



Ministerio de Relaciones Exteriores

DOING BUSINESS IN PERU

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I. COUNTRY OVERVIEW

Starting in the early 1990s, Peru undertook a comprehensive modernization process, which included the establishing of a reliable legal framework geared towards maintaining the stability required for boosting private business activity, investment and growth. As a result, the country has attracted substantial capital investment which has allowed for sustained economic growth.

The development of the agribusiness, fishing, mining, and telecommunications sectors, as well as the completion of major infrastructure projects primarily in the fields of energy, gas, and transportation, have all contributed to increased internal consumption and expanded international trade, thereby making Peru one of South America's most attractive countries for investment opportunities. In this context, Peru continues to negotiate and enter into free trade agreements while strengthening its commercial ties with nations throughout the Pacific Basin, including the United States.

This document briefly describes the legal framework that applies to any person or entity interested in doing business in Peru. Regulations regarding foreign investment, alternative corporate structures, general tax treatment, and other relevant provisions are summarized in order to explain the legal means available for conducting business in Peru. It goes without saying that, the most favorable structure for any business must be determined on a case-by-case basis and, therefore, this document does not aim to substitute appropriate legal advice.

II. ESTABLISHING A BUSINESS PRESENCE

A. Permanent Structures

In general, Peruvian regulations regarding corporations are similar to those found in other jurisdictions.

The corporation is a capital stock company which capital is represented by shares and grants its shareholders the rights set forth in the General Corporations Law and in the respective company's by-laws. Different kinds of stock may exist. The difference may be found in the rights granted to shareholders, the obligations incurred by owners, or both at the same time. All shares of a single class of stock enjoy the same rights and are subject to the same obligations.

The corporation may issue non-voting stock, which shall provide for the right to receive preferred dividends as per the terms established in the by-laws. If there are distributable profits, the corporation is required to pay the dividends to non-voting stock shareholders on a preferred basis

(1) Incorporation

Corporations require at least two founding shareholders to file a public document that must include the articles of incorporation and by-laws stating, among other things, the names of the shareholders, their addresses, the corporation's legal name, its corporate purpose, capital stock, corporate form, and appointment of the initial directors.

The notarized incorporation documents must be filed with the Companies Registry where the corporation is located.

(2) Shareholder Liability

Regardless of the type of corporation chosen, shareholder liability for corporate debts is limited to the amount of the shareholders' contributions.

(3) Capital

As a general rule, the General Corporations Law does not require a minimum amount of capital for incorporation. In some cases, however, the law does require that corporations be formed with a minimum amount of capital based on the nature of their activities (for example, companies in the national financial system, companies managing pension funds, and employment outsourcing companies).

In all cases, shares making up a corporation's stock must be fully subscribed for and at least 25% of the value of each share must be paid in.

Increases and reductions of capital stock and the corresponding amendments to corporate by-laws must be adopted by a majority of the voting members at a general shareholders' meeting. These resolutions must be set forth in a public document and filed with the Companies Registry.

(4) Governance and Administration

The bodies governing corporations are the general shareholders meeting, the board of directors, and the management.

The general shareholders meeting is the corporation's highest governing body. At a general shareholders meeting which is duly convened and at which a legal quorum is present, matters under its jurisdiction are decided by majority vote (as established by law and by the corporate by-laws). The general meeting must be held at least once a year, within three months of the end of the fiscal year (December 31 of each year), in order to assess the corporation's management, its economic performance during the previous fiscal year, and the application of profits (if any), among other matters.

A corporation is managed by a board of directors, which is elected by the shareholders. In the case of closed corporations, the existence of a board of directors as the governing body is optional. A board of directors must have a minimum of three directors. The members of the board of directors may be Peruvians or foreigners, domiciled or non-domiciled. It is not necessary to be a shareholder in order to serve as a board member, unless so stated in the by-laws. Directors may be removed at any time.

The board of directors must provide shareholders and the public with information that is timely, reliable and sufficient, as determined by law, regarding the company's legal, operational and financial conditions. The board of directors is responsible for carrying out resolutions passed by the general shareholders meeting, unless the latter decides otherwise .

A corporation is also managed by one or more managers. If a closed corporation has no board of directors, the general manager will be responsible for managing and legally representing the corporation. The manager may be removed at any time by the shareholders or by the board of directors, depending on the body making the appointment.

Unless otherwise stated in the by-laws or by a special resolution of the shareholders meeting, it is presumed that the general manager has, inter alia, the power to enter into and execute ordinary acts and contracts related to the corporate purpose, and to represent the corporation.

(5) Distribution of Profits

Profits are distributed to the shareholders in proportion to their capital contributions, unless otherwise stated in the articles of incorporation or by-laws.

Corporations are required to set aside a minimum of 10% of their after-tax profits during each fiscal year for

the creation or increase of a reserve fund, until an amount is reached that is equal to one-fifth of the capital stock. The reserve fund is used to compensate for losses in a given fiscal year if there are no other reserves or accumulated profits.

Dividends must be paid in cash up to an amount equal to one-half of the distributable profits during each fiscal year, after subtracting the amount that must be set aside for the reserve fund, if so requested by shareholders representing at least twenty percent of the total voting stock. This request may only be made with respect to profits for the immediately preceding fiscal year.

(6) Financial Statements

The board of directors or, in its absence, the general manager, must prepare the annual report, financial statements and proposal for use of profits (if any), at the end of each fiscal year in order to submit them for consideration at the annual shareholders meeting.

Financial statements are prepared and submitted in accordance with the law and with generally-accepted accounting principles. (IFRS)

Public corporations, , are required by law to have annual independent audits performed by auditors listed in the National Register of Auditors' Associations and to submit quarterly financial statements to the Superintendencia de Capital Markets (Superintendencia de Mercado de Valores - SMV).

Closed corporations or entities other than those that are under the supervision of the SMV, whose annual income from the sale of goods or services or total assets are equal or exceed three thousand (3,000) Tax Units (UIT), must submit to the SMV financial statements audited by audit firms authorized by a School of Public Accountants, according to international financial reporting standards and subject to the provisions and terms established by the SMV. The financial statements filed to the SMV are of public access.

(7) Transfer of Stock

Shareholders may transfer, mortgage or freely encumber their stock, unless the law, company's by-laws, or a shareholders' agreement duly registered with the company limits such transfer, mortgage or encumbrance. This limitation may not be understood as an absolute prohibition on all transfers, mortgages or encumbrances of corporate stock.

¹
1 UIT = S/. 3,650.00, which approximately is RMB 8,612.00, SGD 1,745.00, US\$ 1,360.00

A temporary ban on transfers, mortgages or other means of encumbering stock is valid when so established by the by-laws or articles of incorporation, so agreed to by the bearer of the corresponding shares of stock, or so resolved by the general shareholders meeting. The ban must be for a certain period and may not exceed ten years. It may be extended before it expires, for periods no longer (greater) than ten years.

In ordinary corporations, the transfer of stock is limited by the other shareholders right of first refusal, solely when that right is expressly set forth in the by-laws. In the case of closed corporations, the general rule is that shareholders have the right of first refusal unless the by-laws state otherwise. Additionally, it may be established in the by-laws of closed corporations that the transfer of stock must be approved by the corporation and/or that the shareholders may act as substitute heirs in the acquisition mortis causa of the deceased shareholder's stock.

The following are not permitted in public corporations: limitations on the free transfer of capital stock; any type of restriction on the negotiation of shares; or preferential shareholder rights in the event of stock transfers.

(8) Minority Shareholders

The General Companies Law establishes different measures for protecting minority shareholders. For example, shareholders representing at least 20% of the voting stock have the right to request that the board of directors convene a general shareholders meeting. If a meeting is not convened, such shareholders may request a judge to issue a judicial summon for the meeting. In an open corporation, shareholders representing 5% of the voting stock have this right.

In certain cases, the General Companies Law grants the right of withdrawal to those shareholders who have made their opposition known at a general meeting, to absent shareholders, to those who may have been illegally deprived of their vote, or to owners of non-voting shares. Exercising the right of withdrawal obligates the corporation to reimburse whoever may withdraw for the value of his stock.

Although there are different types of company structures that may be used to perform business in Peru, investors generally choose those types that limit shareholders' liability.

i. Suitable Corporate Forms

The corporation and the limited liability company are the most important and most frequently-used types of companies regulated by the General Companies Law (Ley General de Sociedades, or General Companies Law), which has been in effect since January 1, 1998. Foreign investors may also establish a branch office in Peru.

Corporation types

Our legislation recognizes and regulates three types of corporations: (a) ordinary corporations; (b) closed corporations; and (c) open corporations. All three (3) types have the essential features of any corporation, meaning that they issue capital stock, their ownership is divided into shares of stock, and they enjoy limited liability.

Specific regulations dealing with closed corporations include features that are characteristic of partnerships, without failing to recognize their essential nature as a capital stock corporation. They seek to provide a suitable corporate structure for a limited number of shareholders who are usually involved in managing the company. The closed corporation can not have more than twenty shareholders, and given the importance of personal factors in owning and managing capital, its shares may not be listed on the Lima Stock Exchange or publicly traded on the securities market,

On the other hand, the open corporation satisfies one or more of the following conditions: (i) it has made an initial public offering of stock or of corporate obligations convertible into stock; (ii) it has over 750 shareholders;

(iii) over 35% of its capital stock is held by one hundred and seventy five (175) or more shareholders; (iv) it is incorporated as such; or (v) all voting shareholders unanimously approve the motion to adopt such a system. The open corporation must publicly register its stock in the Public Registry of Securities and listed in the Lima Stock Exchange, meaning that its stock may not be limited regarding its free transfer and negotiation. This type of corporation is subject to the supervision of the SMV.

Agreements between shareholders or between shareholders and third parties are valid in all types of corporations, and are enforceable in all matters concerning the corporation, from the moment they are duly recorded with the company. If any discrepancy exists between any stipulation in the shareholders agreements and the company's articles of incorporation or by-laws, the latter shall prevail without prejudice to the relationship established by the agreement between the parties thereto.

Limited Liability Company

Regulation applicable to the limited liability company (also known as "SRL") is similar to that of the closed corporation, given the importance of personal factors involved in this type of company and which the General Companies Law tries to preserve. This is a company which capital is represented by non-stock shares (participaciones). A limited liability company may not have more than twenty partners.

