), an agency independent from the Vice Ministry of Public Health under the Ministry of Health, whose functions primarily concern public health protection.

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

As regards food and beverages, a marketing approval is required only for industrially processed food and beverages that are marketed within the country. For these purposes, “industrially processed food or beverages” refers to end-products intended for human consumption obtained by physically, chemically or biologically transforming raw materials of plant, animal or mineral origin, and including food additives.
In this regard, no marketing approval is required for food and beverages in their natural state (either packaged for sale or not, such as grains, fruits, vegetables, meat and eggs, among others), 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 basic ingredients that identifies the set and including the same food additives. These marketing approvals allow the holder thereof 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 food or beverage so marketed.

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

Although companies are not required to obtain a preliminary permit prior to the grant of a marketing approval for food or beverages (unlike in the respective cases of pharmaceutical products, health products, and medical devices), the regulations set forth that the holder thereof must be a company organized in Peru. This could pose a problem for foreign companies wishing to enter the Peruvian market without opening a Peruvian branch; if the foreign company is not interested in opening a local branch, marketing approvals may be obtained through a Peruvian distributor.
The legal term for the grant of the marketing approval is seven business days; 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 and 7 business days prior to the expiration thereof.
Sectors

Agriculture and agro-industry ................................................................. 126
Banking, insurance and finance ............................................................. 132
Fishing .................................................................................................. 148
Mining ................................................................................................... 154
Real estate ............................................................................................ 157
Telecommunications ............................................................................. 163
Tourism ................................................................................................ 165
Transportation infrastructure ............................................................... 175
Water resources .................................................................................. 177
Agriculture and agro-industry

General framework

Through the legal framework for the exploitation of agricultural land, the comprehensive, competitive and sustainable development of the agricultural sector, as well as the preservation and effective exploitation of agricultural land, is declared as of national interest and common well-being. To this purpose, the state ensures free access to land ownership, as well as any and all rights with which to benefit from land ownership.9

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 therefrom. Agricultural product prices are determined by free market conditions.

Pursuant to the provisions set forth in Law No. 27360 – Law approving rules for the Promotion of the Agricultural Sector, as amended by Law No. 28810 and others – and regulations thereof, approved by Supreme Decree No. 049-2002-AG, individuals and legal entities engaged in crop production and/or animal breeding, are entitled to certain tax and labor benefits until December 31, 2021.

Pursuant to the provisions of such law, the beneficiaries of this promotion system are: (i) individuals or legal entities engaged in crop production and/or animal breeding, except for the forestry industry; and, (ii) individuals or legal entities carrying out agro-industrial activities, provided they exploit mainly agricultural products, directly produced or acquired from persons engaged in the crop production and/or animal breeding referred to in item (i) above, in areas where such products are produced, outside the province of Lima and the constitutional province of El Callao.

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

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The main tax and labor benefits granted to the beneficiaries of the agricultural system are presented in detail in the following comparative chart:

<table>
<thead>
<tr>
<th>ITEM*</th>
<th>GENERAL LABOR SYSTEM</th>
<th>AGRICULTURAL SYSTEM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax rate (3rd bracket)</td>
<td>29.5%</td>
<td>15%</td>
</tr>
<tr>
<td>Depreciation rate</td>
<td>As provided for by law (usually 10% per year)</td>
<td>20% per year for hydraulic infrastructure works and irrigation works</td>
</tr>
<tr>
<td>Deduction with sale vouchers and payment slips</td>
<td>Only expenses duly supported with invoices may be deducted.</td>
<td>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).</td>
</tr>
<tr>
<td>COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL SYSTEM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Early VAT recovery</td>
<td>An investment agreement must be executed with the state, for the amount of no less than USD 5 million.</td>
<td>There is no need to execute an investment agreement.</td>
</tr>
<tr>
<td>Payments on account</td>
<td>In the absence of calculated tax in the previous year or, if applicable, in the year preceding the previous year, taxpayers shall pay, as a payment on account, the monthly fees, applying the rate of 1,5% to net incomes earned in such month.</td>
<td>In the absence of calculated tax in the previous year or, if applicable, in the year preceding the previous year, taxpayers shall pay, as a payment on account, the monthly quotas, applying the rate of 0,8% to net incomes earned in such month.</td>
</tr>
<tr>
<td>Recruitment</td>
<td>Indefinite term contracts and, as an exception, fixed-term contracts, as provided by law</td>
<td>Indefinite or definite term contracts. The term of definite term contracts shall depend on the activity to be carried out (season).</td>
</tr>
</tbody>
</table>
### COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL SYSTEM

<table>
<thead>
<tr>
<th>Minimum wage (RMV)</th>
<th>PEN 930.00 per month or PEN 31.00 per day, provided an average of more than four hours is worked per day.</th>
<th>PEN 1088.00 per month or PEN 36.29 per day, provided an average of more than four hours is worked per day. Remuneration includes severance pay and Independence Day holidays and Christmas bonuses.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence Day holidays and Christmas bonuses</td>
<td>A monthly remuneration in July and in December, as applicable</td>
<td>Included in the RMV (See RMV.)</td>
</tr>
<tr>
<td>Severance pay (CTS)</td>
<td>Semi-annual deposits in May and in November of each year, in a bank or financial institution designated by the workers, consisting of 9.72% of their remuneration – including bonuses – earned in each semester</td>
<td>Included in the RMV (See RMV.)</td>
</tr>
</tbody>
</table>
## COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL SYSTEM

<table>
<thead>
<tr>
<th></th>
<th>Agricultural System</th>
<th>General System</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Vacation</strong></td>
<td>30 calendar days</td>
<td>15 days per year of service or applicable fraction</td>
</tr>
<tr>
<td><strong>Family allowance</strong></td>
<td>This is applicable to workers whose remuneration is not adjusted by collective bargaining. It is the right to 10% of the minimum wage (at present PEN 93.00) if the worker has one or more children under 18 years.</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>Compensation for wrongful dismissal</strong></td>
<td>1.5 monthly remunerations for each complete year of service with a limit of 12 remunerations.</td>
<td>Equivalent to 15 daily remunerations for each complete year of service, with a limit of 180 daily remunerations</td>
</tr>
<tr>
<td><strong>Employer’s contribution to Social Security for Health (ESSALUD)</strong></td>
<td>9% of the monthly remuneration for each worker</td>
<td>4% of the monthly remuneration for each worker</td>
</tr>
</tbody>
</table>
### COMPARISON OF THE AGRICULTURAL SYSTEM (TAX- AND LABOR-RELATED) AND THE GENERAL SYSTEM

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.

It must be pointed out that agro-exporters may also enjoy general benefits granted to exporters, such as the simplified payment of customs duty (drawback) and balance in favor of the exporter, under the conditions established in the applicable legal provisions.

#### Environmental aspects

In addition, the environmental regulatory framework for the agriculture sector is as follows:

(i) Regulations on Solid Waste Management of the Agricultural Sector, approved by Supreme Decree No. 016-2012-AG, which seeks to regulate the management and handling of solid waste generated by the agricultural sector, in a sanitary and environmentally adequate manner

(ii) Regulations on Environmental Infringements and Penalties of the Agricultural Sector, approved by Supreme Decree No. 017-2012-AG

The purpose of this provision is to regulate the administrative sanctioning procedure in the agricultural sector, as well as the determination of infringements and application of penalties for
noncompliance with the legislation and environmental commitments included in environmental management instruments. In furtherance of these purposes, the regulations approved a new classification of administrative fines.

(iii) Regulations on Public Participation for Assessment, Approval and Follow-up of Environmental Management Instruments of the Agricultural Sector, approved by Supreme Decree No. 018-2012-AG

These regulations seek to regulate the public participation procedure before, during and after approval of the environmental management instruments of the agricultural sector.

(iv) Regulations on Environmental Management of the Agricultural Sector, approved by Supreme Decree No. 019-2012-AG

This provision seeks to promote and regulate environmental management in the activities of the agricultural sector. These regulations also govern the environmental management instruments of the agricultural sector, and classify them depending on their negative impact on environment, as follows: (a) Category I: Environmental Impact Statement; (b) Category II: Semi-detailed Environmental Impact Assessment; and (c) Category III: Detailed Environmental Impact Assessment.

Banking, insurance and finance

Banking and insurance

The rules applicable to banks and financial companies are found in Law 26702, General Law of the Financial and Insurance Systems, and the Organic Law of the Superintendence of Banking and Insurance.

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

The Superintendence of Banking, Insurance and Private Administrators of Pension Funds (SBS) ([www.sbs.gob.pe](http://www.sbs.gob.pe)), an autonomous entity created by the constitution, is the authority responsible for authorizing and supervising the activities of banks, financial companies, insurance companies, as well as private administrators of pension funds (AFP). In Peru, approval by the SBS is required to carry out activities involving the collection of money from the public. Likewise, companies that want to offer insurance in Peru must first obtain a permit from the SBS.

The foreign investor can establish a bank, a branch or a representative office. Banks must be established in the form of a corporation or as branches of foreign banks.

Representative offices are established by foreign financial companies to do business with companies of a similar nature operating in Peru, in order to facilitate foreign trade and provide foreign financing and other services. Representatives of financial companies cannot raise funds from the public 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 insurance or reinsurance broker. Insurance companies must be organized as a corporation.

Interest rates, commissions and expenses for active, passive and service operations are freely determined by the financial system companies. In turn, companies in the insurance system freely determine the terms and conditions of insurance stipulated in their policies, their fees and commissions.
Finance

Currently, in Peru there is no rule 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 concessions, letters of credit, etc. It is also possible to provide more complex guarantees, as in the case of trusts.

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

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

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

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

Electricity

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

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

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

A national grid links facilities throughout the country. However, there are still some isolated systems not connected to the grid. There is a Committee of Economic Operation System (COES) (www.coes.org.pe), consisting, in accordance with the provisions of Law No. 28832 -Law to Ensure the Efficient Development of Electric Power Generation-, of four sub-committees: one of generators, one of distributors, one of transmitters and one of free clients. By means of Supreme Decree No. 027-2008-EM the COES Regulation was approved.

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

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

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

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

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

Likewise, regulated clients whose maximum monthly demand exceeds 2,500 kW will maintain their condition for a period of one (1) year since the month in which the limit was exceeded, unless otherwise agreed between the parties.

On the other hand, in order to exercise its right to choose the free client regime, the regulated client has to communicate in writing to its current supplier, with a copy to its future supplier, if applicable, its willingness to change its condition, with an anticipation not less than one (1) 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. The regulated tariff, also called bar tariff, is set periodically by the OSINERGMIN. The tariffs and compensation charged by holders of transmission and distribution facilities, the energy sales from generators to distribution concessionaires when they are intended for the regulated clients (except in the case where a tender has been conducted to contract this service), and sales to distributors and users of the public electricity service are subject to bar tariffs.

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

With Convention 169 of the International Labor Organization, the Law on the Right to Prior Consultation with the indigenous or native peoples was enacted in 2011. This, among others, must be applied by the Peruvian state 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. This law has been regulated by Supreme Decree No. 001-2012-MC. The prior consultation process is applied, when applicable, prior to the grant of a concession.

Finally, and in connection with tax matters, it shall be noted that notwithstanding the general tax regime applicable, investments in electricity are subject to the following benefits:

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

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

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

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

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

Hydrocarbon agreements usually comprise two stages: exploration, which could last up to seven years as from the agreement’s effective date (an extension 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 as from the agreement’s effective date, and for natural gas, up to 40 years. The exploitation and economic recovery of hydrocarbon reserves are conducted according to technical and economic standards generally accepted in the international hydrocarbons industry, subject to compliance with environmental regulations.

Contractors enjoy customs benefits for the importation of inputs and supplies needed for the fulfilment of the agreements. For example, a contractor can import exempted from any tax, its supplies that are exclusively required for exploration activities.
The holders of license agreements have free availability of the hydrocarbons allocated to them under the agreement and can export them tax-free.

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

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

Exploration and production expenses, as well as any investment made in a block that has not yet reached the production stage, must be accumulated in a separate account, the amount of which must be amortized per unit of production or by linear amortization, deducting them in equal parts over a period of at least five fiscal years.

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

There is a special benefit for investments in hydrocarbons, which consists of obtaining a refund of the VAT and the municipal promotion tax paid by the investor in the acquisition of goods or services directly related to the activities of the contract. Such benefit has been extended until December 31, 2019.

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

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

Technical and safety matters related to hydrocarbons are under the supervision of the OSINERGMIN, and regarding environmental matters, under the OEFA’s authority. 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.

In order to promote the development of the natural gas industry, the Peruvian government has passed several laws and regulations, the purposes of which are to provide investors with the necessary tools to enable the development of this industry and to develop a natural gas local 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, promotes the decentralized development of pipeline-based transportation systems for hydrocarbons

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

• The regulations for the Natural Gas Secondary Market (SPOT) enables the transfer of gas production and of firm transportation capacity among gas distributors and independent consumers
However, the implementation of regulations of the SPOT was suspended until December 31, 2018 by Supreme Decree No. 032-2017-EM, approved on September 30, 2017.