(1) Incorporation

Limited liability companies are incorporated by a minimum of two founding partners by filing a public document containing the articles of incorporation and the by-laws, which must include the names of the partners, their identification document and their addresses, the legal name of the corporation, the corporate purpose, the mailing address of the corporation, and the appointment of the management officers, among other things.

The notarized incorporation document must be filed with the Corporate Register where the corporation has its domicile.

(2) Liability

Partners are not personally liable for the company's obligations.

(3) Capital

At the time of incorporation, partners' contributions must be subscribed in full and at least 25% of each share must be paid in. As is the case with corporations, no minimum amount of capital is required for incorporation.

The corporate by-laws must contain rules regarding formalities that must be observed for increasing and decreasing capital stock, including partners' right of first refusal, and those cases in which stock may be offered to non-partners if the partners refuse.

(4) Governance and Administration

The general partners' meeting is the limited liability company's highest governing body. Its actions are subject to the norms that apply to the general partners' meeting as regards compliance with the General Companies Law.

The company is managed by one or more managers, who represent it in all matters related to its corporate purpose. Managers may not participate personally or through a third party in any line of business that falls

under the company's purpose.

(5) Distribution of Profits

Profits are distributed to partners in proportion to the amount of shares owned, unless otherwise stated in the by-laws.

(6) Financial Statements

Rules regarding the preparation and approval of financial statements must be included in the corporate by-laws. Financial statements are prepared and submitted in accordance with the law and with generally-accepted accounting principles.

(7) Transfer of Stock

Whoever is listed as the owner of one or more shares in the records of the company shall be considered as such. Transfers are carried out on the basis of a public deed signed by the transferring party and the purchasing party.

In the event of a transfer of shares to non-partners, the other partners shall have the right of first refusal. The by-laws may establish agreements and conditions for the transfer of shares and criteria for evaluating their value in such cases, but in no case may resolutions totally prohibit transfers.

(8) Minority Partners

A general meeting must be held when requested by partners representing at least 20% of the capital stock.

ii. Branches

Foreign entities can establish branches in Peru, which are deemed to have permanent legal representation and enjoy procedural autonomy in the sphere of activities assigned to them by the parent company, in accordance with the powers granted to their representatives.

(1) Establishment

Branches of foreign corporations are established through a public deed prepared by a Peruvian notary public, in which the following information (among other items) must be provided: (1) the capital assigned to the branch for its activities undertaken in the country; (2) the activities of the branch and a declaration stating that such activities are a part of the parent company's corporate purpose; (3) the branch address; and (4) the appointment of at least one permanent legal representative in the country.

In addition, the following must be inserted into public deed: (1) a certificate of good standing for the parent company in its country of origin, certifying that neither its articles of incorporation nor by-laws prohibit the establishment of foreign branches; (2) a copy of the articles of incorporation and by-laws of the parent company and of any other equivalent instruments in its country of origin; and (3) the resolution issued by the parent company's governing body in order to establish the branch in Peru.

The aforementioned original documents and copies must be apostilled or legalized by the Peruvian Consulate in the country in which the parent company is located.

(2) Liability

The parent company is liable for all obligations incurred by the branch, any agreement exempting responsibility is considered as null and void.

(3) Capital

The total amount of assets assigned by the parent company to undertake the branch's activities is known as "assigned capital".

(4) Administration

Branches are required to have a permanent legal representative in Peru who shall be authorized to enter into contracts on behalf of the parent company.

(5) Remittance of Profits

There are no limitations on the remittance of profits by a branch to its parent company.

iii. Joint Ventures

Peruvian Law establishes two different types of joint ventures: The consortium and the participation association contract. This is not a closed list, so other associative contracts such as partnerships, shared risk or joint ventures are also permitted under Peruvian law, albeit no specific regulation exists in respect thereof.

The General Companies Law defines the participation contract as an agreement in which an individual or company grants to a person or persons (whether individuals or entities) a participation in the profits of the business that it carries out with third parties. In exchange, the participated partner usually provides some kind of contribution to venture. In this type of contract, the participated party remains hidden in front of third parties with whom its partner may undertake business activities.

The Consortium is defined as a contract in which two individuals or entities join together in order to participate in a certain business to share profits and reduce their transaction costs.

Consortia do not generate a separate independent entity from its partners.

iv. Investments in/Mergers with Existing Entities

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

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

B. Agency/Reseller/Franchising/Distribution Networks

Peruvian Law does not have any specific provisions about the establishment, requisites, or the treatment of agency, reseller, franchising or distribution networks. Likewise, no agent or distributor protection regulations exist. Accordingly, any agency, reseller, franchising or distribution undertaken with Peruvian entities shall be ruled by the provisions of any contract entered into between the parties.

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

C. Approvals and Registrations

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

D. Sensitive Economic Sectors/ Restrictions on Foreign Ownership

Peruvian Law does not provide restrictions to undertake any business activity or own property in Peru, except for the ownership of land referred to in literal I of Section IV below.

E. Political Risk and Related Issues

Peru has offered a stable legal and business environment for the past twenty (20) years. As a result thereof, the country has been recently considered investment grade by major risk assessment entities. Provided they comply with certain minimum requirements, foreign investors are entitled to enter into the so called Legal Stability Agreements referred to in literal B of Section III below.

III. INVESTMENT ISSUES AND TAX INCENTIVES

A. Legal Treatment of Foreign Investment

Peru is governed by a general regime which promotes and ensures foreign investments. In addition, specific laws regarding mining, hydrocarbons, telecommunications, agriculture and fishing (among other areas) further regulate foreign investment in those sectors.

The most important elements regarding foreign investment are as follows:

- (1) Investments by foreigners enjoy the same treatment as investments by Peruvians, which means that foreign investors and Peruvian investors have the same rights and obligations (neither group receives better treatment than the other);
- (2) Foreign investors may invest in any sector of the economy;
- (3) According to the law, foreign investment is deemed to be any investment from outside of the country that produces income in any of the following ways:
 - (a) Capital contributions to a new or existing business formed in any of the ways established by the General Corporations Law, either in freely convertible currency or in the form of tangible or intangible assets. Capital surplus is also considered to be a type of foreign investment;
 - (b) Investments made in Peruvian currency resulting from resources that may be remitted abroad;
 - (c) Conversion of private foreign obligations into shares;
 - (d) Reinvestments;
 - (e) Investments in property located in Peru;
 - (f) Intangible technological contributions, such as trademarks, industrial models, technical assistance, and patented or unpatented technical knowledge which could be submitted as intangible assets, technical documents or instructions (know-how);
 - (g) Investments used to purchase securities, financial documents, and commercial paper trading on the stock exchange, or bank certificates of deposit, either in Peruvian or foreign currency;
 - (h) Resources used to enter into partnership investment agreements or similar contracts; and
 - (i) Any other type of foreign investment contributing to Peru's development.
- (4) The government's prior express authorization is not required for foreign investments. Once undertaken, the investment should be registered with the Peruvian agency known as PROINVERSION (Agencia de Promoción de la Inversión Privada);
- (5) There are no exchange controls and the use, convertibility and remittance of foreign currency is free.

B. Foreign Investment Protection.

Parties may avail themselves of Peru's legal stability regime by entering into contracts known as Legal Stability Agreements (Convenios de Estabilidad Jurídica), based on which the government guarantees the invariability

of certain legal regimes and grants the holder certain guarantees for a specific term, including: (i) income taxes on investors and companies; (ii) free exchange of foreign currency and the remittance of capital and profits (only for investors); (iii) hiring of workers (only for companies); and (iv) export promotion measures, including drawback (only for companies receiving investments). In addition, concession agreements entered into regarding infrastructure projects and/or public services in which investors hold an interest may obtain legal stability for the same period of duration of the concession granted.

Article 62 of the Constitution of Peru provides that contracts shall have the status and the force of law between the parties, meaning that the parties thereto (including the government) must abide by them and cannot amend them on an unilateral basis. In particular, the government may not unilaterally modify them by passing a law or otherwise leaving them without effect.

Legal Stability Agreements may be entered into at any time, provided the legal requirements are met. Notwithstanding, if an investment in the form of a contribution to a local company's capital stock has been made before the execution of a Legal Stability Agreement, such investment may be considered for fulfilling the investment commitment in both the investor and the local company's Legal Stability Agreements, only if such agreements are entered into within twelve (12) months after the capital stock increase has been registered in the local company's accounting records

(1) Requirements for foreign investors

Investors must qualify under any of the scenarios set forth below in order to receive the aforementioned protections under the legal stability regime:

- (a) Capital contributions of at least US\$10,000,000.00 for the mining or hydrocarbon sectors or US\$5,000,000.00 for the other sectors, must be made to the capital of a company in Peru.
- (b) Execute investments involving risk that are entered into with third parties (for example, joint ventures for the amounts and based on the terms and conditions referenced in the preceding subparagraph (a).
- (c) Acquire shares from companies that are directly or indirectly owned by the government (via privatization), as long as over 50% of the shares are in the amounts, for the periods, and based on the conditions referenced in subparagraph (a).
- (d) A foreign investment may also be guaranteed through an agreement, i.e., the capitalized portion of the monetary contributions made by foreign investors as capital surplus, if undertaken in the amounts, periods and conditions referenced in subparagraph (a).
- (e) Capitalization of private obligations abroad (loan capitalization) may be considered a foreign investment capable of being guaranteed through an agreement, as long as it is done in the amounts and for the time periods referenced in the foregoing subparagraph (a).
In the aforementioned cases, investors must channel their investment through an entity of the Peruvian financial system.

(2) Requirements for companies receiving investments

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

Companies fulfilling this requirement may receive the benefits associated with the hiring of workers, export promotion, and taxation, as long as they meet the bases for one of the following:

- (a) New investments must be made in an amount exceeding 50% of their capital and reserves and must be used to increase productive capacity or improve technology, meaning that such investments must be carried out through a capital increase.
- (b) New investments must entail the acquisition of over 50% of the shares of a company that is directly or indirectly owned by the government (as in privatizations).