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

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

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

In order to address the volatility of fuel prices and to prevent price changes from being passed on to consumers in the domestic market, a permanent Fund for the Stabilization of Prices of Petroleum Fuels was created.

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

1. A diversified energy matrix, with emphasis on renewable sources and energy efficiency must be established.
2. A competitive energy supply must be set up.
3. Self-sufficiency in energy production must be achieved.
4. An energy sector with minimal environmental impact and low carbon emissions within 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.

In the other hand, it should be highlighted that in the framework of Convention 169 of the International Labour Organization, in 2011, the Law on the Right to Prior Consultation with the indigenous or native peoples was enacted, 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 has been regulated by Supreme Decree No. 001-2012-MC.

Likewise, for all E&P projects, it will be necessary to carry out citizen participation processes, whose purpose is to collect the queries and needs of the local people, so the project can include them to achieve a positive impact. Such processes shall be performed in two stages: (i) previous 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

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

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

In 2008, the Environmental Supervision Agency (OEFA) was created, with the purpose of supervising and sanctioning any violation to environmental laws by private parties that hold any project or activity.

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

**Environmental Supervision and Enforcement**

In order to strengthen the environmental compliance system in the country, in 2013, the Peruvian government enacted Law No. 30011, which, among other developments, significantly changed the fines imposed by OEFA. The purpose of this law is to deter persons from engaging in unlawful acts; therefore, the maximum amount of fines that OEFA can impose for gross violation to environmental laws or for acts that cause
serious environmental damage has been increased from 10,000 to 30,000 tax units (i.e., up to PEN 126 million or up to approximately USD 38 million).

**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 environmental impact must obtain an environmental certificate. This environmental certificate is a ruling to be issued by the pertinent environmental authority which approves an environmental management instrument. That is to say, the environmental certificate is a statement by the pertinent authority that a project is feasible in environmental terms.

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

1. **Category I**: Environmental Impact Statement (DIA): Environmental assessment that evaluates the investment projects causing minor adverse environmental impacts

2. **Category II**: Semi-detailed Environmental Impact Assessment (EIA-SD): Environmental assessment that evaluates the investment projects that are expected to cause moderate adverse environmental impacts

3. **Category III**: Detailed Environmental Impact Assessment (EIA-D): Environmental assessment that evaluates the investment projects that are expected to cause significant adverse environmental impacts
It is important to point out that on May 21, 2015, through Law No. 30327, Law for the Promotion of Investments for Economic Growth and Sustainable Development, the Global Environmental Certificate Procedure was created. This procedure, applicable to EIADs, aims to progressively incorporate in one procedure some licenses or authorizations related to the project and required for its development (such as the Forest Clearing Authorization, the Sanitary Authorization for Septic Tanks, among others).

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

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

The implementation process of SENACE has been progressive and continuous. Currently SENACE has powers over the mining, energy (hydrocarbons and electricity), agriculture, solid wastes infrastructure and transport sectors. However, the government aims to turn SENACE into a public agency, with exclusive powers to assess and approve all EIA-Ds, while the relevant sectors will maintain their powers to approve DIAs and EIA-SDs; that is to say, projects with non-material environmental impacts.

**Climate change**

In April 2018, the Peruvian government enacted the Climate Change Law (Law No. 30754), which sets forth general provisions for the planning, execution, articulation, monitoring, assessment, reporting and dissemination of the climate change management, in order to comply with
the Paris Agreement and other international commitments the Peruvian government has undertaken under the United Nations Framework Convention on Climate Change (UNFCCC).

This law establishes that the corresponding authorities must oblige public and private project titleholders to conduct a climate risk and vulnerability analysis, as well as to identify climate change mitigation and adaptation measures in the process of obtaining approval of the environmental certification. To date, the regulation of the Climate Change Law is still pending to be approved.

**Fishing**

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

Also, the Fisheries Management Regulations were approved in accordance with the characteristics of each species, geographic area or destination of the hydrobiological resources. Among them, we may find the recently approved Fisheries Management Regulations for Anchovy and White Anchovy Resource for Direct Human Consumption; the Fisheries Management Regulations for the Hake Resource; the Fisheries Management Regulations for the Horse Mackerel and Mackerel Resources (species reserved exclusively for the manufacture of products for direct human consumption — preserved, canned, frozen or cured — among
The Ministry of Production (www.produce.gob.pe) is the administrative authority that supervises fishing activities. Its main functions are the following: to adopt fisheries management measures, grant administrative rights to individuals for the development of fishing activities, and inspect, and if appropriate, punish any infringement related to the rules governing the activity (except for activities related to industrial fishing processing and large-scale aquaculture, which are under the purview of OEFA). It is worth to note that among the management measures that the Ministry of Production regularly approves, we may find the determination of the total quotas of catch per species, the individual fishing quotas — in the case of the anchovy and hake species — and the fishing seasons. Besides, some of the administrative rights granted are the fishing permit to operate vessels, the license to operate processing plants, and the authorization or concession to carry on aquaculture activities.

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

**Research and training activities**

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

**Hydrobiological resources extraction activities**

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

In order to carry on extraction activities, it is necessary to obtain, among other permits, a fishing permit, which is granted by the Ministry of Production. This permit entitles its titleholder to operate fishing vessels within the territorial waters of Peru. The fishing permit includes the rights, obligations and conditions applicable, and comprises: the vessel name, the registration number, the storage capacity, the species it may fish and the fishing gear that may be used. In addition, the fishing permit can be granted to national or foreign flag vessels, the latter being subject to special rules for foreign vessels. In Peru, the transfer of the ownership of fishing vessels involves the transfer of the fishing license as well as the supplementary rights and accessories thereto.

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

Special attention should be given to anchovy regulation, the feedstock for the production of fishmeal and fish oil. In addition, it should be noted that Peru is the world’s largest producer of fishmeal. As from 2008, fishing for anchovy has been the subject of a global management measure called Individual Fishing Quotas System, under which each national vessel is 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, setting aside the denominated Olympic System\textsuperscript{10} regime. This new fishing regime was approved by Legislative Decree No. 1084, Law of Maximum Catch per Vessel, and several supreme decrees have been approved to regulate it along these years. With this new system, fishing companies can better plan their investments in proportion to the amount of anchovies that can be caught. Per the reports issued by the Ministry of Production, this system has boosted the fishing market, has eliminated inefficiencies and has brought about significant benefits for the ecosystem and the environment. On the other hand, a reserved zone that starts from the line of the coast until five nautical miles, between the 16°00′00″ south latitude to the south extreme of the maritime domain, has been created. Within the referred zone, only artisanal extractive activities are allowed and the catch may only be sold for direct human consumption, under the conditions approved by applicable legislation.