(3) Rights guaranteed under agreements

(a) For investors:

Legal Stability Agreements provide foreign investors with legal security in the following areas:

- (i) Income Taxes: Dividends and any other form of profit-sharing to which foreign investors are entitled will not be affected by any tax resulting in a greater tax burden than that which was in effect as of the date on which the contract was signed;
- (ii) Freely convertible currency;
- (iii) The right to freely remit all capital, profits, dividends and royalties, without any limitations or restrictions;
- (iv) The right to make use of the best exchange rate available on the market.
- (v) The right to non-discrimination, meaning that no government company or entity (either on the national, regional or local level) may provide different treatment based on nationality, sector, type of economic activity, or geographic location as regards investments, currency exchange, prices, or non-tariff duties or fees, type of company (including natural or juridical person), and any other equivalent reason.

(b) Companies receiving investments

Legal Stability Agreements provide companies receiving investments with legal security in the following areas:

- (i) Income taxes: As long as the agreement remains in effect, the income tax regime cannot be modified. Similarly, taxable income shall be calculated based on the same rates, deductions, and scale as set forth in legislation in effect at the time of signing the Agreement. This protection exists regardless of whether such modifications prove favorable or not to the company.

As mentioned previously, only those companies meeting the criteria set forth in the second point qualify for such protection.

- (ii) Hiring of employees: for the duration of the Agreement, these companies may hire workers in any way established by the labor laws in effect at the time of execution of the Agreement.
- (iii) Export promotion, as established by the General Customs Law (temporary admission, drawback and repositioning of merchandise based on exemption of duties), as well as favoring the exporter as set forth in the General Sales Tax Law.

(4) Characteristics and term of agreements

The main characteristics of these Agreements are the follows:

- (a) They are legally binding on parties and may not be unilaterally modified.
- (b) They are governed by the provisions of the private contract law (Civil Code) and not by the government's exclusive administrative rights.

- (c) They have a maximum term of ten (10) years starting on the date of execution, except in the case of agreements entered into by concessionaires engaged in infrastructure and public service projects, in which case the term includes the entire duration of the concession only if the aforesaid concession in infrastructure and public service projects is signed under the terms of Supreme Decree No. 059 96-PCM.
- (d) They may be waived by investors and companies receiving investment, in which case common legislation shall apply, starting on the date on which the waiver is submitted.
- (e) The investor may assign his contractual rights to another investor, subject to authorization by the competent entity. Although assignment is prohibited in the case of companies receiving investments, the law allows in the case of corporate reorganization (mergers or divestitures) for contractually granted benefits to be assigned to one of the parties participating in such reorganization, as long as the competent entity expressly authorizes it after having received an opinion from the Peruvian tax authorities.
- (f) Any amendments agreed upon by the parties may not refer to the term, the extension of the two year period for performing the investment, nor to a reduction in the amount of the investment below the limits established by law (as mentioned before, USD 10,000,000 in the mining and hydrocarbon sectors, or USD 5,000,000 in other sectors). If the amendment provides for an increase in the amount of the investment, such increase may also be included in the legal stability regime by receiving authorization from the competent entity.
- (g) Agreements may be legally terminated in the following cases: (a) failure by investors or companies to undertake or receive contributions or purchases, respectively, to which they have agreed within the allotted time frame; and (b) failure by investors to obtain prior authorization for assigning their contractual rights and obligations.

(5) Investments subject to the legal stability regime

Capital increases brought about as a result of capitalizing a revaluation surplus or adjustment for inflation may be included in the legal stability regime, as long as notice of such capitalization is given to PROINVERSION within thirty days of such increases having been undertaken.

(6) National organization representing the government for the execution of contracts

PROINVERSION is the national entity that is responsible for representing the government when contracts are signed with foreign investors.

Contracts entered into by companies receiving foreign investment are signed jointly by PROINVERSION and by the Ministry of the sector in which the investment will be made or by the person appointed by such Ministry. If Peruvian and foreign investors wish to invest in the same company and submit their requests jointly, PROINVERSION shall be the competent entity.

IV. OPERATIONAL LEGAL ENVIRONMENT

A. Foreign Exchange

Peruvian Law does not have any restrictions or limitations concerning foreign exchange. There are no foreign exchange controls, registrations, approvals or other similar restrictions regarding the remittance of foreign currency to or from Peru. There is no need to have an approval to undertake foreign exchange transactions or to carry foreign currency. Any currency can be exchanged for Peruvian Nuevos Soles and may be used in every transaction in Peru provided that the parties agree to do so.

Bank accounts of any kind can be opened in US Dollars and other currencies. Also, credit facilities may be agreed in US Dollars or other currencies without any special conditions.

B. Immigration and Visa Requirements.

1. Business Visa

Under the Peruvian Immigration Law, business visas are issued to persons who enter the country without the intent of residency. While such persons may not receive income from a Peruvian source, they may sign contracts and engage in transactions.

A business visa does not confer the right to render services (either as an employee or independent contractor) to entities domiciled in Peru, even when such services are performed on behalf of a non-resident entity. This rule only allows two exceptions: (i) fees as Director of domiciled companies (ii) or fees as lecturers or international consultants by virtue of a services agreement not exceeding thirty (30) continuous calendar days or accumulated within any given period of twelve (12) months.

2. Foreign Worker from a Non-Resident Company

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

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

A foreign citizen who obtains this immigration status shall have the right to work legally for three (3) months that could be extended up to one (1) year. After the first year elapses, a new visa must be obtained.

3. Worker Immigration Status

Foreign workers who seek to work and reside in Peru are required to obtain resident worker immigration status.

In order to do so, they must sign enter into a foreign employment contract which is approved by the Peruvian Administrative Work Authority once it is confirmed (based on the documents submitted) that all legal requirements are met and that foreign worker percentage quotas are complied with.

Subsequently, a request must be submitted to the Peruvian Immigration Office, which then issues an identification card for the foreigner allowing him to work for an employer in the country.

C. Customs Issues

The General Customs Law approved by Legislative Decree No. 1053 regulates the general basis to the entry and exit of goods to and from Peru.

1. Import

The most important customs regime is the import of foreign goods for their definitive use or consumption in the country. Only domiciled entities or individuals can act as importers.

As a general rule, there are no restrictions to the import of goods into the country, although some restrictions based on specific regulations (regarding matters like sanity, security, environment, etc) may be applied. In such cases, the import is conditioned to the obtaining of specific authorizations or certifications issued by the corresponding entities.

Import duties and taxes applied in the importation of goods are ad valorem, additional variable duty, ISC, VAT, and advance VAT payments.

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

Additional variable duty applies only to certain agricultural products. The rate shall depend on the type of merchandise and the reference price established at the time of importation.

ISC applies only to a certain group of products: petrol (gasoline), gas-oil (diesel), spirits, cigars, tobacco, and certain vehicles, among others. The rate or amount will depend on the type of product involved (as discussed in the section on "Taxation")

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

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

The basis for calculation of duties and taxes applicable to the importation of goods is cost, insurance and freight (CIF) value. This value is determined according to the Relative Agreement on Implementation of Article VII of the General Agreement on Customs Tariffs and Trade (GATT) of 1994 (Valuation Agreement) of the World Trade Organization ((WTO)).

In general terms, customs duties and internal taxes must be paid before taking out the merchandise from the Customs Warehouse. However, importers can apply to the comprehensive guarantee system, which is a mechanism that allows withdrawing goods within forty eight (48) hours from completion of the unloading operation from the carrier or from numbering the import declaration.

The effective use of this mechanism has two (2) requirements that must be fulfilled prior to the arrival of the carrier: the customs import declaration should have been numbered and the special import authorization for restricted goods should have been obtained.

2. Temporary Imports

Temporary entries of goods are also allowed. Such entries can be of two (2) types: for internal use and subsequent re-export (applicable to equipments and machinery included in a closed list of goods approved for this purpose); and for transforming and subsequent export of the final product obtained (applicable to raw materials). In both cases the payment of customs duties and import taxes is suspended by submitting a guarantee covering the amount of such duties and taxes.

3. Export

Export operations are tax free. As a general rule, there are no restrictions for the export of goods. However the export of goods such as endangered animals, vegetable species, and archeological findings is prohibited or restricted.

Only domiciled entities or individuals can act as exporters.

Temporary exports of goods are also allowed and can be of two (2) types: for being used abroad and returning in the same conditions as when they were exported; and for goods that will be transformed, repaired or replaced abroad. In these cases, the re-import of the goods is subject to special tax regulations.

4. Drawback

Peruvian regulations allow the refund of duties upon export of imported good on the basis of a flat rate of 5% of the FOB export value of the goods and up to maximum of 50% of their production value.

Only companies that manufacture or produce goods in the country (by themselves or by hiring third parties), by using imported raw materials, can obtain this benefit after that such goods have been exported. Specific conditions and requirements must be fulfilled to obtain a refund of duties.

5. Replenishment of merchandise with Customs Exemption

This regime allows import with an automatic exemption of customs duties and import taxes. The exemption is in the same amount as the value of equivalent merchandise that was previously imported (without any exemption) and was transformed to obtain goods that were exported.

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

6. Other customs procedures

- Entry into or withdrawal from Peru, of merchandise contained in parcels carried by international cargo carriers, express mail, or courier service.
- A Duty Free system that permits the duty free storage and sale to inbound or outbound passengers of domestic or foreign merchandise in authorized establishments inside international ports or airports.
- Entry into and exit from Peru of samples for exhibition purposes.
- Entry into and exit from Peru of baggage and household items.

7. International Trade Agreements

Peru has signed a number of Trade Agreements to allow the free trade of goods with countries in Asia, the Pacific Basin, Europe and South America. The agreements currently in force include those with Andean Community (Colombia, Ecuador and Bolivia); Latin American Integration Association and Mercosur (Argentina, Brazil,

Uruguay, Paraguay, Mexico and Cuba); United States; Canada; Mexico; Cuba; Panama; Chile; EFTA (European Free Trade Association which includes Norway, Switzerland, Island and Liechtenstein); China; Singapore; Japan; South Korea and Thailand.

Agreements that have been already signed and will be in force in the near future are, European Union, Costa Rica and Guatemala.

These agreements allow the reduction of customs duties that must be paid for the import of goods. For this purpose, originating rules of each agreement must be fulfilled.

8. Antidumping duties and Countervailing duties

In accordance with the WTO general rules on antidumping and countervailing measures, Peru has adopted rules to prevent and correct distortions of competition in the market caused by dumping and subsidies. Peruvian provisions try to prevent unfair trade practices resulting from sale prices that are less than the production cost of exported products or from granting subventions.