On the other hand, Peruvian authorities have executed public licitations to grant the quotas assigned to Peru by the Inter American Tropical Tuna Commission (IATTC) in order to promote its extraction by national flag vessels and its processing in plants located in Peru. Peru, as a member of the IATTC, has a global share — expressed in cubic meters of storage capacity — to be distributed among the vessels that make up its national fleet. Currently, there exists a Peruvian flag fleet performing tuna exploitation activities both in Peruvian and international waters, together with foreign flag vessels.

\textsuperscript{10} The Olympic System was the former regime applicable to the catch of anchovies, which provided for a global quota that was authorized for the season rather than an individual quota for each holder of a fishing permit. Said regime resulted in the holders of said permits competing with each other to gain, in the shortest period of time, the maximum share of the global quota.
Hydrobiological resources processing activities

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

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

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

Marketing and services activities

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

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

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

As in fishing, the Ministry of Production is the administrative authority responsible for issuing special rules, granting administrative rights, and overseeing and penalizing aquaculture activities (except for activities related to large-scale aquaculture, which is under the purview of OEFA). For aquaculture activities to be developed within public domain waterbodies as seas, rivers and lagoons, the Ministry of Production grants a temporal concession (up to 30 years, which may be renewed for the same term). Such concessions are granted through: (i) national or international public contest; or, (ii) direct granting. Additionally, the following activities should be developed by obtaining a temporary authorization (up to 30 years, renewable for the same period) issued by the Ministry of Production: (i) aquaculture activities to be developed within private waterbodies, as artificial ponds specially equipped within private properties; or (ii) research, technological development and innovation activities in connection with aquaculture. These rights granted by the Ministry of Production may be transferred to third parties.
In order to promote aquaculture activities, the General Aquaculture Law provided the implementation of the public registry for aquaculture concessions and authorizations, which is currently operating. Also, in order to promote investments, the law grants to holders of aquaculture concessions or authorizations the right to mortgage such aquaculture rights and to grant security interests over the aquatic resources cultivated by such holders.

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

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

**Mining**

**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 regulations thereof.

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

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

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

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

The Mining Law establishes that the mining concession constitutes a different, separate and independent right from the surface land where it is located; in other words, the mining concession title does not grant rights to the surface land, which means that the concession holder must obtain a right to use the corresponding surface land from the landowner in order to start mining activities.

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

Mining concessions are granted for an indefinite term. Nevertheless, holders of mining concessions or mining claims (mining concessions being processed) must meet several obligations, including the annual payment of a good standing fee (USD 3.00 per hectare, both for mining concessions and mining claims). Failure to pay the aforementioned good standing fee in a timely manner for two consecutive years will lead to the definitive cancellation of the mining concession or of the mining claim.

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

(a) 1 Peruvian tax unit (PEN 4,150.00 for 2018) per year and per hectare applicable to metallic mining concessions,

(b) 10% of 1 Peruvian tax unit (PEN 415.00 for 2018) per year and per hectare applicable to non-metallic mining concessions

Holders of all mining concessions must obtain the aforementioned minimum production no later than December 31, 2018. Otherwise, as of the first semester of 2019, they will pay the following mining penalties:

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

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

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

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

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

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

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

**Real estate**

The main legal framework that rules 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, factory declaration and regime of common and exclusive property (regulating common areas in a same building), or Law No. 29090, which regulates the requirements and legal
procedures to obtain an urban refitting license and the resolution before the corresponding municipality.

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

**System of land registration**

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

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

Nevertheless, by general rule (with the exception of mortgages), real estate rights are not required to be registered to be valid because according to Peruvian legislation, the registry only declares rights and does not create them. However, third parties in good faith are not bound by unregistered interests to real estate property.
Although there is a system of land registration in Peru, and SUNARP can issue a document called Certificate of Land Registry (*Certificado Registral Inmobiliario*) for which registry officers perform a title search to determine ownership of the land (which does not guarantee the investor any right because of the possibility of errors, given that it is only a secondary service provided by SUNARP), a title search and due diligence is always recommended to avoid any contingency in transactions involving real estate, which contains ownership and existing liens, guarantees and limitations to ownership at a given time (i.e., day, hour and second), and thus may vary. It is then recommended that the existence of possible acts pending registration be reviewed. In addition, it is advisable to review the titles (acts) that generated the act registered in the registry.

**Acquisition Process of Real Property**

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

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

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

Leases in Peru are regulated by the Peruvian Civil Code, the same regulation that establishes a model for a lease agreement. Nevertheless, in such regulation, there are both mandatory rules (rules of forced compliance) and supplementary rules (applicable only if the parties do not agree otherwise). For example, a mandatory provision is the maximum term of every lease, which is 10 years; and a supplementary rule is, for instance, that the tenant is forbidden to sublet the lease property to third parties, but parties can disagree.

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

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

A landlord can generally terminate the lease when the tenant breaches the terms of the lease, which usually includes, among others, non-payment of the agreed rent, allowing the use of the property and assigning or subletting the property without the consent of the landlord. Similarly, the tenant may also terminate the agreement in case of default by the landlord, such as in cases where the landlord is unable to provide the tenant uninterrupted peaceful possession of the property or the leased property was delivered with damages that preclude its use. Moreover, the parties may agree that either or both could have the right to unilaterally terminate the contract without cause and without the duty to indemnify the other party, having only to submit a notice to the other party with some term in advance.
Also, termination can occur if the leased property is substantially damaged or destroyed by causes not attributable to either party (e.g., acts of God). And, in case the leased property is damaged or destroyed, but due to causes attributable to one of the parties, then the lease is terminated and such party may be liable and have to repair the damage caused to the other party.

**Planning and Environmental Issue**

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

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

In the same way, the district municipalities are responsible, within the limits of the zoning approved by the provincial municipalities, for approving building, demolition and operation permits. For example, it must be mentioned that the construction of new projects requires building permits before the commencement of construction.

Obtaining a building permit also requires that the building project meet the technical requirements established in the National Building Regulation.