An antidumping duty is levied on certain goods whose dumping prices cause or threaten to cause material injury to the Peruvian domestic industry. A countervailing duty is levied to counteract subsidies directly or indirectly granted in the country of origin when they cause or threaten to cause material injury to the Peruvian domestic industry. The Antidumping and Countervailing duties are imposed by the National Institute for the Defense of Competition and Protection of Intellectual Property (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual, INDECOPI). Customs Authority is in charge of their collection.

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

D. Taxation of Business and Cross-Border Transactions

The Peruvian Constitution establishes that taxes are created, modified, or discharged exclusively by law passed by Congress Law, and exceptionally by legislative decree in case certain attributions are granted by Congress to the Executive Branch. The same premise applies to exemptions.

The Peruvian Tax Regime is regulated by several norms. The Tax Code is the main legislative body that governs the tax principles, nature of taxes, tax obligations and authority of the Tax Administration, the Tax Court, tax proceedings, and imposition of tax penalties. The Tax Code does not contain rules applicable to specific taxes. It guides the application of other tax laws such as the Income Tax Law, the General Sales Tax Law, the Municipal Tax Law, and Customs Act.

1. Tax Administration

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

1.1 Tax Procedures

The outstanding tax bill issued by the Tax Administration after an audit, and the penalties imposed can be claimed by the taxpayer before the Tax Administration. It is not necessary to pay an outstanding bill to file a claim if this is submitted within the period stated by the applicable law. If the claim is rejected the taxpayer can file an appeal before the Tax Court. The tax procedure in its administrative phase ends with the Tax Court. Against the judgment of the Tax Court, an administrative suit can be filed before the Judiciary, starting the judicial phase.

1.2 Taxpayer Identification - RUC

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

2. Peruvian Tax System Legal Framework

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

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

The following is a description of the taxes with the broader application in Peru at the time of the issuance of this report (June 2012). This report also includes a description of certain tax issues relevant to the mining activities.

3. Income Tax

3.1 Scope of application

Income Tax is levied on income obtained from capital, work and from the joint application of both factors; capital gains; revenues resulting from operations with third parties as expressly stated in the Income Tax Law (“LIR”); and imputed income, as expressly stated in the LIR.

3.2 Tax Jurisdiction

Peruvian residents are subject to the Income tax on their worldwide income. Non-residents or permanent establishments in Peru of foreign corporations are taxed only on their Peruvian source income.

3.3 Peruvian Residents

There are considered residents in Peru, among others, (a) Peruvian individuals who reside in Peru; (b) foreign individuals who have resided or remained in the country more than 183 calendar days in a twelve month period; (c) legal entities incorporated in the country; (d) branches, agencies or other permanent establishments in Peru of non-domiciled, case in which the status of resident applies to the branch, agency or other permanent establishment as to the Peruvian source income.

3.4 Peruvian Source Income

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

3.5 Business Income Tax Regime

Business entities are subject to the business income tax regime. The definition of business entities covers corporations, partnerships and any other form used to conduct business. The tax treatment for domiciled

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

3.5.1 Determination of Taxable Income

(a) General Rule

As a general rule, the business income tax regime applies on the taxpayer's net income. The net income over which the income tax is calculated is the result of deducting the expenses incurred to produce the income and maintain its source.

(b) Non-residents

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

3.5.2 Deductions – Losses carry forward

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

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

3.5.3 Monthly Payments

Resident companies must make Income Tax monthly prepayments, based on revenues accrued during the relevant month, according to one of the methods set forth in the Income Tax law. If the taxpayer did not have taxable income the previous year or started activities during the year, the monthly payments will be 2% of the taxpayer's monthly net income, which percentage might be modified twice a year (in January or July).

3.5.4 Withholding

There are required to withhold those who pay or credit income characterized as "second category" (income earned by individuals arising out from capital or dividends) and "fifth category" (income from employment); the persons, companies and entities that are required to keep full accounting records of income and expenses when they pay or credit "fourth category" income (independent personal services); the entities that pay or credit income or obligations to a bearer or other securities to a bearer; securities clearing, settlement entities, investment funds or trust administrators in the cases stated in the law; as well as any other persons as determined by SUNAT.

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

assistance provided certain conditions are met).

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

In addition, reduced withholding tax rates may also apply where there is a Double Tax Treaty in force (Peru has signed treaties of this type –which are currently in force– with Bolivia, Brazil, Canada, Chile, Colombia and Ecuador).

3.5.5 Tax Return Filing and Payment

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

3.6 Individual Income Tax Rules

For individuals considered as resident for tax purposes, the tax amount is determined by applying over the net income a progressive scale. For this purpose the net income would be the annual total salary less seven (7) tax units (approximately US\$ 9,821).

The tax rates applicable to resident individuals are 15% up to a salary equivalent to 27 tax units (approximately US\$ 37,881); 21% to the excess over 27 tax units up to 54 tax units (approximately between US\$ 37,882 and US\$ 75,762), and 30% to the excess over 54 tax units (approximately more than US\$ 75,762).

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

3.7 Taxation of Mining Activities

3.7.1 Special Deduction Rules

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

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

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

3.7.2 Mining Companies Tax Benefits from Public Infrastructure Investments

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

The investments must be approved by the competent authority (i.e., in case of roads, the Ministry of Transport and Communication). The amount of the investments that might be Income Tax deductible expenses would be only the amount related to the portion of the work characterized as public infrastructure. Moreover, there would not be under the benefit expenses related to maintenance, acquisition of land, or pre-investment and investment studies.

3.7.3 Special Mining Tax

Since October 1st, 2011, mining companies in exploitation and production stage are subject to the Special Mining Tax. Companies with stability agreements in force under the General Mining Act are levied with the

called Special Contribution (that it is voluntarily agreed with the Government).

The Special Mining Tax is levied on the company quarterly operating profits from the sale of mineral resources, determined according to the applicable accounting rules. The Special Mining Tax effective rate ranges from 2% to 5.36%; and is determined according to the company's quarterly profits subject to the tax. There is no minimum Special Mining Tax. The tax effectively paid is a deductible expense for the Income Tax of the year in which it is paid.

3.7.4 Mining Royalty

In September of 2011 the Peruvian Congress enacted legislation modifying the Mining Royalty, which is in force since June of 2005. The Mining Royalty is a royalty charge to be paid by mining companies in favor of the regional and local governments where mining resources are located.

The legislation enacted in September of 2011, in force since October 1st of 2011, has modified the Mining Royalty rules. Accordingly, the Mining Royalty is now a percentage of the quarterly operating profits; the effective rates range from 1% to 7.14%; and it can be a deductible expense for purposes of the annual Income Tax in the year in which it is paid. In case the Mining Royalty amount calculated by applying the formula stated in the law is lower than 1% of the respective quarterly sales revenue, the latter would be deemed as the royalty to be paid by the company. Finally, under the new law there are also subject to the Mining Royalty rules the assignees of mining concessions.

3.8 Transfer Pricing

In the case of sales and other property transfers as well as in the provision of services, notwithstanding the consideration agreed upon between the parties, for tax purposes the relevant transaction shall always be deemed as made at its corresponding "fair market" value. If the value determined by the parties differs from the "fair market" value, the tax authorities will make the necessary adjustments for both the purchaser and seller.

In the case of transactions entered into between "related" parties or with entities resident in tax haven jurisdictions, the corresponding "fair market" value shall be deemed equivalent to the consideration that would have been agreed with or between independent parties in comparable transactions, in identical or similar conditions, following local "transfer-pricing" rules.

Peruvian transfer pricing rules are based on the OECD Arm's length principle. The Peruvian tax authority is allowed to adjust the prices of transactions between related parties when they are not consistent to the transfer pricing rules. Generally speaking, for purposes of the application of the transfer pricing rules, related parties must (i) have a technical transfer price study; (ii) keep all the transfer pricing study supporting information and documents; and (iii) file an annual tax transfer pricing return. If any of these requirements is not observed, the company would be subject to a fine as stated by law.

4. Value Added Tax

4.1 Scope of application

Value Added Tax (VAT) is a consumption tax that applies to the following transactions: (i) sale of movable goods within Peru; (ii) services provided or used within Peru; (iii) construction contracts; (iv) first sale of real estate by constructors; and, (v) import of goods.

There will be a taxable sale in case of a transfer of movable goods for a price, regardless the designation given to the transaction in the contracts or negotiations that originated such transfer and the conditions agreed upon by the parties. The transfer of movable goods of a company for free is also considered a sale unless certain conditions are met.

A service would be provided in the country when the service provider is a Peruvian resident subject to the Business Income Tax regime, regardless the place of execution of the contract or payment of the compensation. Services would be considered to be used in the country when the service provider is a non-resident for Income Tax purposes and the service is consumed or used in Peru. There are also within the VAT scope but for certain exceptions, the transfer of business assets free of charge between related companies.

4.2 Persons subject to VAT

VAT taxpayers are all individuals, companies, legal entities, irregular partnerships, associations, trusts, mutual and investment funds that perform any of the transactions subject to the VAT. Also, there might be subject to the VAT rules as responsible parties the purchaser of the goods, when the seller is not a Peruvian resident; individuals, companies or entities of any type designated as such by Law or regulation; the trustee in case of a securitization trust for the operations that the securitized property carries out according to its purpose, among others.

Individuals and any types of entities that do not carry out business activities may be under the VAT rules if they usually import goods or carry out the activities subject to the VAT. Likewise, there would be VAT taxpayers the joint ventures, consortiums and other forms of business cooperation contracts that keep independent accounting from that of the investors or venturers.

4.3 VAT Calculation

As a general rule, the VAT taxable base is the sale price paid for the goods or services, which may be adjusted by the Tax Administration considering their fair market value. In case of construction contracts the VAT tax base would be the construction value; in the first sale of real estate it would be the income received (excluding the 50% corresponding to the land value); and in case of imports it would be the customs value plus rights and taxes affecting the import of goods except for the VAT.

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

4.4 Fiscal Credit

VAT is assessed and collected on the value of goods and services that have been provided every time there is a transaction subject to the VAT. It applies to every stage of the production and distribution cycle, and has no cumulative effects. Generally, each seller of goods or services in the chain of supply charges VAT on its sales and is entitled to deduct from this amount the VAT paid on its purchases (the “Fiscal Credit”). Under the VAT rules, in order to give rise to Fiscal Credit the purchase of goods or services must constitute operating costs or expenses to the taxpayer according to the Income Tax rules, even if the taxpayer is not subject to such tax, and must to be used in VAT taxable transactions. Also, the tax must be separately stated on the purchase invoice; and the supporting invoice must have been issued according to the statutory requirements, among other conditions.

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

4.5 Declaration and Payment

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

4.6 VAT Early Recovery Regime for Mining Activities - Law 27623

By Law 27623 the Peruvian Congress approved a specific VAT early recovery regime applicable to mining activities (the “mining early recovery regime”). The regime allows holders of mining concessions performing mining exploration activities, which are still in a pre-productive stage, to recover the VAT paid upon the imports or local purchases of certain goods, and in the acquisition of certain services and construction contracts related to such exploration activities.

In order to be covered by the mining early recovery regime the investor must enter into an Exploration Investment Contract with the Peruvian government – with the competent authority (i.e. the Ministry of Energy and Mines) – stating its commitment to make an investment of at least US\$ 500,000.00.

If not extended, the mining recovery regime will elapse on December 31, 2012.

5. Net Assets Tax

This tax, so-called “ITAN”, levies the net assets’ value of companies as reflected on their corresponding Balance Sheets as of December 31st of the previous year.

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

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

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

6. Financial Transactions Tax

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

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

7. Selective Consumption Tax

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

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

8. Banking Regulations

Since 2004, companies domiciled in Peru are required to meet certain formalities when fulfilling payment obligations to third parties. One formality thus established requires that payments be made through the Peruvian banking system when such amounts are greater than 3,500 PEN (Peruvian New Sols) or 1,000 USD (depending on the currency in which the obligation was contracted), in order to document expenses, costs and/or tax credits for tax effects.

9. Tax Incentives

9.1 Tax Benefits from Public Infrastructure Investments – Law 29230

Under Law 29230, companies in general may enter into agreements with regional and local governments to finance or carry out public investment projects listed on the PROINVERSION priority projects list. Once finalized the works must be transferred to the regional and local governments. The investors would be paid by the Central Government with certain certificates – the Regional and Local Public Investment Certificates (CIPRL). These certificates might be used by the company to offset its monthly and annual income tax payments of the relevant year up to an amount equivalent to 50% of the income tax of the previous fiscal year. If the certificates are not used on the respective fiscal year due to the 50% limitation, the Central Government would issue new certificates adding a credit of 2% to the amount stated on the previous ones. If the certificates are not used within a period of ten years, the company might request a reimbursement from SUNAT.

In order to be able to subscribe such agreements, the companies must be selected by the regional and local governments according to certain statutory rules. Moreover, the companies should be registered in the registry of companies that undertake public infrastructure projects.

9.2 Stability Agreements

Please see literal B above of this section III.

E. Labor and Employment

1. Labor Contracts

(1) Individual Labor Agreements

(a) Indefinite term labor contract

Labor laws provide that all employees must be hired for an indefinite period. Contracts for a fixed term are only available in certain cases provided they meet the requirements established by law.

(b) Specific types of labor contracts or fixed-term contracts

The most important cases in which the law allows for a worker to be hired for a fixed term are as follows: (i) starting or increasing operations (contract arising from the initiation of a new business activity); (ii) market needs (contract entered into in order to meet business production increases); (iii) substitution (contract entered into in order to temporarily substitute for a permanent employee of the company); and (iv) a certain project or specific service (contract with a previously-established purpose and a specific duration).

Each term-based labor contract has a maximum period based on its type. However, none may exceed five (5) years. Contracts must be entered into in writing and the Labor Authority (Autoridad Administrativa de Trabajo) must be notified for the corresponding registration thereof.

Fixed term contracts are also available for special sectors, i.e. nontraditional exports, construction.

(2) Collective Agreements

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

In Peru, the law establishes the procedure that must be followed by workers and employers when signing collective agreements. If the parties do not reach an agreement, the law provides for various means of resolving conflicts, such as conciliation, mediation, and arbitration. The Constitution also recognizes the right of the workers to strike.

(3) Special Agreements

Given the special characteristics of activities involved in rendering services, special regimes exist for contracting labor regarding mining, agriculture, civil construction, foreign employees, micro and small business employees, among others. Each regime is governed by special legislation establishing its characteristics and specifications.

(4) Non-Labor Agreements

(a) Trainee contracts

Trainee contracts do not qualify as labor relations as their purpose is to train the work force (ideally

young people) who have not yet joined the labor market. The types of contracts regarding training include apprenticeship contracts, internship contracts, youth trainee contracts, clerkships, and labor re-insertion.

Persons rendering such types of services are not entitled to legal benefits arising from work contracts, but to special ones established for such services.

(b) Independent services contracts

These contracts may be used only in the case of independent services, where the party rendering the service is under no type of subordination or control exercised on the part of whoever benefits from such work. Persons contracted under these systems are not entitled to benefits that are routinely a part of work contracts.

(5) *Worker Age*

The Child and Adolescent Code provides for specific minimum ages in order for a legal minor to be authorized to perform a job under a work contract. The minimum age depends on the activity performed, although generally it must not be below the age of 14.

On the other hand, retirement age in the Private Pension System is sixty-five (65), at which age workers may choose to apply for a retirement pension.

Similarly, our laws provide for compulsory and automatic worker retirement at age 70, as long as the worker is entitled to a retirement pension, although the parties may reach an agreement to the contrary.

(6) *Worker Nationality*

The Foreign Worker Hiring Law provides that Peruvian or foreign companies may hire foreign workers, as long as the latter do not exceed 20% of the total number of their workers. Similarly, it provides that total payments to foreign workers may not exceed 30% of the value of the total payroll.

Notwithstanding the foregoing, there are cases in which the aforementioned percentage limits do not apply, as in the case of a foreigner whose spouse is Peruvian or a foreigner with an immigrant visa. Similarly, there are cases of foreign workers who are exempt from such percentages because they perform work involving specialized, managerial or leadership tasks.

(7) *Work Shift*

The ordinary work day is 8 hours, or a maximum of 48 hours per week. Work performed after the end of the work day must be treated as overtime. Overtime work is voluntary on the part of the worker. Overtime pay for the first two hours may not be less than 25% per hour, based on the pay received by the worker. A percentage of 35% is applied to any additional hours.

Employers must keep an "Attendance Register" in order to keep the information of the entrance and the departure of the workers, trainees and third party services from the work place.

(8) *Paid Leaves*

(a) Weekly Day Off

Workers are entitled to a 24-hour weekly rest period. This day of rest should preferably be taken on Sunday. However, because of the nature of the company activities, it may be taken on other day.

(b) Vacations

Workers are entitled to thirty (30) calendar days of paid vacation for each full year of service. Vacation time must be taken in the year following the year in which it was accrued. Failure to concede the resting period during the applicable year leads to the employer being liable for one extra monthly wage as an indemnification, on top of the vacation remuneration and the wages already collected by the worker. General managers and some other high level employees may not be entitled to receive such indemnification.

(c) Holidays

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

(9) Maternity Leave and Benefits

Female workers are entitled to 45 days of prenatal leave and 45 days of postnatal leave. The prenatal leave can be accumulated with the postnatal, at worker's choice. In the event of multiple births, there shall be an additional 30 days of postnatal leave. Similarly, at the end of the postnatal period, the mother is entitled to a daily one-hour nursing leave until the child is one year old.

(10) Remuneration

Our legislation considers remuneration to be the total amount received by workers for their services, whether in cash or in kind, provided it may be used freely by workers. However, other legal concepts exist such as special bonuses, profit sharing, and value of work conditions, among others.

The form in which payment is made is established by mutual agreement between the worker and the employer. It is also possible for employers to establish a total annual payment with those workers who receive monthly payments greater than two (2) UIT. This amount includes all legal and conventional benefits to which the company is subject, with the exception of profit-sharing.

Workers are entitled to the following benefits, among others:

(a) Minimum Living Wage

Workers shall receive a minimum monthly income of approximately USD 283.00.

(b) Profit-Sharing

Legislative Decrees 677 and 892 establish a system of profit-sharing for personnel at private companies. The workers' share is not based on employer earnings, but rather on annual income calculated in accordance with income tax regulations. The percentage which must be distributed by the employer to his workers depends on the employer's activity, and varies from 5% to 10% of taxable profits.

(c) Seniority Pay Severance

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

The amount of each deposit is equal to one-twelfth of the computed monthly pay for the months worked. Computed pay is the total amount that the worker regularly receives as compensation for his work, whether in cash or in kind. This amount must be deposited in the bank that the worker chooses.

(d) Legal Bonuses

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

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

(11) Social Security Health Insurance

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

(12) Termination of Work Relations

(a) Individual Dismissal

If a worker is dismissed for a serious breach of contract, and the employer follows the procedure established by law, the worker is not entitled to any severance pay whatsoever.

If the employer dismisses a permanent worker without cause, he is entitled to one and a half months' pay for every full year of service, with a cap of twelve months' pay as severance pay. If he does not cash said severance pay, he can demand to be reinstated. The same applies when the employer falsifies the worker's serious breach of contract.

Finally, if the employer dismisses a worker because of a banned reason, such as being a union member, pregnancy, or discrimination, the worker can demand to be reinstated and to be compensated for the pay he stopped receiving as a result of the dismissal. At the end of the corresponding proceeding, the worker can choose to receive the severance pay described above and not be reinstated.

(b) Collective Dismissal

There are four (4) possible scenarios in which an employer may dismiss workers collectively.

The first scenario is the reduction of personnel. In this case, the employer may reduce personnel for economic, technological, organizational or similar reasons, as long as the termination of work contracts based on such causes pertains to a number of workers not greater than 10% of the company's total personnel. To this end, an administrative procedure must be carried out before the Administrative Work Authority. In such case, workers are not entitled to seek any severance pay whatsoever for being laid off.

The second scenario arises from the dissolution and liquidation of the employer. Employers may

agree to their dissolution or liquidation at any time, without the need for prior authorization or any cause or reason to justify their decision. Dissolution of a corporation in Peru does not result in any type of employer liability towards workers. Upon dissolution of the corporation based on a resolution passed at the general shareholders' meeting, the liquidator is authorized to terminate labor relations with the workers. In such case, workers are not entitled to seek any type of severance pay whatsoever for the termination of their work relationships.