On the other hand, environmental regulation for building or structure (including the construction phase) and land use is dictated by the national government through the Ministry of Environment, the Ministry of Housing and the Ministry of Production (i.e., for shopping centers). Also, municipalities have some regulatory powers in environmental issues such as emissions and solid waste.
Environmental Impact Assessment Act

Pursuant to Law No. 27446 and its regulations, any individual or legal entity that intends to develop an investment project that may result in environmental impacts must obtain an environmental certification.

Some real estate projects are subject to such environmental certification requirement: shopping centers (depending on the area and average density of inhabitants per hectare); certain kinds of land development, multifamily or residential (depending of the density zoning); parking buildings of certain area; infrastructure of high density (schools, universities, prisons, arenas and stadiums, civic centers, museums, sports fields, etc.), among others.

Real estate licenses

Investors that want to develop real estate projects need to obtain certain licenses. For instance, if the land is undeveloped yet (non-urban lands), a license to develop is required before even applying for the building permit. In such cases, the possibility of developing depends on whether the land has been approved as developable by the provincial municipality. Conversion is achieved by developing accessibility routes and enabling water distribution, drainage systems, electricity and other infrastructure facilities.

Once the land is developed, construction projects become possible. However, new construction requires a building permit before the commencement of construction. If anything is to be demolished, it is also necessary to have a demolition license. Additionally, in some types of projects, an environmental certification is a requirement to obtain the building permit.

Occupying real estate does not need a license. However, if the building is intended to be commercial (offices, malls, shops, factories, etc.), an operating license is required.
Telecommunications

Since the mid-nineties, all public telecommunications services (landline, mobile, long-distance carrier, cable TV) in Peru have been provided by private companies under a free competition regime.

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, the General Telecommunications Law and its Regulations. The Supervisory Body for Private Investment in Telecommunications (OSIPTEL) (www.osiptel.gob.pe) is the regulatory agency responsible for monitoring market conditions, while the Ministry of Transportation and Communications (MTC) (www.mtc.gob.pe) is the entity that grants concessions for public telecommunications services and authorizes the use of the radio spectrum.

In order to provide carriers of final services (for example, landline and mobile phone services), operators must obtain a concession from the government and sign a contract. 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 previously registered with the MTC. Internet access is considered a value-added service.
The commercialization of public telecommunications services is allowed. Companies that want to perform this activity must request its registration in the Registry of Traders of Traffic and/or Telecommunication Services with the MTC. Satellite service providers must also be registered with the MTC in order to provide satellite capacity services to local concessionaires.

In order to promote the competition in public mobile services provision, the government has issued rules governing the provision of mobile services by mobile virtual network operators (MVNOs), and the conditions in which MVNOs can use the networks of mobile operators in exchange for a tariff. Concessionaires of public mobile services that want to provide services as MVNOs must request their registration in the respective registry of the MTC. To obtain a concession in order to provide services as MVNOs, companies must apply for a special procedure.

Interconnection is mandatory for the concessionaires in accordance with the regulations on the subject. Interconnection includes access to essential facilities. If the parties do not agree on the terms of interconnection, the regulator can issue a mandate establishing these. Markets in which there is no competition are subject to rate regulation.

In order to promote the provision of telecommunications services in poorly served areas, and to facilitate the entry of new operators and the expansion of existing networks, several rules have been adopted. They include the law governing the sharing of infrastructure (antennas, ducts, and poles) for the provision of public telecommunications services; a regulation to obtain forced easements, allowing operators to extend their telecommunications networks in places where they serve; regulation of special services with interoperability; standards for infrastructure expansion in telecommunications (regulating the use of areas and property in the public domain by telecommunications operators for the deployment, improvement or maintenance of existing infrastructure, or infrastructure yet to be installed, and ensuring that the rates or rights charged to obtain the required permits and/or authorizations correspond to the actual costs
incurred for their granting); and provisions allowing and facilitating access by operators of telecommunications services to infrastructure belonging to owners of other public services (thus, for example, any road to be built must include, in its infrastructure, ducts and chambers technically suitable for the installation of fiber optic cables).

A special regimen that harmonizes the requirements that must be requested by local governments in order to allow concessionaires and passive infrastructure providers install telecommunication infrastructure is in force. Currently, these norms established an automatic approval procedure of installation applications.

A network neutrality regulation is applicable to companies that participate directly or indirectly in the provision of the Internet access service and 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**

Tourism has been growing steadily due to the diversity of the tourist spots that Peru offers and the activities that can be developed. Culture, archeology and nature are complemented by gastronomy and crafts to form an attractive tourist destination.

The General Tourism Law (Law No. 29408) and its regulations, approved by Supreme Decree No. 003-2010-MINCETUR, establish the basic principles for the development of the tourism activity in the country, for the purposes of promoting, encouraging and regulating the sustainable development of tourism.
The National Direction of Tourism has, as its purpose, the promotion and coordination of the development and implementation of projects of tourist interest carried out by local or regional governments or other public administrations.

It recognizes the intention of the state to contribute to the process of national identity and integration, by promoting the development of the infrastructure and quality of tourism services, with the Ministry of Foreign Trade and Tourism (MINCETUR) as the national governing body, and it creates a tourism advisory committee composed of representatives of entities related to tourism (www.mincetur.gob.pe).

Pursuant to Supreme Decree No. 003-2007-MINCETUR, the Commission for the Promotion of Peruvian Exports and Tourism (PROMPERU) is now the entity that integrates the former Commission for the Promotion of Exports (PROMPEX) and the former Commission for the Promotion of Peru (PROMPERU), previously responsible for the promotion of tourism (http://www.promperu.gob.pe).

This institution is responsible for developing activities to promote exports and tourism, always at the service of exporting companies and tour operators, and is also responsible for promoting the image of Peru and its tourism.

On the other hand, the Ministry of Culture is the corresponding entity that protects, administers and promotes the Cultural Patrimony of the Nation, as well as the contemporary cultural creation and the ethnic and cultural plurality (www.cultura.gob.pe); while the National Service of Natural Areas Protected by the State (SERNANP) (www.sernanp.gob.pe) is in charge of protecting the historical and archaeological monuments, parks and nature reserves. The latter was created by Legislative Decree No. 1013 and replaced the former National Institute of Natural Resources (INRENA).
Also, companies that qualify as providers of tourism services fall within the scope of Law 29408, among which are travel and tourism agencies, lodging establishments, tourist guides, tourist transport services, casinos, restaurants and the like, among others.

It is noteworthy that Supreme Decree No. 022-91-ICTI-TUR declared of national interest the protection of all domestic or foreign tourists who individually or in an organized manner, stay or travel within the national territory.

It also promotes social and internal tourism by providing special rates to students, teachers, and retirees, as well as by facilitating any kind of procedure in criminal and administrative matters.

Pursuant to these rules, the MINCETUR may propose, at its own initiative or at the request of a party, the declaration of tourist reserve zones regarding the places that are areas with evident tourism potential and merit special protection by the state. The qualification of the tourist reserve zone does not restrict the development of other economic activities, and allows taking advantage of the regulated use of the area for tourism, subject to compliance with the provisions contained within the MINCETUR Tourism Development Plan.

On the other hand, 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. 004-2016-MINCETUR) and for granting authorizations in accordance with the rule. This rule also establishes the requirements and procedures for authorizing the provision of services by travel and tourism agencies, defines the concept of travel and tourism agencies, sets the conditions to be met for the provision of services, establishes the classification of agencies as retailer, wholesaler or
tour operator, and specifies the obligation to submit a sworn statement detailing the meeting of minimum requirements.

The travel and tourism agencies are responsible for promoting national and international tourism, the hiring of tour guides and the chartering of transportation for tourist services, among others.

The National Chamber of Tourism of Peru (CANATUR), which brings together institutions, organizations, companies and individuals who perform activities related to tourism in Peru, contributes to the economic and social development of the country as a sustainable tourism destination by promoting internal and inbound tourism, responding to consultations and issuing opinions. It also organizes conferences, seminars and other events where various topics related to Peru’s economic activity are analyzed (www.canatur.org).

Also relevant is Supreme Decree No. 001-2015-MINCETUR, or the Lodging Establishments Regulations, which the competent authorities in the Regional Bureaus of Foreign Trade and Tourism of the regional governments, and the municipality of Lima, through its competent authority have been also tasked with enforcing. These authorities are empowered to grant the classification and categorization of establishments, monitor compliance with the requirements, and perform supervisory visits at will, among others.

These regulations provide in detail the minimum requirements to be met in order for the establishments to be classified and categorized as hotels, apart-hotels, hostels or refuges.

On the other hand, on December 17, 2018, the project of modifying the Lodging Establishments Regulations was published in the Institutional Portal of MINCETUR. In that sense, during the term of thirty (30) calendar days, the National Direction of Tourism will be in charge of receiving, processing, evaluating and consolidating the different proposals and
opinions that are sent regarding such project in order to consider them for the elaboration of the final version of such norm.

The main changes that this project contemplates consist of regulating the qualification of the lodging establishments according to specifically pre-established criteria. On the other hand, it additionally covers issues related to the equipment and infrastructure requirements, among others.

The purpose of this project is to establish the administrative provisions governing accommodation and qualification establishments. This project will consider the particular conditions of location, market segmentation and personalized service provided, among other criteria. In that sense, the project stipulates minimum conditions, equipment and service conditions that lodging establishments should have.

On the other hand, this project considers new categories of lodging establishments such as the "boutique hotel," a qualification that corresponds to a lodging establishment, with design and decoration that have an exclusive theme; Additionally, that the establishment is located in a building with high architectural value will also be considered. Boutique hotels should also offer personalized service and a minimum of six rooms.

Legislative Decree No. 1329, published on January 6, 2017, created the project "Fondo Turismo Emprende," which promotes the creation, development and reinforcement of the private undertakings related to the tourism activities. In this sense, financial aid and/or funding of the undertakings will be provided, in order to promote touristic diversification in Peru.

MINCETUR stated that this fund seeks to promote the development of tourism activity in Peru as a means to contribute to the economic growth and social development of the country.

Furthermore, Legislative Decree No. 1284 created the project "Fondo de Inversión Agua Segura," which pursues the improvement of sanitation
services with the purpose of achieving sustainability of such services. Funding and investments in the sanitation services will facilitate extending these services to places that did not have access to these services before. This rule — in between other activities — is of utmost importance for the tourism sector, since the lack of sanitation in any area will prevent the development of touristic projects of varied natures.

In turn, the National Building Regulations, approved by Supreme Decree No. 011-2006-VIVIENDA, includes all the technical rules laying 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 January 16, 2010, the Regulations of the Law on Tour Guides (Supreme Decree No. 004-2010-MINCETUR) were 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 establishments qualifiers, which have the role of issuing technical reports in connection with requests by lodging establishments for classified or categorized establishments status.

Supreme Decree No. 025-2004-MINCETUR approved the regulations of restaurants. As in the previous regulations, the competent authorities in the Regional Bureaus of Trade and Tourism of the regional governments, and the municipality of Lima, through its competent authority, are responsible for monitoring compliance with the regulations in question, awarding the respective category to restaurants, as well as for performing relevant supervisory visits, among others. In addition, these regulations list
the requirements, conditions, and general and specific characteristics necessary to be categorized as restaurants, with one to five stars, depending, of course, on the service they provide.

Also, Supreme Decree No. 017-2009-MTC approved the National Regulations for Transportation Administration to regulate the 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 tourist ground transportation activities, and to travel and tourism agencies that transport users in vehicles they themselves own.

On December 20, 2007, Law No. 29164, the Law on the Promotion of Sustainable Development of Tourism Services in Real Estate belonging to the National Cultural Heritage, was promulgated. The purpose of the law is to establish conditions that favor and promote the development of private investment for the recovery, restoration, conservation, enhancement and sustainable development of real estate belonging to the National Cultural Heritage, through concessions for the provision of tourism services in the areas that for this purpose may be determined by the Ministry of Culture.

This rule establishes conditions that will ensure that real estate heritage is not damaged and that the granting tourism services concessions are made within the framework of the constitution and existing rules that ensure their protection. Tourism services for which concessions are feasible are lodgings and restaurants with a minimum rating of four stars, and, complementarily, the sale of handicrafts and souvenirs. This rule limits the initiatives to real estate that are suitable for this investment and will generate high-impact tourism.

The National Institute of Culture, in coordination with MINCETUR, is responsible for publishing the list of real estate suitable for the
development of this type of project, as prescribed by law. Through the publication of Law 29092, Law No. 29164 was amended and its scope defined, giving regional governments the ability to deliver a list of archaeological sites that are not to be affected by the law, upon agreement of the council.

There are certain tax benefits in relation to tourism that are designed to encourage inbound tourism, by exempting the accommodation and food services purchased locally by non-domiciled individuals from VAT. These food services must be rendered in the very establishment providing the lodging services.