The third scenario happens when the company is declared in insolvency.

Finally, contracts may be terminated when the company faces force majeure, if it lingers for at least three (3) months.

(13) Labor intermediation and Third-Party Services

(a) Labor intermediation

Labor intermediation is only permitted when there is a need for temporary, supplementary or specialized services. The law clearly states that transferred workers hired under this scheme may not render services that entail the ongoing performance of the employer's main activity.

The law establishes that the number of workers that may be transferred to a user firm may not exceed 20% of the user firm's total workforce. This percentage will not be applied to supplementary or specialized services, as long as the service provider assumes full technical autonomy and responsibility for carrying out its activities.

(b) Third-Party Services

Third Party Services Implies the hiring of companies of services to develop specialized activities, as long as they carry out the contracted assignments on their behalf and at their own risk; have their own financial, technical and material resources; and have workers who are under their exclusive control. The using of these types of contracts doesn't restrict the individual and collective rights of the workers.

Our legislation has established that the following do constitute third-party services: management contracts; project contracts; contracts for the purpose of placing a third party in charge of an integral part of a company's production; and services rendered by contracting and sub-contracting firms, as long as they carry out the contracted assignments on their behalf and at their risk; have their own financial, technical and material resources; and have workers who are under their exclusive control.

The company that hires the services company is jointly liable with the latter for workers payment and statutory benefits.

2. Unions

The main function of unions is to represent workers in a particular industry in conflicts or complains of a collective nature, and to enter into collective agreements with their employers.

Formation of a union depends on the industry or the level on which workers intend to negotiate with their employer or employers. If the workers are going to negotiate solely on a company level, they will need to form a company union, for which a minimum of twenty persons is needed. On the other hand, if they intend to negotiate with several employers, they will have to form a trade union, for which a minimum of fifty workers must join together.

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

3. Pension Systems

In Peru, there are two pension systems. However, in both cases the worker must be at least 65 years old in order to apply for retirement pension, and must have contributed for the minimum number of years. In special cases, both the retirement age and the longevity requirement may be reduced as a result of high-risk activities performed by workers, who may then receive their retirement pension at an earlier age.

(1) National Pension System.

The National Pension System is a system administered by the government through the Office of Pensions. All workers subject to labor regulations in the private sector must adhere to such system, unless they are affiliated with the private pension system.

(2) Private Pension System.

Workers subject to labor regulations in the private sector may choose to be affiliated with the private pension system administered by private pension fund managers.

4. Taxes on Compensation

The main taxes on compensation received by workers are as follows:

(1) Social Security Health Insurance

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

(2) National and Private Pension System

In the case of the national pension system the contribution amounts to 13% of compensation. In the case of the private pension system, the contribution varies between 12 and 13%. In both cases, the worker is responsible for payment, but must be withheld and paid by the employer.

(3) Income Tax

This tax is levied on all work-related income. It is charged to the worker, but must be withheld and paid by the employer.

For resident workers in the country, the tax is based on a progressive scale applied to net income (total payments received in the year minus 7 UITs). For non-resident workers in the country, a general rate of 30% is applied to total gross income without any deductions being made.

F. Antitrust and competition Issues

Peruvian legislation promotes and protects free competition. Conducts against the free competition are forbidden and sanctioned by the Repression of Anticompetitive Law (Ley de Represión de Conductas Anticompetitivas, LRCA). Sanctions are determined and executed by INDECOPI regarding each case that is presented before it.

Three (3) main types of conducts are sanctioned by the competition regulations: abuse of dominant position; horizontal collusive practices; and vertical collusive practices.

1. Abuse of dominant position

According to the LRCA, an economic agent enjoys a dominant position in a relevant market when it has the possibility of substantially restraining, affecting or distorting the supply or demand conditions in such market, without its competitors, suppliers or customers being able to counteract it.

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

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

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

The LRCA provides that an abuse of dominant position is verified when an economic agent that holds a dominant position in the relevant market uses this position to unduly restrain competition, obtaining benefits and harming other competitors, which would not have been possible if such position had not been held.

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

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

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

2. Horizontal Collusive Practices

Horizontal collusive practices imply the joint action of several competitors as if they were one. The reason for this is that sometimes companies find that cooperating with other competitors is more beneficial than competing with them. Collaboration enables companies to reduce their volume of production, raise their prices, and increase benefits for each company.

According to the LRCA, such practices may consist of concerted agreements, decisions, recommendations or practices among competitors with the aim or effect of restraining, preventing or distorting competition. The law is not limited to those agreements that are legally enforceable, but also includes cooperation activities, decisions or recommendations made through business partnerships and even an understanding between parties.

Collusive practices are regulated by absolute prohibitions or relative prohibitions. Absolute prohibitions relate to practices that are illegal per se, while relative prohibitions relate to practices that require examination to verify whether they have anticompetitive effects.

Absolute prohibitions relate to horizontal agreements between competitors that are not supplementary or accessory to other legal agreements. These agreements consist of:

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

Horizontal collusive practices that constitute relative prohibitions are concerned practices related to:

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

3. Vertical Collusive Practices

According to the LRCA, these are collusive practices among economic agents operating at different levels of the production, distribution or marketing chain, aimed at restricting, preventing or forging free competition. These types of practices require at least one of the parties to have a dominant position in the relevant market prior to engaging therein.

Illegal vertical practices may consist of alleged abuse of dominant position and horizontal collusive practices.

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

4. Proving Collusive Practices

Given that collusive practices are difficult to prove, the competition agency may resort to signs and presumptions in order to verify whether a similar behavior exists among competitors, and that the similarity is not naturally explained by the competitive operation of the market, such as simultaneous price fluctuations, similar quality of the product offered, and comparable indications.

In this sense, the competition agency must make a careful and restrictive analysis of the alleged uncompetitive practice. For example, it must make sure that the similarity in behavior is not the result of a mere suspicion, but that it has been absolutely proved, that there is no rational alternative explanation for the concerted practice which is capable of justifying such identical behavior.

5. Sanctions corrective measures

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

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

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

6. Mergers control

In Peru, until now merger control has only been contemplated for the electric power sector. However, INDECOPI has presented certain initiatives to include merger control in the general system governing free competition.

Every type of vertical integration in the electric power sector, whether direct or indirect, is prohibited. The sole exception is that the concentration does not imply a decrease, damage or restriction of competition and free concurrence.

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

To this end, LAASE provides that concentration is understood to be the performance of the following actions: merger; incorporation of a company in common; the direct or indirect acquisition of control over other companies through the purchase of shares, a participating interest, or through any other contract or legal form that confers direct or indirect control in a company, including entering into joint venture agreements, unincorporated partnerships, or any other similar business cooperation agreements. Also included is the acquisition of productive assets of any company that performs activities in the sector; or any other act, contract or legal form including legacies, by virtue of which societies, associations, shares, corporate parties, trusts or assets in general are concentrated, performed between competitors, suppliers, clients, shareholders or any other economic agents.

It is important to clarify that included within the scope of the LAASE are those concentration acts that in spite of being performed in a foreign country, directly or indirectly involve companies engaged in electric power generation, transmission and/or distribution activities within the national territory.

Concentration acts that require prior authorization from INDECOPI are those acts that directly or indirectly involve companies engaged in electric power generation and/or transmission and/or distribution activities that hold, before or after the act that gave rise to the authorization application, either jointly or separately, a percentage equal to or greater than 15% of the market in horizontal concentration acts, and a percentage equal to or greater than 5% of any of the markets involved in the case of vertical concentration acts.

Without prejudice to the provisions contained in the referred rules, the reform for the disintegration of electric power generation, transmission and distribution activities was never fully implemented. At present, the Republic of Peru still maintains a significant share in the generation and distribution markets. Moreover, since the LAASE was approved, various cases of concentration, both vertical and horizontal, have occurred, which have been authorized by INDECOPI without establishing any type of structural limitation or restriction.

Without prejudice to the imposition of applicable sanctions, the failure to obtain prior authorization from INDECOPI empowers this entity to bring the necessary legal actions for the purpose of invalidating the concentration performed, such as: ordering the sale of productive assets, the sale of shares, declaring the nullity of the act, among others.

G. Environmental Issues

Enactment of the Environmental and Natural Resources Code (Código del Medio Ambiente y de los Recursos Naturales, or CMARN) in 1990, was the first attempt at systematizing Peruvian environmental legislation. The

1993 Peruvian Constitution also established a series of governing principles in the area of environmental policy, such as the government's role in setting national environmental policy and its role in promoting the sustainable use of natural resources.

Furthermore, Legislative Decree 757, the Law for the Promotion of Private Investment (Ley Marco para el Crecimiento de la Inversión Privada) modified the CMARN and established the competent environmental authority.

In this respect, Peruvian environmental legislation has undergone significant development aimed at (among other objectives) creating a less bureaucratic environment in which companies undertaking activities with potential environmental impact may conduct business without facing administrative obstacles, unnecessary costs, and possible social conflicts.

Accordingly, various legal norms have been implemented over the recent years in order to provide for efficient and coordinated actions by each state entity, thereby establishing the principles for environmental legislation and laying the groundwork for national environmental policy while (most importantly) setting guidelines for the elimination of overlapping authorities.

Similarly, the General Environmental Law (Ley General del Ambiente, or LGA) which repealed the CMARN, seeks to harmonize the conduct of governmental operations and business activity in order to achieve sustainable development in the country. It also establishes clear rules for economic development and introduces mechanisms for promoting economic activities. A clear example of the intent to foster the creation of "clean policies" that go hand in hand with the proper development of economic activity is the establishment of the groundwork for granting tax incentives.

LGA also introduces innovative changes, including the following: Strengthening the National Environmental Council (Consejo Nacional del Ambiente, which is the highest national authority in environmental affairs); establishing a National Comprehensive Code for Sanctions, to which other codes providing for sanctions and violations in each economic sector must be adapted; introducing the new concept of "environmental responsibility," the objective of which is to provide compensation for possible damage generated by negative environmental impact; and, finally, creating a system for assigning environmental responsibility.