Among others, the following provisions are in force: (i) the provision of lodging services, including food, to non-domiciled individuals is considered an export (Legislative Decree No. 919); (ii) regulations have been issued for the implementation of tax benefits for lodging establishments that provide services to non-domiciled individuals (Supreme Decree No. 122-2001-EF); (iii) rules have been issued relating to the special registration of lodging establishments (Resolution 082-2001-SUNAT); and (iv) Law No. 29646 was enacted, which amended Article 33° of the consolidated text of the Law of Value Added Tax and Excise Tax, section 4 of which refers to the provision of lodging services.

The Executive Branch enacted new tax measures designed to encourage and facilitate investment in the long run, and generate a more equitable tax framework.

The anticipated recovery of VAT is a regime by which the financial cost of investment is decreased, allowing for the refund of VAT paid on purchases of goods and services. Its main objective is to not increase financing costs for projects that require large amounts of investment (a minimum of USD 5 million) and have long-lasting pre-operational stages (minimum of two years). To date, the regime was applicable to only some economic activities
and was found scattered in various legal provisions (mainly mining, hydrocarbons, gas, etc.).

The tax measures make the Special Regime of Advanced Recovery of VAT applicable to all economic activities involving significant investments and extensive pre-operational periods, including sectors that were already undergoing the anticipated recovery of VAT regime (mining, hydrocarbons, and das). In addition, it organizes and unifies its legal treatment in a single regulatory body, gathering the regulation of sector rules, and then standardizing their conditions and scope.

There are various agreements and conventions concluded between the Peruvian state and other states that are intended to facilitate and promote cooperation in tourism. Among the countries that have signed agreements for cooperation in tourism are: China, Costa Rica, Dominican Republic, El Salvador, Guatemala, Hungary, Italy, Mexico, Panama, Portugal, Romania, Thailand, as well as the signing of an Agreement for the Promotion of South American Tourism by members of the Latin American Integration Association (ALADI), including Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Uruguay and Venezuela.

The member countries of the Andean Community (Bolivia, Peru, Colombia, and Ecuador) have legislation that allows their nationals to be admitted to and enter any of those countries, as tourists, by the mere presentation of one of the national identification documents currently valid in the issuing country and without the requirement of a consular visa.

Furthermore, there are agreements that allow the free movement of persons (as tourists) between Peru and Brazil, and Peru and Chile.

It is also noteworthy that Peru is a member of the Asia-Pacific Economic Cooperation (APEC), composed of 21 different economies. These are Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the
Philippines, Russia, Singapore, Taipei China, Thailand, US and Vietnam. APEC mainly aims to achieve the liberalization and facilitation of trade and investment for developed economies, and in 2020 for developing economies. It works to create a safe environment for the efficient movement of goods, services and people in the region.

Eight years after Peru hosted APEC for the first time, it again hosted the institution, to facilitate — in between other goals — the implementation of the 2030 Agenda for Sustainable Development.

Likewise, they have the purpose of reaching the objective about trade facilitation and investment using the APEC Strategies for the Strengthening Development of Quality for 2020, in order to better focus on the importance of pursuing the quality development that was established in the Development Strategy of APEC as of 2010, which took place in Yokohama, Japan.

Peru is also part of the Pacific Alliance, composed of four economies: Chile, Mexico, Colombia and Peru. The Pacific Alliance is a mechanism of political, economic and integration articulation that seeks to promote growth and greater competitiveness of the four economies that integrate it 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 appropriate to highlight the importance and 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 undoubtedly brought and will continue to attract a large number of tourists to the country.

On the other hand, according to MINECTUR, receptive tourism will grow around 10% in 2019. On the other hand, foreign tourists’ visits to Machu...
Picchu, the main national tourist attraction, increased by 6.3% by October 2018. This increase of foreign tourists to Cusco was mainly associated with visitors from the United States, France, China and Spain.

Regionally, the Project for Reorganization and Rehabilitation of the Vilcanota Valley will promote sustainable development initiatives in that area, which has about 100,000 inhabitants, through the support of cultural preservation, tourism development, urban infrastructure, environmental protection, and local social and economic development. The project is being implemented jointly with UNESCO, the National Geographic Society, the World Monuments Fund, NGOs and bilateral donors.

A particular purpose of the project is to assist the government of Peru in its efforts to improve the management of tourism in the Historic Sanctuary of Machu Picchu (SHMP) and preserve the status of Machu Picchu as a world heritage site.

On the other hand, on March 2, 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, since through these cable cars, tourists will have a means of transportation that will facilitate the viewing of the Fortress of Kuelap and, in addition, will contribute to the consolidation of the northeastern tourist circuit of Peru. To this end, the Ministry of Foreign Trade and Tourism (MINCETUR) invested, through the executing entity Plan Copesco Nacional, approximately PEN 711 million in its construction.

**Transportation infrastructure**

Peru has a public private partnership law and a regulatory framework that promote investment in transportation infrastructure through concessions
to private operators. The operation of railways, airports and roads can be granted for up to 60 years through the concessions system. Likewise, the concession of ports may be granted up to 30 years.

Under this regime, ownership of the infrastructure remains with the state and is not transferred to private operators, which receive a right to its economic exploitation (for example, the collection of tolls or in the case of co-financed projects, the payments made by the state to finance part of the investment).

In self-funded projects contracts, the concessionaire is expected to assume the obligation of making specific investments and/or of paying a the state.

Concession contracts must include the principles governing the rates and at the end of the concession, the operator must return the infrastructure to the state with all the improvements made. Access to the transportation infrastructure considered essential facilities is mandatory under the regulations in force. An exception to this rule is new port infrastructure that can be granted in concession under a regime of exclusivity in the provision of services.

An example of transportation Infrastructure projects is the Jorge Chavez International Airport, the first and second group of regional airports, Lima Metro Line 2, the Matarani Port, the Road Network No. 5 - Ancón-Huacho-Pativilca highway, the Cusco-Machu Picchu Railway and the Paita Port, and the Salaverry Port, which was granted in May 2018, among others.

The Ministry of Transport and Communications grants infrastructure concessions and authorizations for the provision of public transportation services and is regulated by the Supervisory Body of Investment in Public Transport Infrastructure (OSITRAN) (www.ositran.gob.pe).
Water resources

The Water Law No. 29338 and its regulations, approved by Supreme Decree No. 001-2010-AG, aims to regulate the use and management of water resources, which includes surface and ground continental waters as well as assets related thereto. Under such regulations, water resources are property of the nation and may not be privately owned. In addition, such law and regulations constitute the regulatory framework for water use rights (permits, authorizations or water use license), and regulate the respective administrative proceedings.