However, the Law on the National Environmental Impact Assessment System is probably one of the most important environmental laws enacted on the past years. Aimed at regulating the environmental certification for investment projects that may cause negative environmental impacts, it establishes the criterion for classifying investment projects according to the level of environmental impact that each project may cause, as well as an a standardized procedure that all competent environmental authorities have to fulfill in order to grant an environmental certification to any investment project.

H. Consumer Protection and Products Liability

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

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

The Code of Protection and Defense of the Consumer is applicable to all consumer relations that are entered into the Peruvian territory or when the consumer relations have effects therein.

I. Land use and Real Estate

Peruvian law offers rules that guarantee the acquisition, transfer, and protection of real estate. The specific measures adopted by the government have a threefold thrust. First, the protection of the right to acquire property is at the constitutional level, ensuring the free exercise of this right and enshrining it as inviolable. Second, the Constitution also establishes that foreigners (whether natural individuals or legal entities) have the same status as Peruvians with respect to the acquisition of property, with a specific exception set forth for national security reasons regarding lands located within fifty (50) km from the border zone. Third, several legal mechanisms have been developed to ensure the safety of transactions related to the acquisition, transfer, and use of property.

1. Private and Public Real Estate

Investors interested in acquiring property in Peru should first be aware of the distinction between private real estate and public real estate.

The transfer of private property is governed by ordinary rules regulated by the Civil Code. According to these rules, transactions between individuals enjoy wide contractual possibilities, even allowing the creation of new types of contracts, called ‘atypical contracts’, that are not stipulated in the current legislation. Within the regulated legal concepts are the real rights of property: surface rights, easements, ownership, and usufruct, among others.

Peruvian regulations also allow the parties to enter into preliminary agreements intended for the possible acquisition of real estate. This is the case of a commitment to execute an agreement, by means of which the parties agree to enter into a future contract; the party that refuses to execute the preliminary agreement may even have to pay a penalty. There also is the option agreement, by means of which one of the parties agrees to perform the sale within a stipulated term, with the other party having the power to decide whether or not to execute the agreement.

With the exception of donations and mortgages, which are invested with certain formalities, agreements related to real estate may generally be executed by simple mutual consent. The recommended practice, however, is to abide by the formalities that evidence the execution of an agreement, either by written evidence of the agreement, by formalizing the agreement in a public deed, or by recording it in the Public Registry.

In relation to private real estate, there is a special type of property that may only be transferred by observing special formalities. These are properties owned by native and peasant communities, in which case the sale of property must be approved by the corresponding community meetings. According to the resolution adopted at this meeting, a person who has been expressly chosen to act on behalf of the community must execute the agreement.

Public property could be the private property of the government or could belong to the public domain. In both cases, there is a very specialized regulation which stipulates a number of formalities that must be met for the use of such property by any individual. A private entity may purchase state-owned property, execute agreements on exchange, easement, surface rights, or usufruct, or lease the property for a specific purpose of public relevance. In these cases, it will be necessary to follow administrative procedures relevant to the entity owning the public property; to comply with the requirements legally set forth for each type of operation; and, depending on the case, to take part in auctions or public bids, competing with other bidders for the acquisition of the intended right.

2. Urban and Rural Land

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

Urban lands are located within the cities, including lands on which commercial, industrial, residential, public service activities, and other activities typical of development in urban area take place. When urban land is intended to be acquired for a specific purpose, it is very important to first obtain the necessary certification from the corresponding local authority, either a 'land development and building parameters' certificate or a 'zoning and roads' certificate. These certificates, which have a three-year validity, detail (among other information) the use and building parameters that must be observed. Notably, while the certificates are valid, the person who has requested them may put into effect the information contained in them, despite the fact that within the three-year period normative changes may arise, modifying the uses and parameters of the land.

Rural lands are those located outside urban area, intended for agricultural use, livestock, and rural activities in general. In most cases, it is possible to modify the designation of land from rural to urban, following a fairly complex procedure before the competent local authority.

3. Registry System

The National Superintendency of the Public Registry (Superintendencia Nacional de los Registros Públicos - SUNARP) is the entity that governs the real estate registration system. It is through the SUNARP that any person may obtain a property registry certificate (Certificado Registral Inmobiliario - CRI). This document enables the purchaser to verify the existence and attributes/description of the property (land and construction), the identity of the owner, and to check whether the title is free from attachments, mortgages, or any encumbrances of a judicial or extrajudicial nature.

The effectiveness of the real estate registry is guaranteed by legal order. All the information published and contained in the records is presumed known by all, without admitting evidence to the contrary. Persons that appear as owners in this system are duly empowered to sell the properties of which they are titleholders.

J. Intellectual Property

1. Trademarks

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

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

A multi-class application can be filed for products and for services. If the registration application is filed in compliance with all formalities required by law and no oppositions are filed, the procedure will take approximately 4 months. If oppositions are filed, the procedure takes approximately one and a half years.

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

Once the application is filed, the Trademark Office will examine within the following 15 working days if it meets the legal requirements established by law; which are mainly if the list of products and services corresponds to the class and if the corresponding power of attorney has been filed.

If from the examination it is found that a legal requirement has been omitted, the applicant will be granted a

term of sixty working days from the date the notification is served to correct such omission. If at the expiry of such term the applicant does not complete said requirements, the application will be considered abandoned and will lose its priority. If the registration application meets the formal requirements, the Trademark Office will order its publication.

Within the term of thirty working days from the date of publication, any person having a legitimate interest may file an opposition against the registration of the mark. If an opposition is filed, the Trademark Office will notify the applicant to -within the following thirty working days- assert his arguments and file evidence, if he deems it convenient. Once such term has expired, or if oppositions have not been filed, the Trademark Office conducts a registrability examination. If oppositions have been filed, the Trademark Office takes a decision on the granting or rejection of the registration of the trademark.

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

The registration of a trademark may be cancelled at the request of any interested person, if it has not been used in any of the countries member of the Andean Community (Bolivia, Colombia, Ecuador or Peru) during the three years preceding the filing date of the cancellation application.

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

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

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

2. Patents and Industrial Designs

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

In Peru, patents for inventions are granted, whether they are for product or for procedures, in all fields of technology, provided that they are new, involve an inventive level and are susceptible of industrial application. Uses and second uses can not be patented.

If the patent application is filed in compliance with all formalities required by law and no oppositions are filed, procedures will take approximately 4 years. If oppositions are filed procedures will take about 5 to 6 years.

The registration last twenty years from the date the application is filed.

Once such application is filed, the Office of Inventions and New Technologies (Patent Office) examines within the following 30 working days if it meets all legal requirements established by law; that is if specifications, claims, summary, drawings, power of attorney and the assignment document have been filed, where applicable, duly legalized up to the Peruvian Consul or by Apostille.

If from the examination it is verified that a legal requirement has been omitted, the applicant is granted a period of 2 months, extendable for 2 more months after the date of serving, to correct the omission. If at the expiry of such term the applicant does not complete such requirements, the application shall be considered abandoned and shall lose its priority. If the registration application meets all legal requirements, after eighteen months from the date of filing of the application or, where applicable, from the priority date claimed, the Patent Office will order its publication.

Within the term of sixty (60) working days from the date of publication, any person having a legitimate interest may file an opposition against the patent of invention. If an opposition has been filed, the Patent Office will notify the applicant to within the next sixty working days assert his arguments and submit evidence if he deems it convenient. Within the term of thirty (30) working days counted from the publication of the application, regardless of whether oppositions have been filed, the applicant must request the technical examination of the invention. If such period elapses without the applicant having requested such exam to be made, the application shall fall into abandonment.

If the Patent office finds that the invention is not patentable or that it does not comply with any of the requirements established for the granting of the patent, it shall notify the applicant. The applicant shall answer to such notification within the term of sixty working days from the date of the notification is served. Such term may be extended once for a period of thirty additional working days. If the applicant fails to respond to the notification within the prescribed period, or if in spite of the response there are still obstacles to grant the patent, the Patent Office shall deny the patent.

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

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

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

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

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

3. Copyrights

Decision 351 of the Andean Community and Legislative Decree No. 822 govern copyright protection in Peru.

Copyright protection falls on any original intellectual creation of artistic, scientific or literary character susceptible of disclosure or reproduction in any form.

Unlike industrial property rights, these works are protected without having to be registered. Registration is merely declarative.

The author of a work has by the mere fact of its creation, the original ownership of an exclusive right, opposable against third parties, which includes moral and economic rights.

K. Internet Regulations/ e Commerce

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

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

L. Financing Issues/ Payments

The execution of financing agreements with foreign financial entities is not subject to any restriction and does not require any prior authorization or registration with the Central Bank of Peru or any other authority. Payment of debt abroad under such agreements is equally free of authorizations or restrictions, provided that applicable income tax withholdings on any interest paid are made.

Financial leasing activities are restricted to Peruvian authorized entities.

M. Securities Law issues

Securities are mainly regulated by the Securities Market Law (“SML”). This Law applies to securities that are massively issued, freely negotiable, and give their holders credit, equity or similar rights of economic nature. Securities may be offered publicly or privately.

(1) Offerings Involving Securities

All securities publicly offered must be previously registered with the Securities Market Public Registry (“SMPR”), managed by the SMV.

The SML, along with other regulations issued by the SMV, establishes certain standards such as transparency and timely disclosure of material information. All information disclosed to the market through the SMPR’s systems for the dissemination of information must be true, clear, sufficient and timely. The information contained in the SMPR is freely accessible unless it is declared confidential under certain circumstances provided in the legislation.

Securities Market legislation mainly regulates the following different types of public offerings: (i) public offering of securities, (ii) tender offer (oferta pública de adquisición – OPA), and (iii) purchase offer (oferta pública de compra de valores por exclusion - OPC).

(a) Public Offering of Securities

Our legislation regards as public offering of securities any offer that is directed to the general public or to a determined segment of non-institutional investors for the purchase, sale or placement of securities. Every offer is presumed public if it is addressed to more than one hundred (100) prospective investors. However, Peruvian legislation provides for certain safe harbors, and deems as private offers (i.e. not a public offering) those that are directed to institutional investors or those in which the lowest unitary value of the offered securities equals or exceeds a figure indexed to inflation (equivalent to approximately S/. 450,000 for 2012).

Securities that are subject to this kind of offer shall be registered in the SMPR, for which, an Information Memorandum, financial statements from the latest two (2) fiscal years and certain other documents and information described in the applicable regulation shall be filed with the SMV.

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

The sale of securities under this kind of offer may be made within the eighteen (18) months that follow the date of registration of the securities.

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

(b) Tender Offer (oferta pública de adquisición – OPA)

According with the rules for the OPA, if a person or company intend to acquire or increase, directly or indirectly, a significant participation (defined as any acquisition of 25%, 50% or 60% of the voting capital, or the ability to elect the majority of the issuer's Board of Directors or to amend the issuer's by-laws) in a listed company, such acquisition shall be undertaken through a tender offer, unless an exemption is available.

The offer shall be addressed to holders of the outstanding voting shares of the issuer and holders that right to acquire said shares within a certain period of time.

(c) Purchase Offer (oferta pública de compra de valores por exclusión - OPC)

Rules of the OPC provides that if the issuer of securities registered with the SMPR requests the cancelation of said registration, or approves a transaction with a similar effect (e.g. a split whereby investors end up holding unregistered securities), a purchase offer shall be launched, unless an exemption is available.

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

(2) Stock Exchanges – the Lima Stock Exchange

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

(3) Stock Exchange Intermediaries

Stock exchange brokerage houses are in charge of all transactions undertaken on the Lima Stock Exchange.

Said entities are required to obtain a license from the SMV and are subject to its control and supervision.

(4) Institutions for the clearance and settlement of securities - CAVALI

CAVALI is the entity in charge of the clearing and settlement of all transactions undertaken on the Lima Stock Exchange, for which it has previously obtained a license from the SMV. CAVALI is also subject to the control and supervision of this latter governmental entity.

(5) Tax matters

Capital gains on listed securities are subject to a 5% preferential Income tax rate when seller is a non-domiciled entity provided that the securities are in fact traded in the Lima Stock Exchange (otherwise a 30% rate applies).

N. Secured Transactions

There are no restrictions for the holding of security interests in Peru by foreign individuals or entities. The most vastly used types of guarantees under Peruvian law are the mortgage and the Garantía Mobiliaria.

(1) Mortgage

Real estate and any immovable assets can be mortgaged.

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

- i. Expressed consent of the owner or its legal representative.
- ii. Secure compliance of an already determined obligation or an obligation which can be determined.
- iii. Secured amount must be determined or able to be determined.
- iv. Registration of the public deed containing the mortgage agreement in the Registry of Real Estate Property.

Once the mortgage is registered in the abovementioned Registry, it is considered as legally valid and effective.

(2) Garantía Mobiliaria

The Garantía Mobiliaria creates a security interest on any personal goods or assets as long as there is written evidence thereof. Registration of the security interest thus created will allow its enforceability against third parties.

Enforcement of the Garantía Mobiliaria can be made directly by creditor without having to resort to courts if so agreed in the corresponding security agreement.

O. Litigation/ Dispute Resolution Systems

Peruvian Law allows for the resolution of disputes either through courts or arbitration. Foreigners are subject to the same rights and legal guaranties that apply to nationals. Due process and effective jurisdictional protection are recognized as constitutional rights.

1. Judicial System

The Judicial System is integrated by different Courts types that are specialized in different areas of law and have a determined jurisdiction on matters based on location, amounts involved in the dispute, among other factors. Civil courts are in charge of civil, commercial and constitutional disputes, while criminal courts deal with any matter that is considered as a crime under our Criminal Code or other applicable laws.

Procedural matters pertaining to civil and commercial matters are contained in the Code of Civil Procedure (Código Procesal Civil), while criminal procedures are dealt with by the Code of Criminal Procedure (Código de Procedimientos Penales). Please note that the aforementioned Code is being replaced by a new Code (Código Procesal Penal). This already applies in some provinces of Peru and it is programmed to be applicable nationally on December, 2013. In turn, certain constitutional procedural matters are dealt with by the Code of Constitutional Procedure.

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

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

2. Enforcement of Foreign Judgments

Enforcement of foreign judgments in Peru is subject to compliance with the following requirements: (i) the judgment to be enforced does not resolve matters under the exclusive jurisdiction of Peruvian courts; (ii) the court rendering such judgment had jurisdiction under its own conflict of laws rules and under international rules on jurisdiction; (iii) the defendant was served with process in accordance with the law of the place where such court sits, was granted a reasonable opportunity to appear before such foreign courts and was guaranteed due process rights; (iv) the judgment has the status of res judicata in the jurisdiction of the court rendering such judgment; (v) there is no pending litigation in the Republic of Peru between the same parties for the same dispute, which shall have been initiated before the commencement of the proceeding that concluded with the foreign judgment; (vi) such judgment is not incompatible with another enforceable judgment in the Republic of Peru unless such foreign judgment was rendered first; (vii) such judgment is not contrary to the public order or good morals of the Republic of Peru; and (viii) there is a treaty between the Republic of Peru and the country in which such judgment has been rendered, and the provisions of such treaty shall apply. In the absence of a treaty, the reciprocity rule is applicable (such reciprocity being presumed), under which a judgment given by a foreign competent court will be admissible in the Peruvian courts and will be enforceable thereby, except if according to such foreign law (a) judgments issued by Peruvian courts are not admissible in such foreign country, or (b) judgments issued by Peruvian courts are subject to re-examination by such competent court of the issues dealt with therein. As of this date, there is no treaty between the Republic of Peru and the United States of America on the enforcement of foreign judicial resolutions.

3. Arbitration

Any civil or commercial dispute can be submitted to arbitration if the parties thereto agree to do so.

When arbitration takes place, any matters not expressly provided for by the parties shall be ruled by the Arbitration Law, which contains provisions regulating both domestic and international arbitration carried out in Peru.

Foreign arbitration awards will be recognized and enforced in Peru, according to the following instruments even if they are based on a foreign law:

1. Convention of Reconnaissance and Execution of Arbitral Decisions, approved in New York on June, 10th, 1958; or
2. Interamerican Convention of International Commercial Arbitration, approved in Panama on January, 30th, 1975;

V. CONTRACTS AND DOCUMENTS – FORMS AND ENFORCEABILITY

Contracts are regulated in the Civil Code, which sets forth the general rules applicable to contract in general, and to a number of specific legal relationships with an economic content. Pursuant to these rules, parties to a contract can freely determine the contents of a contract as long as it does not contravene any public order provision or good morals and provided that the relevant formalities (where applicable) are complied with.

The Civil Code establishes expressly that contract content set forth by the parties is considered as law and completely enforceable between the contracting parties, unless an imperative law indicates the contrary. The content must include all obligations that the parties must fulfill including obligations to give, do or not do. Contracts are terminated by mutual consent from all parties or when all obligations are completely fulfilled.

The Civil Code also contains general provisions applicable to any breach of contract, liability arising therefrom and termination, all of which apply as a supplement to the agreements of the parties contained in the contract.

VI. ENDING/RESTRUCTURING A BUSINESS PRESENCE

A. Dissolution/Liquidation

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

1. Dissolution

The dissolution of companies applies in any of the following scenarios:

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

When a corporation falls into an event of dissolution, the Board of Directors or any other shareholder must call within thirty (30) days to a General Shareholders Meeting so the corporation decides to approve the dissolution or to adopt all necessary measures that allow it to overcome such dissolution cause. It shall be noted that although corporations are run by the shareholders and its government bodies, the Peruvian government may force the continuation of a company's activities due to domestic security or public necessity reasons.

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

2. Liquidation

The liquidation process is initiated with the adoption of the decision to dissolve the company, which maintains its corporate existence until the liquidation process is duly finished and its extinction is recorded before the Companies Registry.

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

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

According to the General Corporations Law, once the remaining amounts have been distributed, the liquidators shall request the extinction of the company before the Companies Registry. If there are pending debts to corporate creditors after the extinction, those creditors can enforce their payment to the shareholders but only up to the remaining amounts distributed thereto in the liquidation process. If unpaid obligations exist once the realization of all assets has been completed, the company falls into bankruptcy.

B. Insolvency/Bankruptcy/Restructuring

Peruvian Law establishes that all insolvency, bankruptcy and restructuring process involving companies or individuals who are Peruvian residents shall be ruled by the Law of Insolvency System (Ley General del Sistema Concursal). INDECOPI is the government agency in charge of, and with exclusive and mandatory competence over insolvency matters. Banks, insurance companies and governmental institutions (Ministries, Tax Authority, Local Governments (Municipalities) and the like, are not subject to this Law)

Insolvency may be initiated at the request of debtor when it has losses in excess of 1/3 of its paid-in capital or past due obligations in excess of 1/3 of the total debtor's liabilities. Insolvency can also be initiated by the creditors when their credits exceed from fifty (50) Tax Units, and are past due for more than thirty (30) days. The insolvency proceeding seeks to provide an orderly scenario so as to allow creditors to decide whether to restructure or liquidate the debtor.

A creditors meeting is formed by all creditors who hold claims against the debtor provided that such credits are acknowledged by INDECOPI. In general (in the most used and common insolvency proceeding), the creditors meeting decides on the outcome of debtor taking into account the following alternatives:

1. A debt restructuring plan which consists in the continuing of the debtor activities with changes in its administration, establishing a payment schedule.
2. The dissolution and liquidation of the debtor estate.

Unlike other insolvency legal frameworks, there is no intervention of a court or INDECOPI in the soundness, reasonability or feasibility of the creditors meeting decisions and, therefore, the Peruvian insolvency system is highly "privatized" in its core.

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

In addition, preferential payments or fraudulent conveyances, apart from eventual criminal sanctions, can be civilly pursued through a judicial action when: (i) those acts were committed within one (1) year prior to the commencement of the insolvency proceeding; and (ii) the acts negatively affected the debtor's estate.

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

First: Salaries and labor benefits owed to workers, as well as contributions to Pension Funds.

Second: Alimony credits (only applicable to the insolvency of individuals)

Third: Credits secured by mortgage, mobiliary guarantees, pledges, warrants or precautionary measures over the debtor patrimony as long as such guarantees or liens were duly registered and the precautionary measures were attached before the commencement of the insolvency process.

Fourth: Tax debts including taxes, fees, rates, contributions, interests and fines.

Fifth: All remaining unsecured credits that were not considered in the precedent orders.

If the dissolution and liquidation process ends with the liquidation of the entire debtor's estate, and credits remain unpaid, then the debtor shall be judicially declared in bankruptcy.