The use of water resources to be obtained from a natural source is contingent upon its availability and must be carried out efficiently. Regardless of the project’s productive sector, a water use right (usually a water use license) must be obtained from decentralized bodies of the National Water Authority (ANA) prior to the execution of the corresponding technical studies and in accordance with the procedure established for this purpose.

The ANA is the governing body of the National Water Resource Management System and it is authorized to enact provisions and establish procedures for the integrated and multisectorial management of water resources. The ANA has nationwide presence through decentralized entities called water management authorities (Autoridades Administrativas del Agua or AAA). Furthermore, within the structure of the ANA are local authorities that depend on the AAA, called local water managements (Autoridades Locales del Agua or ALA).
Main foreign companies present in Peru
## Main foreign companies present in Peru

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<tr>
<td>AGROINDUSTRIAL AND FARMING</td>
<td>AGROINDUSTRIAL LAREDO S.A.A.</td>
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<tr>
<td>BEVERAGE</td>
<td>CIA. CERVECERA AMBEV PERU S.A.C.</td>
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<td>CHEMICAL</td>
<td>BASF CONSTRUCTION CHEMICALS PERU S.A.</td>
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<tr>
<td>ENERGY AND WATER</td>
<td>LUZ DEL SUR S.A.A.</td>
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<tr>
<td>SECTOR</td>
<td>COMPANIES</td>
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<tr>
<td>FISHING</td>
<td>CORPORACION PESQUERA INCA S.A.C.</td>
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<td>FOOD</td>
<td>INGREDION PERU S.A.</td>
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<tr>
<td>HEALTH</td>
<td>MAPFRE PERU S.A. ENTIDAD PRESTADORA DE SALUD</td>
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<td>LEATHER</td>
<td>CALZADO ATLAS S.A.</td>
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Main foreign companies present in Peru

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<thead>
<tr>
<th>SECTOR</th>
<th>COMPANIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAPER</td>
<td>CARTONES VILLA MARINA S.A.</td>
</tr>
<tr>
<td>PLASTIC</td>
<td>VULCO PERU S.A.</td>
</tr>
<tr>
<td>REAL ESTATE</td>
<td>PARQUE LAMBRAMANI S.A.C.</td>
</tr>
<tr>
<td>TELECOM</td>
<td>INTERNEXA PERU S.A.</td>
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<tr>
<td>SECTOR</td>
<td>COMPANIES</td>
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<tr>
<td>TEXTILES</td>
<td>INDUSTRIAS NETTALCO S.A.</td>
</tr>
<tr>
<td>TOURISM</td>
<td>CONDOR TRAVEL S.A.</td>
</tr>
<tr>
<td>VEHICLES</td>
<td>VOLVO PERU S.A.</td>
</tr>
</tbody>
</table>
1. **What guarantees does the legal framework recognize for investors, whether domestic or foreign?**

   - The right to have contractual terms that cannot be modified by laws or other provisions of any kind
   - Free access to all productive sectors
   - Right to nondiscrimination between Peruvians and foreigners, or between private and public companies
   - The right to receive all the profits or dividends that they are entitled to
   - Right to use a more favorable exchange rate available in the exchange market
   - Subscribe legal stability agreements with the state.

2. **What are the specific guarantees in favor of the foreign investor?**

   - Right to the remittance of profits and capital using the most favorable exchange rate available in the exchange market
   - Free availability of foreign exchange

3. **Are there investment stability agreements?**

   Yes. Investors and companies receiving investment can sign legal stability agreements with the state, which will stabilize, among others, the income tax regime.

   With regard to foreign investors, the stabilization also includes the right to the free availability of foreign exchange and the right to freely remit profits, dividends and capital.
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. If so, 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 total payroll. Foreign workers require a work visa issued by 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, and by the Andean Community and national legislation. Intellectual property rights are registered in Peru at the National Institute for the Defense of Competition and Intellectual Property Protection (INDECOPI).

12. Has Peru executed bilateral investment agreements and/or regional/bilateral free trade agreements?

Peru has executed investment protection agreements that are currently in force, either in the form of bilateral investment agreements or through an investment protection chapter contained in a free trade agreement. The most important investment treaties executed by Peru are as follows:
2. Argentina 18. Holland 32. UK
3. Australia 19. Honduras* 33. Czech Republic
4. Belgium 20. Italy 34. Republic of China*
5. Bolivia 21. Iceland* 35. Republic of Korea*
7. Chile * 23. Liechtenstein* 37. Sweden*
8. Colombia 24. Luxembourg 38. Singapore*
10. Cuba* 26. Mexico* 40. Thailand*
11. Denmark 27. Norway* 41. Venezuela*
12. Ecuador 28. Netherlands
13. El Salvador 29. Panama*
14. Spain 30. Paraguay
15. United States*
16. Finland

The countries marked with an asterisk have an investment chapter in an FTA entered into with Peru.¹¹

¹¹ Peru has executed a trade agreement with the European Union, which includes an investment chapter with the member countries of the agreement.
Listed below are the current FTAs of Peru with our business partners:

- MERCOSUR (since January 2, 2006).
- United States of America (since February 1, 2009).
- Chile (since March 1, 2009).
- Canada (since August 1, 2009).
- Cuba (since October 5, 2000).
- Singapore (since August 1, 2009).
- People’s Republic of China (since March 1, 2010).
- European Free Trade Association (EFTA) (Norway, Liechtenstein and Switzerland since July 1, 2011. Iceland since October 1, 2011).
- South Korea (since August 1, 2011).
- Thailand (since December 31, 2011).
- Mexico (since February 1, 2012).
- Japan (since March 1, 2012).
- Panama (since May 1, 2012).
- European Union (since March 1, 2013).
- Costa Rica (since June 1, 2013).
- Venezuela (since August 1, 2013).
- Pacific Alliance Agreement (since May 1, 2016).
- Honduras (since January 1, 2017).
The main areas covered by the abovementioned trade agreements are: customs affairs and trade facilitation; technical barriers to trade; sanitary and phytosanitary measures; trade protection; services, establishments and capital movement; public procurement; intellectual property; competition; dispute resolution, horizontal and institutional affairs; trade and sustainable development; technical assistance and skill building; among other matters.

13. The Doha development round is still under negotiation.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entered into force on December 30, 2018 for six of the 11 member countries of the treaty, while Peru’s ratification remains pending.

Are there any double taxation agreements?

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

Peru has signed a double tax treaty with Spain, which is not in force.
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We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.